
(2004) 10 AHC CK 0177
In the Allahabad High Court
Case No : C.M.W.P. No. 38780 of 2004

Anar Kali

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 07-10-2004

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 25A

Citation : (2005) 1 AWC 116 : (2004) 97 RD 683

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : R.K. Pandey, for the Appellant; R.S. Tiwari and P.K. Shukla and V.K. Sharma, S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

Krishna Murari, J.—Heard Sri Ratnesh Kumar Pandey, learned counsel for the petitioner, learned standing counsel for respondent Nos. 1 and 2, Sri R.S. Tiwari, learned counsel for respondent No. 3 and Sri Vinod Kumar Sharma, learned counsel for respondent No. 4.

2. Pleadings have been exchanged and the writ petition is being finally disposed of at the admission stage with the consent of the learned counsel appearing for the parties.

3. The facts are that the petitioner moved an application u/s 12 of the U. P. Consolidation of Holdings Act (hereinafter referred to as "the Act") for recording her name over the plot in dispute claiming herself to be the heir and legal representative being wife of predeceased son of deceased Khadai, the recorded tenure holder. The said proceedings ended in a compromise between the petitioner and respondent Nos. 3 and 4, the other two sons of deceased Khadai. It was agreed under the terms of compromise that name of all the three persons be recorded over the plots in dispute in place of deceased Khadai as his heirs and legal representatives. The Assistant Consolidation Officer passed an order dated

7.11.2002 on the basis of the said compromise and accordingly directed the name of all the three persons namely the petitioner and respondent Nos. 3 and 4 be recorded over the plots in dispute. Subsequently, respondent No. 3 filed a time barred appeal. The Settlement Officer Consolidation condoned the delay and allowed the appeal. It was held that the deceased Khadai had only two sons, i.e., respondent Nos. 3 and 4 and only their names be recorded in place of the deceased. Feeling aggrieved, the petitioner filed a revision before the Deputy Director of Consolidation which was dismissed vide order dated 25.8.2004.

4. The Settlement Officer Consolidation and Deputy Director of Consolidation while setting aside the order dated 7.11.2002 passed by the Assistant Consolidation Officer on the basis of compromise between the parties also dismissed the claim of the petitioner on merits on the ground that she had failed to produce any evidence to establish that deceased Khadai had any son Ram Chandra and that she was the wife of said Ram Chandra.

5. It has been urged by the learned counsel for the petitioner that the dispute was duly compromised between the parties and on the basis of the same the name of the petitioner was directed to be recorded over the plots in dispute along with respondent Nos. 3 and 4. The Settlement Officer Consolidation and the Deputy Director of Consolidation have committed manifest illegality in setting aside the order passed by the Assistant Consolidation Officer, based on the compromise. In the alternative it has been argued by the learned counsel for the petitioner that the Settlement Officer Consolidation and the Deputy Director of Consolidation wrongly rejected the claim of the petitioner on merits on the ground that she had failed to produce any evidence in respect of her claim. Since the dispute ended in a compromise before the Assistant Consolidation Officer, the petitioner had no occasion to adduce any evidence in support of her claim. Once the compromise was found to be invalid, the Settlement Officer Consolidation and the Deputy Director of Consolidation ought to have remanded the matter back to the Consolidation Officer for deciding the claim of the petitioner on merits after opportunity of adducing evidence.

6. On the other hand learned counsel appearing for respondent No. 3 has tried to justify the orders passed by the Settlement Officer Consolidation and the Deputy Director of Consolidation on the ground that the compromise was not in accordance with the provisions of Rule 25A of the U. P. Consolidation of Holdings Rules, 1954 (for short "the Rules") and the same was rightly set aside. It has further been contended that the claim of the petitioner has rightly been rejected by the two courts below on merits inasmuch as deceased Khadai had only two sons namely, Ram Raj and Lalji and the petitioner is only an imposter having no connection with the family.

7. I have considered the rival submissions and gone through the record of the writ petition.

8. Rule 25A of the Rules provides that terms of the compromise shall be recorded

by the Assistant Consolidation Officer in the presence of two members of the consolidation committee. It further provides that the terms shall be read over to the parties concerned and the signature or thumb impression shall be obtained. The members of the consolidation committee in whose presence the compromise will be recorded shall also be required to sign the same. In the case of Hira Lal v. Deputy Director of Consolidation 1982 RD 78 the provisions of Rule 25A have been held to be mandatory. It is well-settled that where the provisions of the Act or Rules prescribe a procedure for purpose of a particular act, the said act is to be performed in that manner or not at all. Every Court or Tribunal has to exercise jurisdiction and follow the procedure in the manner prescribed under the Act or Rules framed thereunder. Any order passed in utter disregard of the prescribed procedure becomes illegal having been passed in a manner unwarranted in law. The provisions of Rule 25A being mandatory any order passed by the Assistant Consolidation Officer without following the procedure prescribed by the said Rules shall be illegal and without jurisdiction.

9. A perusal of the compromise in the present case (filed as Annexure-1 to the writ petition) goes to show that the same has been signed by the petitioner, respondent No. 4 Lalji, one Amrit Lal, member consolidation committee and one Nirmala, Pradhan of Gaon Sabha. The compromise does not bear the signature of respondent No. 3 Ram Raj instead respondent No. 4 has put signature on behalf of Ram Raj as his brother. From the pleadings of the parties, it is not clear that Nirmala has signed the compromise in her capacity as Pradhan or she was also a member of the consolidation committee. However, one thing is clear that respondent No. 3 Ram Raj has not signed the terms of compromise. Thus, the mandatory requirement of signature of all parties on the compromise as prescribed by Rule 25A of the Rules does not stand fulfilled. Such a compromise and the order passed on the same cannot be said to be legal and valid and has rightly been set aside by the Settlement Officer Consolidation and the Deputy Director of Consolidation. The said part of their order do not call for any interference by this Court.

10. However, the Settlement Officer Consolidation and the Deputy Director of Consolidation exceeded their jurisdiction by proceeding to decide the claim of the petitioner on merits. There appears to be force in the argument of the learned counsel for the petitioner that after setting aside the compromise, the case ought to have been remanded back to the Consolidation Officer for decision" on merits after opportunity to lead evidence. It is more than apparent that claim of the petitioner has been rejected on merits without any opportunity to adduce evidence. The findings by the Settlement Officer Consolidation and the Deputy Director of Consolidation on the merits of the claim of the petitioner cannot be sustained.

11. In view of the aforesaid discussions, the writ petition succeeds and is allowed in part. While the judgment of the Settlement Officer Consolidation and the Deputy Director of Consolidation setting aside the order of the Assistant

Consolidation Officer dated 7.11.2002 passed on the compromise is maintained. The rest part of their orders dismissing the claim of the petitioner on merits is quashed. The matter is remanded back to the Consolidation Officer for decision afresh; in accordance with law after affording an opportunity of hearing to all the parties concerned.