
(2010) 04 AHC CK 0270
In the Allahabad High Court

Asha Ram

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12

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

Citation : (2010) 04 AHC CK 0270

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Sharma, J.—Heard Sri I.D. Shukla, learned Counsel for the petitioner. Sri N.N. Jaiswal, learned Counsel, represents respondent Nos. 2 to 9. Sri Shiva Kant Tiwari, learned Counsel, has filed his Vakalatnama on behalf of respondent Nos. 4/1, 4/2 and 4/3, that is, Bharat Kumar, Dinesh Kumar and Ranvijay @ Guddu. The Vakalatnama filed today is taken on record.

2. This writ petition was presented in this Court in the year 1981, assailing the order passed by the Deputy Director of Consolidation, Faizabad on 30.9.1981, Annexure-3 to the writ petition, disposing of four revisions brought by respondent No. 4, Daya Ram, since dead, now represented by his legal heirs and legal representatives. By the said judgment and order, the Deputy Director of Consolidation, Faizabad had set aside the judgment and order rendered by the Assistant Settlement Officer, Consolidation.

3. From perusal of the record, it emerges that the dispute relates to Chak No. 228, having an area of 6 Biga, 8 Biswa and 2 Dhoors, situate in Village Jamunipur, Tehsil Akbarpur, District Faizabad, now District Ambedkar Nagar. Initially at the time of commencement of consolidation proceedings in the concerned Village, the land in dispute was recorded in the name of one Bisai. It further emerges from the record that Bisai, the original tenureholder, had died during pendency of the consolidation proceedings in the Village leaving behind

his widow, Smt. Manraji. This couple was issueless. Objections were filed by the respondent No. 2, Dayaram, claiming himself to be Bisai's wife's Brother's son (Bisai's Brother-in-Law's son), u/s 12 of the U.P. Consolidation of Holdings Act, alleging that he had obtained a sale deed executed by Bisai, transferring his Chak No. 228 in his favour on 25.8.1971. Upon this, Bisai, the tenureholder from whom the land was alleged to have been purchased, reacted and filed objections before the Consolidation Officer. In his objections, Bisai has contended that he had never executed any sale deed. Since, he was issueless, Daya Ram, being his Brother-in-Law's son (Dhanpal's son), used to visit him to look after him during his illness. The alleged sale deed was a fraudulent transaction. However, during pendency of the litigation, Bisai had died. The Consolidation Officer, on the application submitted by Smt. Manraji, widow of Bisai, the tenureholder, had ordered for mutation of her name being the legal heir and successor of Bisai.

4. It appears from the pleadings that Smt. Manraji had executed a registered adoption deed on 15.2.1978, adopting Asha Ram, the petitioner as her son. She had also died during pendency of the litigation before the Consolidation Officer. However, various other events took place during the course of litigation before the Consolidation courts. Daya Ram, respondent No. 2, had executed a power of attorney in favour of one Syed Husain Ahmad, Advocate for the Pairvi of the case. Another sale deed was executed by Daya Ram in favour of one Nand Kishore, father of one Harish Chandra, Advocate, who was a counsel, engaged by Daya Ram to pursue his cases. He had also sought mutation of his name on the basis of the said alleged sale deed executed by Daya Ram. The application submitted by Daya Ram, seeking mutation in respect of the land in dispute owned by Bisai was rejected on 8.10.1976. Later on, another order was passed by the Consolidation Officer on 20.7.1979 by which the Consolidation Officer had ordered for vesting the land in favour of Gaon Sabha. Thus, by operation of this order passed by the Consolidation Officer on 20.7.1979, no contesting party was going to get benefit of the litigation contested in the court of Consolidation Officer.

5. The order passed by the Consolidation Officer on 20.7.1979 was assailed by three Appeals before the Assistant Settlement Officer, Consolidation by Daya Ram. Asha Ram, the petitioner herein, also came forward to challenge the order dated 20.7.1979 by which the land in dispute was going to be vested in favour of Gaon Sabha. These three Appeals were considered by the Assistant Settlement Officer, Consolidation. While deciding the Appeals, so preferred, he had passed a detailed judgment and order on 28.5.1981, taking note of versions of the parties. Daya Ram's (respondent No. 2) three Appeals were dismissed whereas the appeal preferred by Asha Ram, the petitioner, was allowed and the order dated 20.7.1979, passed by the Consolidation Officer was set aside.

6. It is noted that Sri N.N. Jaiswal, learned Counsel for the respondent Nos. 2 to 9, has raised a preliminary objection before the Court at the outset when the

case was taken up that this order dated 20.7.1979 was not challenged in this writ petition.

7. The Court has perused all the judgments rendered by the Consolidation Officer, Assistant Settlement Officer, Consolidation and the Deputy Director of Consolidation, which form part of the record. It was found that the order dated 20.7.1979, passed by the Consolidation Officer, was challenged before the Appellate court. It was assailed before the Deputy Director of Consolidation also. The Assistant Settlement Officer, Consolidation had set aside the order dated 20.7.1979. Since the Assistant Settlement Officer, Consolidation had allowed the Appeal filed by Asha Ram and the order dated 20.7.1979 was set aside, in these circumstances, Asha Ram had not challenged the said order. The Deputy Director of Consolidation had also taken note of this situation in his order. The preliminary objection raised by Sri N.N. Jaiswal, learned Counsel for the respondent Nos. 2 to 9, has been taken note of and is rejected in these circumstances.

8. Now the parties entered in the arena of filing revisions, u/s 48 of the U.P. Consolidation of Holdings Act. Four revisions were filed by Daya Ram, respondent No. 2, challenging the order passed by the Assistant Settlement Officer, Consolidation. These four revisions have been allowed. The Revisional court had set aside the order passed in Appeal by the Assistant Settlement Officer, Consolidation and the order passed by the Consolidation Officer on 20.7.1979. By the said order, passed by the Deputy Director of Consolidation, the earlier order passed by the Consolidation Officer on 8.10.1976 was partly set aside and the subsequent order passed by the Consolidation Officer was set aside in toto. The land in dispute was ordered to be recorded in the name of Daya Ram.

9. It appears that the Deputy Director of Consolidation had laid much stress on the sale deed dated 25.8.1971, said to have been executed by Bisai in favour of Daya Ram.

10. Sri I.D. Shukla, learned Counsel for the petitioner, has assailed the findings recorded by the Deputy Director of Consolidation in its judgment by filing the present petition. The present writ petition was admitted on 23.10.1981 and an order of maintaining the status quo was passed by the Court.

11. As per Sri Shukla, some material facts and points of law have been excluded from consideration by the Deputy Director of Consolidation, while passing the impugned order dated 30.9.1981. Detailed findings have been recorded by the Assistant Settlement Officer, Consolidation in arriving at its conclusion. The Deputy Director of Consolidation has not recorded detailed reasons while reversing the findings recorded by the Assistant Settlement Officer, Consolidation.

12. The main grounds of attack of learned Counsel for the petitioner are that before executing the forged and fabricated sale deed, no permission of Settlement Officer, Consolidation was obtained for executing the sale deed as required u/s 5(1)(c)(ii) of the U.P. Consolidation of Holdings Act. Secondly, the sale deed alleged to have been executed on 25.8.1971 whereas Bisai, the

tenureholder, himself had appeared before the Consolidation Officer and submitted by filing a written objection that he had never executed any sale deed in respect of the land in dispute. He had categorically denied executing any sale deed in favour of Daya Ram. Moreover, in the presence of his legally wedded wife, Smt. Manraji, how could the agricultural land as well as dwelling house could have been sold by him in view of the fact that he was issueless and his wife had to sustain on the land as well as on the residential house in the Village. Learned Counsel for the petitioner has also pointed out that Daya Ram, respondent No. 2, did not stop here, he had executed sale deeds in favour of his own lawyer, who further sold it to respondent Nos. 3 to 9. Further, he had also violated spirit of the interim order passed by the High Court for maintaining status quo in respect of the land in dispute. Moreover, the Revisional court had committed a patent error of law, which was apparent on the face of the record in holding that the sale deed alleged to have been executed by Bisai, the tenureholder ought to have been got cancelled by filing a Civil Suit in the Civil Court. Therefore, the sale deed could not have been challenged before the Consolidation courts. Since the alleged sale deed has been executed without obtaining permission from the Settlement Officer, Consolidation as required u/s 5(1)(c)(ii) of the U.P. Consolidation of Holdings Act, as the consolidation operation was going on in the concerned Village, the alleged sale deed was having no legal sanctity. The Assistant Settlement Officer has rightly allowed the Appeal of Asha Ram, the petitioner.

13. Sri I.D. Shukla, learned Counsel for the petitioner, has categorically submitted that the Revisional court, u/s 48 of the U.P. Consolidation of Holdings Act, could itself have scrutinised the character of the sale deed or any document or will to ascertain whether the said document was executed by playing fraud on Bisai, the tenureholder or whether any permission was obtained from the Settlement Officer, Consolidation, as required u/s 5(1)(c)(ii) of the U.P. Consolidation of Holdings Act before executing the sale deed by Bisai. In the present case, due procedure was not followed. The Deputy Director of Consolidation had excluded from considered, another very important fact that Bisai, the tenureholder, had himself submitted before the Consolidation Officer that he had never executed any sale deed. In these circumstances, the Deputy Director of Consolidation ought to have recorded detailed reasons, taking note of these facts and circumstances and the law on the subject. Thus, the matter requires reconsideration.

14. Sri N.N. Jaiswal, learned Counsel for the respondent Nos. 2 to 9, by filing a counter affidavit, has supported the findings recorded in the judgment of the Deputy Director of Consolidation. The alleged sale deed was legal and valid and its validity could not have been looked into by the Consolidation courts. Moreover, proper parties, like, Consolidation Officer etc. have not been impleaded.

15. Sri Shiva Kant Tiwari, learned Counsel, has put in appearance on behalf of respondent Nos. 4/1, 4/2 and 4/3, Bharat Kumar, Dinesh Kumar and Ranvijay. He

has also supported the findings and conclusions recorded by the Deputy Director of Consolidation. According to him, the judgment of the Deputy Director of Consolidation is not assailable. The issues on facts have already been dealt with and concluded.

16. I have heard learned Counsel for the parties and perused the three judgments, rendered by the Consolidation Officer, Assistant Settlement Officer, Consolidation and the Deputy Director of Consolidation.

17. In view of the factual matrix of the case, it was incumbent upon the Deputy Director of Consolidation to have dealt with the matter independently and scrutinised the validity of the sale deed. Here was a case where during consolidation proceedings, Bisai, the tenureholder, whose land was under the consolidation operations, had come out to say before the Consolidation Officer that he had never executed the alleged sale deed on 25.8.1971. It is admitted to both the parties that no permission was sought or obtained from the Settlement Officer, Consolidation, which is a condition precedent, as per Section 5(1)(c)(ii) of the U.P. Consolidation of Holdings Act. The other facts, like, Bisai was issueless and after his death, his widow, Smt. Manraji, was to survive. How a widow, in a Village, can survive if the entire agricultural holding alongwith residential house etc. is sold to her brother's son. The whole story appears to be incredible. This case, thus, needs to be weighed from these angles also. As per the situation and social atmosphere prevailing in the Villages of Rural India in 1970s, by a duly registered adoption deed Asha Ram, the petitioner, was adopted by the widow, Smt. Manraji, the tenureholder, whose name was recorded in the revenue records, being the legal heir and successor of Bisai, the original tenureholder, as per Section 171 of the U.P. Zamindari Abolition & Land Reforms Act. The revenue entries appear to have been considered by the Assistant Settlement Officer Consolidation. There is no finding or reason recorded by the Deputy Director of Consolidation as to how revenue entries by which a widow of a tenureholder had been recorded as tenureholder, being legal heir and successor u/s 171 of the U.P. Zamindari Abolition & Land Reforms Act can be scored out or scrapped. As per scheme of Section 171 of the U.P. Zamindari Abolition & Land Reforms Act, a widow and wife would succeed her husband's property after his death and this issue ought to have been dealt with and considered by the Deputy Director of Consolidation alongwith other issues and detailed findings and reasons ought to have been recorded.

18. In view of the discussions made above, the writ petition succeeds and is allowed. The impugned order dated 30.9.1981, passed by the Deputy Director of Consolidation, Faizabad is quashed and the matter is remanded back to the Deputy Director of Consolidation, Faizabad/Ambekar Nagar for deciding the matter afresh in the light of observations made hereinabove and taking note of the arguments made by the parties as well as law on the subject by passing a reasoned and speaking order in accordance with law, after affording opportunity of hearing to the parties, within four months" from the date of presentation of a

certified copy of this order. The contesting parties will place their arguments and produce evidence, if any, in support of their respective claims before the Deputy Director of Consolidation.

19. No order as to costs.