

(1976) 09 AHC CK 0035
In the Allahabad High Court
Case No : Writ Petition No. 106 of 1971

Ashok Kumar and others

APPELLANT

Vs

Gaya Lal and others

RESPONDENT

Date of Decision : 01-09-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1976) 09 AHC CK 0035

Hon'ble Judges : D.N.Jha, J

Final Decision : Disposed Of

Judgement

D. N. Jha, J.

The petitioners have filed this petition challenging the order passed by the Deputy Director of Consolidation dated 30th September, 1970 contained in Annexure 5.

In brief the facts are that between the opposite parties and father of the petitioners, who is now dead, the dispute related to plots nos. 134 and 158. The basic year entry was recorded in the name of Chhotey Lal. On publication of record opposite parties 1 to 3, namely Gaya Lal, Sobran and Sudarshan who were sons of Brij Nath filed objections claiming cotenancy rights. It may be mentioned that there is no dispute between the parties with respect to the pedigree which is given out as under:

Debi Dayal

Gambba

Balai

Bhawani

Lati

Gauri

Bajjnath

Kalika

Ganda

Kallu

Sahai

Chhotey Lal

Sudarshan O. P. 3

Sobran O. P. 2

Gaya Lal O. P.

Ashok Kumar

Gur Prasad

Kaliaka

Phool Chand

Babu Ram

Suraj Prasad

The dispute came up before the Consolidation Officer who after considering the oral and documentary evidence vide his order dated December 2, 1968 rejected the objections filed by the opposite parties. They preferred an appeal before the Settlement Officer (Consolidation) but that was also dismissed on 31/5/1968. This order is annexure 4. The opposite parties then went up in revision before the Deputy Director of Consolidation who allowed the revision vide his order dated 30th September, 1970. This is Annexure 5. It is, in these circumstances, the petitioners have now come up before this Court.

The petition has been contested on behalf of opposite parties and a counteraffidavit has also been filed and an effort has been made to support the order passed by the Deputy Director of Consolidation.

I have heard the learned counsel for the parties and I have also gone through the orders passed by the Settlement Officer (Consolidation) and the Deputy Director of Consolidation. Learned counsel for the petitioners argued that the finding recorded by Deputy Director of Consolidation is not only cryptic and arbitrary but is based altogether on no evidence. Learned counsel for the opposite parties, however, tried to justify the finding recorded by the Deputy Director of Consolidation to the effect that at the time of the death of Gauri, Baij Nath was alive. It may be mentioned that the Deputy Director of Consolidation has not recorded a positive finding but has contented by saying that at the time of the death of Gauri, Baij Nath and Kallu should be taken as alive. The exact

words are, "Gauri ke mirtu ke badd dono ko he jivat mana jana chaiye."

The only reason given by the Deputy Director of Consolidation is that from the socalled family settlement dated 21101953 it cannot be taken that Baij Nath had died before the death of Gauri because this agreement was made some time in 1360F. in which year there is mention about the death of Gauri and this paper relates to 1361 F. It is impossible to decipher what the Deputy Director of Consolidation wanted to convey or what was the actual consideration that weighed in his mind to come to a conclusion that Baij Nath was alive at the time of the death of Gauri. He has not considered any evidence in order to record a finding as to what was the time of the death of Gauri and that of Baij Nath. Learned counsel for the opposite parties argued that the Deputy Director of Consolidation has only considered the argument that was advanced by the petitioners before him. It may be mentioned that the revision had been filed by the opposite parties and it does not transpire from the order of the Deputy Director of Consolidation as to what was the case that was put up by the opposite parties before him nor is it possible to decipher as to what was the contention of the learned counsel for the petitioners. The judgment of the Deputy Director of Consolidation, in my opinion, can hardly be termed to be an application of true sense of justice. These quasijudicial bodies are constituted to adjudicate on important questions, viz. titles and they also attain a finality hence it is expected that before setting at rest the real dispute, they judicially approach the questions that are canvassed by the parties. Learned counsel for the opposite parties tried to supplement the order of the Deputy Director of Consolidation by making reference to the statement of Chhotey Lal attached as Annexure A1 to the counteraffidavit. I am deliberately refraining myself from making any observation with respect to the statement referred to by the learned counsel since I am inclined to refer the matter to the Deputy Director of Consolidation for reconsideration I wish to leave the entire chapter open to him. It will be open to the parties to canvass before him on the basis of the entire evidence oral and documentary produced before the subordinate consolidation authorities.

I would, however, like to observe that the jurisdiction under Article 226 of the Constitution is limited one and this court does not sit as a Court of appeal. The orders of the subordinate tribunals are subject to supervisory jurisdiction of this Court and it is expected of these quasijudicial bodies to write out judgments in a manner from which it may be possible for the Courts to decipher as to what was the evidence that was considered and how it weighed upon the mind of the deciding authority. The cryptic and arbitrary disposal of cases specially when it affects the rights of the parties, are not to be taken lightly. I have no hesitation in holding that the Deputy Director of Consolidation has acted in a most reckless manner in deciding the dispute brought before him by the parties.

The result is that the order passed by the Deputy Director of Consolidation dated 30th September, 1970 being manifestly perverse and erroneous is quashed I

further direct that the Deputy Director of Consolidation will restore the revision filed by the appellate parties and shall proceed to dispose of in the light of the evidence on record. I, however, make no order as to costs.