
(2015) 08 AHC CK 0189
In the Allahabad High Court
Case No : Writ B. No. 45268 of 2015

Amar Nath and Others

APPELLANT

Vs

D.D.C., Mirzapur and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Transfer of Property Act, 1882 — Section 43

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

Citation : (2015) 129 RD 39

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

Bench : Single Bench

Advocate : Bimal Prasad and Vijay Prakash Pandey, for the Appellant; Bal Krishan Pandey, Jai Prakash Rai and Paras Nath Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Bimal Prasad for the petitioners, Sri Triveni Shanker for respondents-2 and 5 and Sri Jai Prakash Rai for respondents-9 and 10. The writ petition has been filed against the order of Deputy Director of Consolidation dated 16.5.2015 passed in the title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act").

2. Brij Lal, father of the petitioners, filed an objection under section 9-A of the Act on 27.8.1991 for recording his name over the land in dispute on the basis of sale deed dated 12.7.1968 and 18.8.1973 allegedly executed by Daya Shanker, Vijay Shanker and Hriday Shanker sons of Badri Narain and Hari Shanker, Gopinath sons of Raj Narain, in his favour. It was stated by Brij Lal that initially Awadh Narain and Ram Narain, sons of Lalji and Smt. Dashwanti, widow of Ram Khilawan were owner of the land in dispute. They executed a sale deed dated 22.3.1965 of the land in dispute in favour of the transferees of Brij Lal and they executed two sale deeds i.e. sale deeds dated 12.7.1968 and 18.8.1973 in favour of Brij Lal. On its basis he was in possession over the land in dispute as

such his name be recorded over it. The case was contested by the recorded tenure holders. They contested the case on the ground that they were Sirdar of the land in dispute and they never executed any sale deed in favour of Daya Shanker and others. Thus, Daya Shanker and others have no right to execute the sale deed. The case was tried by the Consolidation Officer. Before the Consolidation Officer, copy of the sale deed dated 22.3.1965 was filed. The petitioners filed a copy of the sale deed dated 18.8.1973 and khatauni of 1414-1419 fasli of khata No. 292, the questionnaire to the effect that a Civil Suit No. 153 of 1964 (Laxmi Narain v. Daya Shanker) was filed in which original sale deed was filed, khasra prepared during the record operation, a copy of the sale deed dated 18.8.1973 in favour of Laxmi Narain and others and a copy of the sale deed dated 18.8.1973 in favour of Hari Lal and Daya Shanker, a copy of the sale deed dated 22.3.1973 in favour of Daya Shanker, Vijay Shanker and Hriday Shanker sons of Badri Dubey and Hari Shanker Gopi Nath sons of Ram Narain, a copy of sale deed dated 22.3.1965 of village Gargara dated 29.9.1973 and original sale deed dated 12.7.1968 executed by Ram Lakhan, a copy of the sale deed dated 22.3.1965, a copy of the sale deed dated 18.8.1973, a copy of the sale deed dated 12.7.1968. The petitioners also examined Ram Narain who was witness of original sale deed dated 22.3.1965 and Amar Nath. After hearing the parties the Consolidation Officer by judgment dated 22.5.2010 found that the land in dispute was sirdari land and there was no evidence to show that any application for obtaining bhumidhari certificate was moved or the required amount was deposited. Thus, on the basis of sale deed dated 22.3.1965 Awadh Narain and others had no transferable rights and the sale deed was void. Since initial sale deed itself was void as such two sale deeds executed by the transferees of that sale deed had no effect. On this finding he dismissed the objection of the petitioners. Against the order of Consolidation Officer, two appeals were filed - one appeal was filed by the petitioners and other appeal was filed by Hari Shanker and others. In the appeal filed by Hari Shanker, a compromise was filed and in terms of the compromise, the appeal was dismissed. The appeal of the petitioners was heard on merit by the Settlement Officer, Consolidation, who by order dated 14.11.2013 found that as the transferee had acquired bhumidhari right under U.P. Act No. 8 of 1977 as such in view of provision of section 43 of Transfer of Property Act sale deed would be valid. On this finding he allowed the appeal of the petitioners and directed for recording their names over the land in dispute. Against the order of Settlement Officer, Consolidation, three revisions were filed by Laxmi Narain, Sewalal and Jaglal. All the three revisions were consolidated and decided by the Deputy Director of Consolidation by a common judgment dated 16.5.2015. The Deputy Director of Consolidation found that on 22.3.1965 Awadh Narain and others were Sirdar of the land in dispute and had no transferable right and there was no evidence to show that any application for obtaining bhumidhari certificate was moved or requisite amount was deposited for it. In the compromise dated 4.2.2013 filed in Appeal No. 450 of Hari Shanker and others, it was proved that the sale deed of 1965 was void. The sale deed dated 22.3.1965 was not acted

upon. In such circumstances neither the transferee of the petitioners nor the petitioners were owner in possession over the transferred land. Amar Nath in his cross-examination has stated that he had no knowledge about possession over the land in dispute. Thus, the possession of the petitioners was not proved. On this finding he allowed the revision and set aside the order of Settlement Officer, Consolidation dated 14.11.2013 and reinstated the order of the Consolidation Officer. Hence, this writ petition has been filed.

3. The Counsel for the petitioners submits that due execution of the sale deed dated 22.3.1965 was proved by the attesting witness Ram Narain. Under U.P. Act No. 8 of 1977 recorded tenure holder, namely, Awadh Narain, Ram Narain and Smt. Dashwanti were conferred bhumidhari right as such in view of section 43 of Transfer of Property Act, the sale deed was valid and on its basis subsequent sale deeds dated 12.7.1968 and 18.8.1973 executed in favour of the father of the petitioners were also valid. The Settlement Officer, Consolidation has rightly relied upon section 43 of Transfer of Property Act and allowed the appeal of the petitioners but the Deputy Director of Consolidation has illegally set aside the order of the Settlement Officer, Consolidation. He further submits that issue relating to possession has not been raised before any Court nor any of the Court decided this issue. The Deputy Director of Consolidation for the first time has gone into the issue of possession and decided this issue against the petitioners.

4. I have considered the arguments of the Counsel for the petitioners.

5. A perusal of the judgment of Consolidation Officer shows that issue Nos. 3 and 5 were framed in which the possession was also mentioned. Thus, the Deputy Director of Consolidation has gone into the issue of possession. The Deputy Director of Consolidation relying upon the statement of Amar Nath has held that possession of the petitioners was not proved. Otherwise also, no evidence is on record to prove the possession of the petitioners. In such circumstances, it was specifically held that sale deed dated 22.3.1965 was never acted upon.

6. Admittedly, on 22.3.1965 Awadh Narain and others were Sirdar and had no transferable right. Names of Daya Shanker and others were not recorded in revenue records on the basis of sale deed dated 22.3.1965. They executed sale deeds dated 12.7.1968 and 18.8.1973 in favour of Brij Lal. Although "bhumidhar with transferable right" was conferred by U.P. Act No. 8 of 1977 w.e.f. 18.1.1977 upon the recorded tenure holder but Brij Lal also did not take any step for recording his name. It is only on 27.8.1991, the objection under section 9 of the Act was filed. Amar Nath, in his statement could not prove his possession over the land in dispute. Thus, it was proved that Brij Lal or the petitioners could not obtain possession over the land in dispute on the basis of sale deed and period of limitation for obtaining possession has also expired. Thus, findings of fact recorded by Deputy Director of Consolidation that sale deeds were not acted upon or the petitioners were not in possession do not suffer from any illegality. In view of the above, the petitioners have no case. There is no merit in the writ petition and it is dismissed.