

(2015) 09 AHC CK 0139
In the Allahabad High Court
Case No : Writ-B. No. 42070 of 2015

Afsar Ali and Others

APPELLANT

Vs

Dy. Director of Consolidation, Bareilly and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9-A

Citation : (2015) 129 RD 492

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : M.N. Singh, for the Appellant; Naqvi and Shivaji Singh Sisodiya, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri M.N. Singh, for the petitioners and Sri S.F.A. Naqvi, along with Sri Shivaji Singh Sisodiya, for respondents - 2 and 29. The writ petition has been filed against the order of Deputy Director of Consolidation dated 5.6.2015, passed in title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute relates to the share of the parties in basic consolidation year khata 587 (consisting plots 239 (area 10 biswa), 242 (area 19 biswa) and 1185 (area 5 biswa) (total 1 bigha 14 biswa) of village Thiriya Nizawat Khan, tahsil and district Bareilly. It may be mentioned that in lieu of plots 239 (area 10 biswa), 242 (area 19 biswa) and 1185 (area 5 biswa) (total 1 bigha 14 biswa), Chak 1034 on plots 239/1, 239/2, 240, 241 and 242 (total area 1 bigha 10 biswa 14 biswansi) was allotted. In basic consolidation year, khata in dispute was recorded in the names of Yaqoob Khan (now represented by respondents-8 to 11), Akbar Khan (now represented by respondent-7), Mehdi Hasan Khan son of Nasarullah Khan, Shanshah Wali (now represented by respondents-40 to 41), Sher Mohammad (now represented by respondent-6), Chhiddu Khan, Bhurey Khan (now represented by respondents-12 to 14), Rahmat Ali Khan (now represented

by respondents-2 to 5), Sherandaz Khan (respondent-6), Jaan Mohammad (now represented by respondents-29 to 32), Zakir Ali (now represented by respondents-23 and 24), Banne Khan (now represented by respondents-33 and 34), Babu Khan (now represented by respondents-21 and 22), Israil Khan, Niyaz Ali Khan, Lau Khan sons of Khan Mohammad and Smt. Nanhi Devi wife of Khem Karan (now represented by the petitioners). It may be mentioned Mangal Khan son of Nawab Ali alias Nabban Ali executed a sale deed dated 20.6.1973 of his share in the land in dispute and on its basis, name of Smt. Nanhi Devi was mutated over the land in dispute on 28.8.1973. Smt. Nanhi Devi was inherited by her son Makhan Lal, whose name was mutated by order of Assistant Consolidation Officer dated 14.1.1992 as her heir. Makhan Lal executed a sale deed dated 27.10.1993 in favour of Safdar Ali Khan (father of the petitioners) and his name was mutated by order of Assistant Consolidation Officer, dated 12.1.1994.

3. Jaan Mohammad filed an objection (registered as Case No. 521/05-06) under section 9-A of the Act, for recording his name as an heir of Mohammad Khan son of Meer Khan, over khata-12 and declaring his share as 1/3 in both khata 12 and 587. Hashmat Ali Khan, Liyakat Ali Khan, Riyasat Ali Khan, Azaz Khan sons of Rahmat Ali Khan filed an objection for recording their names as heirs of Rahmat Ali Khan and declaring their shares as 1/3 jointly in khata 587. The petitioners filed an objection for recording their names as an heirs of Safdar Khan and for separating their 1/4 share jointly, in khata 587. The Consolidation Officer, by order dated 14.6.2006, held that land in dispute originally belonged to Imam Khan, who was inherited by his three sons Sharfoo Khan, Meer Khan and Rajjab Khan. Khan Mohammad was son of Meer Khan. Hashmat Khan and others were sons of Khan Mohammad and had 1/3 share jointly. As in the sale deed dated 27.10.1993 executed by Makhan Lal in favour of Safdar Ali Khan (father of the petitioners), 1/4 share has been mentioned as such the petitioners had 1/4 share jointly. On these findings, share of the petitioners was held as 1/4. Hashmat Khan and others filed an appeal from the aforesaid order, which was dismissed by Settlement Officer Consolidation by order dated 8.4.2008. Hashmat Khan and others filed a revision against the aforesaid order, which was allowed by order dated 13.3.2009 and the orders of Consolidation Officer and Settlement Officer Consolidation were set aside and the matter has been remanded to Consolidation Officer for fresh decision. Nisar Ali Khan filed Writ B No. 20892 of 2003, against remand order, which was later on dismissed as withdrawn on 19.11.2013, as dispute between the respondents was compromised.

4. After dismissal of the writ petition, Consolidation Officer by order dated 27.1.2014 held that land in dispute originally belonged to Imam Khan, who had three sons Sharfoo Khan, Meer Khan and Rajjab Khan. Share of Sharfoo Khan was 1/3. Sharfoo Khan had two sons Chunna Khan and Abdulla Khan. Thus share of Chunna Khan and Abdulla Khan was 1/6 each. Chunna Khan sold his 1/6 share to Mitthu Khan and Sher Mohammad sons of Abdulla Khan. Abdulla Khan had four sons namely Kasim Khan, Sher Mohammad, Nawab Khan alias Nabban Khan

and Mitthu Khan. Thus share of Nawab Khan was 1/24, which was sold by Mangal Khan, his son to Smt. Nanhi Devi through sale deed dated 20.6.1973. Makhan Lal son of Nanhi Devi executed a sale deed dated 27.10.1993 in favour of Safdar Ali Khan (father of the petitioners) as such share of the petitioners was 1/24. On these findings, he held share of the petitioners as 1/24 and of the contesting respondents jointly as 23/24, in khata 587.

5. The petitioners filed an appeal (registered as Appeal No. 122/2013-14) from the aforesaid order. The appeal was heard by Settlement Officer Consolidation, who by order dated 16.6.2014, held that as in the sale deed dated 20.6.1973, Mangal Khan has sold 1/4 share to Smt. Nanhi Devi as such share of the petitioners was 1/4. On these findings, he allowed the appeal. Hashmat Ali and others filed a revision (registered as Revision No. 1/14) from the aforesaid order, which was allowed by Deputy Director of Consolidation, by order dated 5.6.2015 and order of Settlement Officer Consolidation dated 16.6.2014 was set aside. Hence this writ petition has been filed.

6. The Counsel for the petitioners submitted that Mangal Khan son of Nawab Khan obtained bhumidhari certificate in respect of his 1/4 share and sold his 1/4 share to Smt. Nanhi Devi through sale deed dated 20.6.1973. Makhan Lal son of Smt. Nanhi Devi sold 1/4 share through sale deed dated 27.10.1993 to Safdar Ali Khan (father of the petitioners). The Consolidation Officer, in his order dated 14.8.2006 and Settlement Officer Consolidation in his order dated 16.6.2014 held 1/4 share of the petitioners. Subsequently, the respondents, who were family members colluded against the petitioners. After remand, they set up a new pedigree showing that Sharfoo Khan had two sons Chunna Khan and Abdulla Khan. Abdulla Khan had four sons namely Kasim Khan, Sher Mohammad, Nawab Khan alias Nabban Khan and Mitthu Khan. Chunna Khan sold his 1/6 share to Mitthu Khan and Sher Mohammad sons of Abdulla Khan. Nawab Khan had one son Mangal Khan, who had 1/24 share only although they never challenged the sale deed dated 20.6.1973. Pedigree as set up by the respondents, after remand has not been proved from any evidence on record. The orders of Deputy Director of Consolidation is illegal and liable to be set aside.

7. I have considered the arguments of the Counsel for the parties and examined the record. Two issues arise in the writ petition for consideration namely (i) Whether Imam Khan had three sons namely Sharfoo Khan, Meer Khan and Rajab Khan and (ii) Whether Sharfoo Khan had two sons Chunna Khan and Abdulla Khan? According to the petitioners, Imam Khan had two sons Sharfoo Khan and Rajab Khan. Sharfoo Khan had one son Abdulla Khan. Deputy Director of Consolidation found that in khata 148 of khatauni 1304 F, in khata 329 of khatauni 1305-F, and in khata 198 of khatauni 1344-F, the name of Meer Khan son of Imam Khan was recorded. In khata 198, plot 239 (which is also disputed plot) was also recorded. In khata 441 of khatauni 1362 F, in which all the three disputed plots were mentioned, name of Khan Mohammad Khan son of Meer Khan was also recorded along with other persons of the branches of Sharfoo

Khan and Rajab Khan. On its basis findings has been recorded that Imam Khan had three sons namely Sharfoo Khan, Meer Khan and Rajab Khan. The finding in this respect is based upon documentary evidence on record. It may be mentioned that Consolidation Officer, in his order dated 14.8.2006 also held that Imam Khan had three sons namely Sharfoo Khan, Meer Khan and Rajab Khan. The petitioners had not challenged this order dated 14.8.2006.

8. So far as issue as to whether Sharfoo Khan had two sons Chunna Khan and Abdulla Khan, is concerned, Consolidation Officer, in the order dated 14.8.2006 found that in khatauni 1304 F, names of Chunna Khan and Abdulla Khan sons of Sharfoo Khan were recorded along with other co-sharers in khata 145. Thus findings, in this respect is also based upon documentary evidence. The petitioners could not adduce any evidence to rebut the aforesaid documentary evidence.

9. Share between co-sharers is a question of law. Admittedly the land in dispute was coining in the family from the time of Imam Khan. According to the pedigree as stated above, share of Mangal Khan was 1/24. He had no right to sell 1/4 share in the land in dispute. The petitioners could not adduce any evidence to prove share of Mangal Khan as 1/4. Order of Deputy Director of Consolidation is concluded with findings of fact and no interference is required by this Court in exercise of writ jurisdiction. In view of aforesaid discussions, the writ petition has merit and is dismissed.