
(1994) 02 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 438 of 1977

Amar Singh and Another

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 16-02-1994

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A(2)

Citation : (1994) 1 AWC 584

Hon'ble Judges : S.R. Misra, J

Bench : Single Bench

Advocate : H.O.K. Srivastava, for the Appellant; G.P. Bhargava, A.N. Bhargava and S.M. Chaturvedi, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Misra, J.—By means of this writ petition, Petitioners challenge an order passed by the Deputy Director of Consolidation dated 14-2-1977, exercising its jurisdiction u/s 48 of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act).

2. Brief facts giving rise to the writ petition are that in proceedings u/s 9-A(2) of the Act an objection was filed by the Respondent No. 4 claiming 1/2 share in khata nos. 1 and 205 alleging that previously both the khatas (1 and 205) were one which was recorded in the name of Smt. Ram Piari widow of laxman and Nanka son of Fakira. After the death of Smt. Ram Piari the name of Amar Singh was recorded and after the death of Nanka, Dhani Ram was recorded, in view of this, half share was claimed by the Respondent No. 4 and remaining half share was with all the Petitioners. It was further alleged that in 1958 Smt. Ram Piari deposited 10 times land revenue to the extent of 2/3 share and obtained Bhumidhari Sanad of 2/3 share. A suit was filed claiming half share which was abated on account of consolidation proceedings.

3. The Petitioner Amar Singh contested the claim and filed a written statement

contending that opposite party No. 4 is entitled to only 1/3 share and 2/3 share belongs to him which he sold to Petitioner No. 2. The Consolidation Officer disbelieved the oral evidence led by the parties but, placing reliance on khatauni of 1318 F and revenue receipts where the share of the Respondent No. 4 was 1/3 and that of the Petitioner 2/3. Petitioner was held to be owner of 2/3 share and Respondent No. 4 of 1/3 share. The order of the consolidation officer was affirmed in an appeal by the Settlement Officer (Consolidation) vide his order dated 15-7-1974. Aggrieved by the said order Respondent No. 4 filed a revision and the revisional Court by its order dated 14-2-1977 allowed the revision, set aside the orders of the Court below, holding that the Petitioner and Respondent No. 4, both have half and half share each. Aggrieved by the said order, Petitioner has come to this Court under Article 226 of the Constitution of India.

4. I have heard Sri H.O.K. Srivastava in] support of the writ petition and Sri A. N. Bhargava on behalf of the contesting Respondent.

5. The counsel for the Petitioners has urged that the Deputy Director of Consolidation who was passing an order of reversal setting aside the orders of the Consolidation Officer and Settlement Officer (Consolidation) has failed to consider the oral evidence which was available on record.: It has also been urged that the Consolidation Officer and Settlement Officer (Consolidation) have placed reliance on the khatauni of 1318 F where 2/3 share is entered in the ancestor's name of the Petitioners and 1/3 of Dhani Ram. Petitioners branch alone were paying land revenue to the extent of 2/3 share, and, this was on the basis of some settlement and when the Deputy Director of Consolidation was passing an order of reversal then without considering all these material evidence on the record, he has erred in law in allowing the revision.

6. Having considered the argument of the counsel for the Petitioners and perused the two orders of the subordinate authorities (Consolidation Officer and Settlement Officer, (Consolidation), it is not clear nor there is any material available on record as to how the Petitioners are entitled to 2/3 share. If it was a question of determination of shares, it is a question of law and the mere entry in 1318 F in khatauni, if the shares of the parties were"-determined to the extent of 1/3 and 2/3 respectively, this itself is not final between the parties. When the question of determination arises, at the best the khatauni is a piece of evidence.

7. So far as the payment of rent revenue is concerned, it is a dispute between two co-sharers, as one is claiming 2/3 share and the other to the extent of 1/2 share. In the absence of any consent reason as to why the share of the Petitioners has been fixed as 2/3 and how the shares of the Respondent No. 4 has been fixed 1/3 is not clear from the orders of the three authorities except the entry and the payment of land revenue. The v entry is not a sacrosanct entry as a result of which without any other material or evidence it could be said that the Petitioners by virtue of this entry necessarily get 2/3 share. So far as the payment of land revenue is concerned, it is always open for a co-sharers to pay more land revenue and to recover the balance amount.

8. The attack of the counsel for the Petitioners that oral evidence has not been considered, a perusal of the order of the Consolidation Officer would go to show that on merits of dispute the oral evidence has been disbelieve, and, if mainly the oral evidence on merits is disbelieved then; the question of consideration of the oral evidence, in respect of the entries and payment of land revenue was not material for consideration.

9. Since it appears from the -narration of the facts in the orders of the three authorities and after hearing the counsel for the parties I am satisfied that substantial justice has been done between the parties when half share each has been allotted to the Petitioners and Respondent No. 4, I do not find that it is a fit case for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India.

10. Accordingly in view of the discussion made above, the writ petition fails and is dismissed. Parties are directed to bear their own costs.