
(2015) 11 AHC CK 0053

In the Allahabad High Court

Case No : Writ - B Nos. 6743 and 11629 of 1984

Annapurna Devi

APPELLANT

Vs

DDC

RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 52, 9-A(2)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171, 172

Citation : (2015) 11 AHC CK 0053

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : V.B. Khare and A.K. Shukla, for the Appellant; Mahesh Narain Singh, S.C., G.S.M. Tripathi, A.N. Tripathi, A.P.N. Giri, Anil Kumar Mishra, B.P. Misra, C.M. Shukla, G.M. Tripathi, M.N. Singh, S. Hasnain and T.N. Tripathi, for the Respondent

Final Decision : Partly Allowed

Judgement

Anjani Kumar Mishra, J.—These two writ petitions pertain to the same land and the parties thereto are common and, therefore, they have been heard and are being decided together. Even the issues involved therein, are identical.

2. I have heard Shri A.K. Shukla for the petitioner in writ petition No. 6743 of 1984 and Shri A.N. Tripathi for Annapurna Devi, contesting respondent. The same counsel appears for the parties in the connected writ petition, Shri A.N. Tripathi, learned Senior Advocate for the petitioner in and Shri A.K. Shukla for the respondents.

3. Writ petition No. 11629 of 1984 pertains to land of khata Nos. 52 and 58 of village Majhgawan, khata No. 42 of village Nauniya and khata No. 94 of village Ahirauli.

4. Admittedly, this land belonged to one Ram Awadh Dubey, who died in 1944. Upon his death, he was succeeded by his three sons, namely, Raghunandan,

Krishna Chandra and Ram Chandra. Ram Chandra died in the year 1970 and was succeeded by his widow Smt. Annapurna, who was duly recorded over the land in question. Therefore, in the basic year the property was recorded in the names of Raghunandan, Krishna Chandra and Annapurna.

5. Raghunandan and Krishna Chandra filed an objection under Section 9-A(2) of the UP Consolidation of Holdings Act on the ground that Annapurna remarried Dev Shanker and, thereby, lost her right, title and interest in the land of Ram Chandra and, therefore, her name was liable to be expunged.

6. The Consolidation Officer (the CO) by his order dated 13.08.1976 allowed the objection.

7. Aggrieved by the order, Annapurna filed an appeal. The Settlement Officer, Consolidation (the SOC) vide order dated 02.02.1977 allowed the appeal and set aside the order passed by the CO thereby maintaining the basic year entry. He recorded a finding that the case of remarriage set up by the objectors was not proved and that the possession of Annapurna was proved by the irrigation slips filed by her. This appellate order has been affirmed by the Deputy Director of Consolidation (the DDC) vide order dated 20.02.1984.

8. Writ petition No. 6743 of 1984 arises out of an objection under Section 9-A(2) filed by Dev Jani widow of Ram Awadh Dubey on 24.04.1980 along with an application under Section 5 of the Limitation Act. This objection is stated to have been filed after issuance of notification under Section 52 of the UP Consolidation of Holdings Act which had been issued on 05.08.1980.

9. The CO by his order dated 22.05.1981 refused to condone the delay in filing the objection.

10. Aggrieved by this order, a revision was filed before the DDC. Subsequently on 14.09.1982 upon an application purporting to be, on behalf of the revisionist Dev Jani, that the revision had not filed by her, the DDC on the very same day dismissed the revision as not pressed.

11. On 06.02.1984 an application was filed by Dev Jani alleging therein that the revision had been fraudulently dismissed as withdrawn. She had no been filed any application for withdrawal of the revision nor had instructed anyone to file it on her behalf. On these grounds, the recall of the order dated 14.09.1982 dismissing the revision as withdrawn was sought.

12. An objection to this application was filed by Smt. Annapurna, duly supported by an affidavit. The DDC by his order dated 20.02.1984, recalled the order dated 14.09.1982 and also set aside the order dated 22.05.1982 passed by the CO refusing to condone the delay and remanded back the matter for a fresh decision. Therefore, this writ petition No. 6743 of 1984 had been filed by Annapurna Devi challenging the order dated 20.02.1984.

13. From the facts stated above, it emerges that the dispute in writ petition No.

6743 of 1984 is as to whether the DDC was justified in granting the benefit of Section 5 of the Limitation Act to Dev Jani and remanding the matter for consideration on merits.

14. The issue in writ petition No. 11629 of 1984 is as to whether or not Annapurna remarried after the death of her husband of Ram Chandra and its effect on her rights as regards the land recorded in the name of Ram Chandra.

15. Shri A.K. Shukla for the petitioner, Smt. Annapurna in writ petition No. 6743 of 1984 has submitted that the objection filed by Dev Jani had been filed after the village had been denotified by issuance of notification under Section 52 of the UP Consolidation of Holdings Act. Her objection was, therefore, not maintainable and in remanding the same the DDC has acted without jurisdiction. In support of his submission, he has relied upon the judgement in the case of Hari Ram vs. DDC reported in 1989 RD 281 which is a judgement by a Division Bench.

16. The second submission made is that the revision had been dismissed as withdrawn on an application of the revisionist Smt. Dev Jani. The DDC has wrongly recalled this order which amounts to review which power the DDC does not possess under the Act.

17. The third submission made is that the DDC has condoned the delay in filing the objection without recording any finding on the question of sufficiency of the cause shown for the delay and, therefore, also the order is vitiated.

18. The next submission is that the objection by Dev Jani was with regard to only one village, namely, Ghorghoba yet, the DDC has passed an order regarding four villages, namely Ghorghoba, Majhgawan, Nuniya and Ahirauli. The impugned order, therefore, is wholly without jurisdiction.

19. He has lastly submitted that the objection filed by Dev Jani was filed on the ground that she is the widowed-mother of Ram Chandra, the recorded tenure-holder. She, therefore, inherited as a mother and in view of the fact that she had died on 02.01.1999, in view of Section 172 of the UP Zamindari Abolition & Land Reforms Act, the land would revert back and devolve in accordance with Section 171 of the Act and, therefore, Annapurna being a widow of Ram Chandra would still inherit the land in question. Therefore, as on date, the objection which stands revived by the impugned order, infructuous and affirming the order of remand would be an exercise in futility and at best of purely academic exercise.

20. Shri A.N. Tripathi, learned Senior Counsel appearing for the respondents in this writ petition has submitted that the notification under Section 52 of the Act was issued on 25.04.1981 and not on 05.08.1980 as is the case set up by Annapurna. He submits that the DDC has not reviewed the earlier order passed on 14.09.1982 but has merely recalled it on the ground that it was ex parte. This order impugned was well within jurisdiction and has rightly been passed. He has further submitted that Ram Awadh Dubey died in the year 1944. The Hindu Women's Rights to Property Act, 1937 had already been enforced and in view of

the same, Dev Jani, widow of Ram Awadh Dubey had 1/4th share in the property of her husband. This right was further recognized by the Hindu Succession Act, 1956. He, therefore, contends that Dev Jani had a right in the property in question from the date of death of Ram Awadh Dubey her husband and even though her sons did not get her name mutated and she was unaware that her name was not recorded, yet her rights in the property in question would not cease to exist.

21. In rebuttal, Shri A.K. Shukla, has reiterated that Dev Jani claimed succession as a widow and is now dead and, therefore, in view of Section 172 of the UP Zamindari Abolition & Land Reforms Act, Annapurna who would be entitled to inherit her share and, therefore, all questions that are being raised by the respondents are redundant and require no consideration.

22. Insofar as the writ petition No. 11629 of 1984 is concerned, Shri A.N. Tripathi, learned Senior Advocate, for the petitioner has submitted that even in this case, the question of right, title and interest of Dev Jani in the land in question was involved. No objection was filed by her as was unaware that her name was not recorded. When she came to know about the same which was during the pendency of revision filed by her sons, namely, Raghunandan, Krishna Chandra, she filed an application for impleadment in the revision. The revision filed by her sons was dismissed but no orders were passed on an impleadment application which is, therefore, still pending consideration. He has made submissions identical to those in the connected writ petition, to establish the right, title and interest of Dev Jani over the land in question.

23. At this stage, it would be relevant to note that this writ petition has been filed by Krishna Chandra alone who was one of the objectors and Shri A.N. Tripathi is the counsel appearing for him the writ petition had been filed by him. The issue in this writ petition is as to whether Annapurna Devi remarried on the death of Ram Chandra. The SOC as also the DDC have returned findings that this claim of remarriage of Annapurna Devi was not proved. This finding, in my considered opinion is a pure finding of fact which cannot be assailed in a writ petition.

24. Besides any claim raised by Dev Jani was an independent claim which cannot be canvassed by the petitioner in this writ petition, namely, Krishna Chandra or by his counsel therein.

25. In such view of the matter, this Court of the considered opinion that the order impugned in writ petition No. 11629 of 1984 is concluded by pure findings of fact which cannot be assailed and, therefore, this writ petition is liable to be dismissed.

26. In view of the above, it is only writ petition No. 6743 of 1984 which requires consideration. The issue, therefore, is as to whether the Deputy Director of Consolidation was justified in condoning the delay and treating the objection of Dev Jani to be within time.

27. The contention of learned counsel for the petitioner as already noticed is that the DDC has reviewed the earlier order dated 14.09.1982 whereby the revision of the Dev Jani has been dismissed as withdrawn.

28. This submission in my considered opinion, is without merit inasmuch as the DDC has set aside the earlier order on the ground that it was ex parte. Even the question as to whether the objection was filed before or after issuance of notification under Section 52 of the Act is in dispute and both the parties have mentioned different dates.

29. The submission that the delay in filing the objection has been condoned by the revisional court without recording any finding as to the sufficiency of the cause shown for the delay, is correct.

30. However, the DDC has condoned the delay on the finding that the question of title was involved in the matter wherein the order of the consolidation authorities are final and binding and, therefore, every tenure-holder should be given an opportunity of establishing his case.

31. It is in this context that he has condoned the delay and I do not see any good ground to interfere with the reasoning given.

32. The next issue be considered is the submission that the objection filed by the Dev Jani was with regard to only one village, namely, Ghorghoba but the DDC has directed that his order shall apply to the land of the other three villages.

33. In this connection, it would be relevant to note that the respondent Dev Jani's case is that the connected writ petition No. 11629 of 1984 pertains to the land of the other three villages and she had filed an application for impleadment at the revisional stage and, therefore, she had agitated her claim as regards all four villages. Since impleadment application not having being disposed of, it cannot be said that her claim was only with regard to one village.

34. Besides the factum of pendency of the impleadment application has been noticed by the DDC while passing the order dated 20.02.1984 in the connected writ petition No. 11629 of 1984.

35. This impleadment application was not filed by the Dev Jani herself, but by sons who were revisionists in the court below and, therefore, in the connected writ petition the order of the DDC has been assailed on the ground that a necessary party had not been impleaded.

36. From the facts noticed above, it is abundantly clear that Dev Jani filed an objection as regards only one village. Since she has raised any claim as regards the other villagers, I do not see any justification for the DDC to have treated the objection to be one with regard to the other villages also. The order impugned, therefore, insofar as it directs that it shall apply also to the land of villages Majhgawan, Nauniya and Ahirauli, therefore, in my considered opinion, cannot be sustained.

37. Besides it is settled law that the question of condonation of delay is a discretionary relief which should not be lightly interfered with by the superior courts. I, therefore, do not think fit to interfere with the revisional order whereby the delay in filing the objection has condoned. However the order is liable to be modified insofar as it made applicable to the land of villages Majhgawan, Nauniya and Ahirauli directions are liable to be issued that the order shall apply only to the land of village Ghorghoba regarding which Dev Jani had filed an objection under Section 9-A(2).

38. All other questions that have been raised by the parties as regards the claim of the Dev Jani having acquired title on the death of her husband and the contention of counsel for Annapurna regarding Section 172 of the U.P.Z.A. & L.R. Act are, in my considered opinion, questions to be considered by the CO in pursuance of the order of remand passed in this writ petition. It would not be appropriate for this Court to rule on this issues and to prejudge the matter.

39. Accordingly and in view of the above, writ petition No. 11629 of 1984 is dismissed.

40. The order impugned in writ petition No. 6743 of 1984 is modified to the extent that It shall apply only to the land situated in village Ghorghoba. Rest of order is affirmed. Accordingly writ petition No. 6743 of 1984 is allowed in part as indicated above.

41. In the peculiar facts and circumstances of the case, there shall be no order as to costs.

42. It is further provided that since the question as to whether or not the objection of Dev Jani was filed after issuance of notification under Section 52 of the Act, is a disputed question of fact, the same may also be examined by the CO while considering her objection.