
(2016) 07 AHC CK 0072
In the Allahabad High Court
Case No : Writ-B No. 34135 of 2016

Ashok Kumar Pandey

APPELLANT

Vs

Deputy Director of Consolidation Varanasi

RESPONDENT

Date of Decision : 26-07-2016

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 201

Citation : (2016) 132 RD 625 : (2016) 132 RD 535

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Shiva Nand Pandey and S.P. Pandey, Advocates, for the Appellant;
C.S.C, Indradeo Maurya, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.— Heard Sri S.P. Pandey, for the petitioners and Sri Indradeo Maurya, for respondent-2.

2. The writ petition has been filed against the order of Deputy Director of Consolidation, dated 28.06.2016, dismissing recall application of the petitioners as time barred, in title proceeding under U.P. Consolidation Act, 1953 (hereinafter referred to as the Act).

3. The dispute between the parties was in respect of plot 68 (area 0-3-10) bigha of village Usri, pargana Kera Mangraur, district Chandauli. In basic consolidation year, land in dispute was recorded in khata-8, in the names of Rama, Uma sons of Ram Roop and Smt. Shubhwanti widow of Bakhtawar. Ram Dev Pandey (respondent-2) filed an objection under Section 9 of the Act, claiming his right on the basis of sale deed dated 11.04.1934, executed by the predecessors of the petitioners, in favour of his father. He claimed that the land in dispute was falling inside the land purchased by his father through sale deed dated 11.04.1934 and was transferred to him along with other land. In alternative, he claimed that he had been in possession of this land since 11.04.1934 as such his right through

adverse possession accrued over it. Consolidation Officer, by order dated 16.10.1971, found that although the land in dispute was not included in the sale deed dated 11.04.1934 but being inside of land covered in the aforesaid sale deed, respondent-2 and his predecessor were in possession of it and his right by way of adverse possession was matured. On these findings, he allowed the objection of respondent-2. Rama and others filed an appeal from aforesaid order. Settlement Officer Consolidation by order dated 15.09.1972, dismissed the appeal. Rama and others filed a revision (registered as Revision No. 2774) against aforesaid order, which was allowed by Deputy Director of Consolidation, by order dated 10.09.1975, on the ground that plea of adverse possession has neither been raised nor proved. Ram Dev Pandey (respondent-2) filed a writ petition (registered as Civil Misc. Writ petition No. 19 of 1976). This Court, by judgment dated 04.08.1994, held that there was clear pleading of adverse possession of Ram Dev Pandey but Deputy Director of Consolidation has illegally held that there was no pleading relating to adverse possession. On this ground he has also ignored the evidence on record in this respect. On these findings, writ petition was allowed, order of Deputy Director of Consolidation dated 10.09.1975 was set aside and matter has been remanded to Deputy Director of Consolidation, for fresh decision of the revision on merit.

4. After remand, the revision was dismissed in default by Deputy Director of Consolidation by order dated 16.01.2007. The petitioners filed an application dated 03.07.2014, for recall of aforesaid order, along with delay condonation application. In the application and affidavit filed in support of it, the petitioners have stated that Rama Pandey, their father fell ill in December, 2006 and became unable to move. He had become physically and mentally paralytic and was not able to attend the Court. The petitioners had no knowledge of the revision as such they could not do any pairavee in it. As such, the revision was dismissed in default on 16.01.2007. On 01.07.2014, respondent-2 came on spot for taking possession over disput land and informed that he had won litigation in 2007, in respect of land in dispute, then on inquiry, they could know about it. Order dated 16.01.2007, dismissing revision in default is causing grave injustice to the petitioners and is liable to be recalled, condoning delay.

5. Respondent-2 filed an objection to recall application and delay condonation application. He had denied that Rama Pandey ever fell ill in December, 2006 or he was unable to move in January 2007. He has stated that his name was recorded over the land in dispute on the basis of order of Consolidation Officer dated 16.10.1971. After setting aside of order of Deputy Director of Consolidation dated 10.09.1975, on 04.08.1994, he initiated proceeding under Rule-109-A of the Rules, in which possession was given to him on 01.09.1995. He had filed a civil suit (registered as O.S. No. 51 of 1997), in which interim injunction, restraining Rama and others from interfering in possession of respondent-2 over the land in dispute was granted. The petitioners had knowledge of order dated 16.01.2007, from very beginning. They have given false explanation for condoning inordinate delay. Restoration application was

heard by Deputy Director of Consolidation, who by impugned order dated 28.06.2016 found that the petitioners have not filed any evidence to prove that their father was ill at the relevant time and unable to move. Although father of the petitioners died on 09.01.2012, but he did not file recall application during his life time. There is no ground for condoning inordinate delay. On these findings, he rejected delay condonation application and dismissed recall application of the petitioners as time barred. Hence this writ petition has been filed.

6. The counsel for the petitioners submitted that this Court by order dated 04.08.1994, remanded the matter to Deputy Director of Consolidation to decide the revision afresh on merit. Deputy Director of Consolidation has illegally dismissed the revision in default, in stead of deciding it on merit. The father of the petitioners, was pairokar on behalf the revisionists. Suddenly, he fell ill due to paralytic attack in December, 2006. He was unable to move. His mental condition was also not fit. The petitioners had no knowledge of the pendency of revision. As such no one could appear before Deputy Director of Consolidation on 16.01.2007 and the revision was dismissed in default. Illness of pairokar as well ignorance of the petitioners about revision was sufficient ground for condoning delay and recalling order dated 16.01.2007 but restoration application has been illegally dismissed as time barred. He relied upon judgment of Supreme Court in M/s Dehri Rohtas Light Railway Company Ltd. v. District Board Bhojpur, (1999) 2 SCC 598, in which it has been held that High Court was not justified in dismissing writ petition on the ground of latches instead of deciding it on merit. He submits that order is illegal and be set aside.

7. I have considered the arguments of the counsel for the parties and examined the record. So far as case law relied upon by the counsel for the petitioners is concerned, it has no application in present case as no limitation has been provided for filing writ petition and in the fact of particular case, Supreme Court found that High Court was not justified in dismissing writ petition on the ground of latches instead of deciding it on merit.

8. In present case, by virtue of Section 41 of the Act, provisions of Chapter IX and X of U.P. Land Revenue Act, 1901, have been applied. Section 201, falling under Chapter IX of U.P. Land Revenue Act, 1901 provides remedy for filing recall application, in which 15 days limitation has been provided for filing restoration application. By virtue of Section 53-B of the Act, provisions of Section 5 of Limitation Act, 1963 have applied. Consolidation authorities are competent to condone delay on "sufficient cause".

9. The petitioners have stated that their father was pairokar on behalf the revisionists. Suddenly, he fell ill due to paralytic attack in December, 2006. He was unable to move. His mental condition was also not fit. The petitioners had no knowledge of the pendency of revision. As such no one could appear before Deputy Director of Consolidation on 16.01.2007 and the revision was dismissed in default. This fact has been denied by respondent-2. In the light of controversy,

the petitioners were required to prove that his father was ill on 16.01.2007. The petitioners could not file any evidence to prove illness of his father. It is admitted to the petitioners that their father died on 09.01.2012. Deputy Director of Consolidation found that cause for default was not proved. Findings of fact recorded in this respect does not suffer from any illegality.

10. So far as knowledge of order dated 16.01.2007, is concerned, the petitioners had stated that when respondent-2 came on spot on 01.07.2014 for taking possession over disput land and informed that he had won the case then they made inquiry through counsel on 02.07.2014 and recall application was filed on 03.07.2014. This fact was also denied by respondent-2, who had stated that his name was recorded over the land in dispute on the basis of order of Consolidation Officer dated 16.10.1971. After setting aside of order of Deputy Director of Consolidation dated 10.09.1975, on 04.08.1994, he initiated proceeding under Rule-109-A of the Rules, in which possession was given to him on 01.09.1995. He had filed a civil suit (registered as O.S. No. 51 of 1997), in which interim injunction, restraining Rama and others from interfering in possession of respondent-2 over the land in dispute was granted. The petitioners had knowledge of order dated 16.01.2007, from very beginning. The petitioners had not denied about O.S. No. 51 of 1997. Source of knowledge was also not found correct. Respondent-2 had already taken possession, adopting legal proceeding under Rule 109-A of the Rules in the year 1995. Since 1997, injunction of the order is operating against the petitioners, as such, there was no occasion for respondent-2 for taking possession in July 2014.

11. Supreme Court in *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*, (2012) 5 SCC 157, held that what needs to be emphasised is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the 5 expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

12. So far as merit of the case of the petitioners, nothing has been stated about it in writ petition. Even orders of Consolidation Officer and Settlement Officer Consolidation, which are against the petitioners have not been filed. Nothing has been argued before this Court on merit.

13. In view of the aforesaid discussion, the writ petition has no merit and is dismissed.