
(2014) 04 AHC CK 0061
In the Allahabad High Court
Case No : C.M.W.P. No. 21572 of 2014

Anil Kumar

APPELLANT

Vs

Deputy Director Of Consolidation

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 168-A

Citation : (2014) 5 ADJ 757 : (2014) 124 RD 66

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Saurabh Sachan and A.K. Sachan, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—Heard Sri. A.K. Sachan, learned Counsel for the petitioner. This writ petition arises out of an objection u/s 9-A(2) filed by Mushe and others,

2. The dispute in the writ petition pertains to land of Khata No. 104 which was recorded in the name of Smt. Saremwati, w/o Sri. Kashi Ram, Mushe, son of Solu, and Horam, son of Kale in the basic year. Three sets of objections were filed u/s 9-A(2). Of the three objections, the writ petition pertains to the objection filed by Mushe claiming on the basis of the sale deed dated 11.12.1964 wherein Chandru had sold his 1/4th share in favour of Horam, son of Kale and Mushe, son of Solu.

3. A counter objection was filed by the petitioner's mother claiming the share of Chandru on the basis of sale deed dated 17.4.1973 alleged to have been executed in her favour by the said Chandru.

4. The Consolidation Officer by his order dated 3.4.1989 determined the share of the parties on the basis of the pedigree on record. The claim based on the sale deed dated 11.12.1964 was not accepted on the ground that no mutation on the basis of the sale deed has been made and that the sale itself was void in view of

section 168-A of the U.P. Zamindari Abolition and Land Reforms Act (the Act).

5. Aggrieved, an appeal was preferred which was allowed by order dated 7.7.2006 whereby relying upon the sale deed dated 11.12.1964, an area of 1.160 was ordered to be recorded in the name of successor in interest of Horam and Mushe.

6. Against the order passed by the appellate authority, the mother of the petitioner preferred Revision No. 29. The Deputy Director of Consolidation (the DDC) by his order dated 1.8.2013 dismissed the revision. Hence the present writ petition.

7. Learned Counsel for the petitioner Sri. A.K. Sachan has submitted that the sale deed dated 11.12.1964 was never mutated in the revenue records and in any case the said sale deed was void in view of section 168-A of the Act. He submits that the orders of the appellate Court and revisional Court which ignore the aforesaid two aspects of case are patently illegal and therefore deserve to be set aside.

8. I have considered the submission made by the petitioner and have perused the record.

9. The record reveals that the sale deed dated 11.12.1964 was executed in favour of persons who were co-tenure holders of the Khata in question and were recorded as such thereon from prior to the sale deed.

10. Under the circumstances, there was no question of the sale deed requiring mutation in the revenue record. Mutation could have been required only if the sale deed was in favour of persons whose name did not already exist in the record. Moreover, sale deed is of a share in a joint Khata and the same, therefore, is not hit by provision 168-A of the Act as it existed in the statute book on the date of sale deed. This provision has been deleted from statute book w.e.f. 23.8.2004 vide Act No. 27 of 2004. Sale of share by one co-tenure holder in favour of another co-tenure holder in a joint khata does not result in any fragmentation.

11. This view is fully supported by the judgment in the case of (1971) 41 AWR 590 wherein it was held as under:

Where undivided interest of one of the co-tenure holders is transferred, it cannot be said that the transfer involves transfer of a "fragment",....."What is transferred is undivided interest in the land and not any specific land. The prohibition contained in section 168-A is in respect of land which is a fragment i.e. which is lesser in extent than the prescribed area and not of undivided interest in the land...

12. By the sale deed in question the share of one co-tenure holder increased and that of the vendor decreased in an undivided holding. Hence no fragmentation resulted and the holding remained the same.

13. The plea of fragmentation cannot be accepted for another reason. For this plea to succeed it is also required to be proved that the sale was of a fragment in a consolidated area. There is nothing on record that consolidation operations had taken place prior to the execution of the sale deed on 11.2.1964. In view of aforesaid discussion the submissions made by the learned Counsel for the petitioner have no force. The writ petition is devoid of merits and is accordingly dismissed at the admission stage.