
(2011) 01 AHC CK 0256
In the Allahabad High Court
Case No : Writ B. No. 70004 of 2010

Awdhesh Kumar

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

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

Citation : (2011) 01 AHC CK 0256

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : M.D. Misra and Poonam Dubey, for the Appellant; C.S.C. and Santosh Kumar Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Krishna Murari, J.—Heard learned Counsel for the Petitioner and Sri Santosh Kumar Misra for the Respondents.

2. Undisputed facts, giving rise to the dispute, are as under.

3. An objection u/s 9A(2) of the U. P. Consolidation of Holdings Act was filed by Respondent No. 5 and predecessor-in-interest of the Petitioner in respect of Khata No. 28. Another objection was filed by Respondents No. 15 and 16. Both objections were consolidated together and decided by the Consolidation Officer vide judgment and order dated 20.10.1985 on the basis of alleged compromise between the parties. Respondent No. 4 went up in appeal. Another appeal was filed by Respondents No. 15 and 16. Settlement Officer Consolidation vide order dated 12.4.1988 decided both the appeals holding that all the parties have equal share in the Khata in dispute. A revision was preferred by Respondents No. 15 and 16 against the appellate order. Respondent No. 5 and predecessor-in-interest of the Petitioner, namely, Suresh also filed a revision. Revision filed by Respondent No. 5 and predecessor-in-interest was allowed vide judgment dated 10.1.1990 whereas other revision filed by Respondents No. 15 and 16 was

decided by separate judgment dated 23.1.1990. The Petitioner again filed revision, out of which present writ petition arises challenging the same order of the Settlement Officer Consolidation Officer dated 12.4.1988 against which revision was preferred by his predecessor-in-interest and which was decided vide order dated 10.1.1990.

4. It is contended by the learned Counsel for the Petitioner that, as a matter of fact, he had no grievance against the order passed by the Settlement Officer Consolidation and the revision filed by predecessor-in-interest was for limited purpose against such observation made by the Settlement Officer Consolidation in the judgment and he has not chosen to file revision against the entire order and it is only when the revision filed by Respondents No. 15 and 16 was decided, cause of action arose.

5. Be that as it may, it was open to the Petitioner to have challenged the order dated 23.1.1990 which was not done.

6. Revision filed by the Petitioner has been dismissed by the Deputy Director of Consolidation on the ground that earlier judgment dated 10.1.1990 passed on the revision filed by predecessor-in-interest shall operate as res-judicata and the Petitioner cannot be permitted to prefer a fresh revision against the same order of the Settlement Officer Consolidation, against which revision filed by the predecessor-in-interest of the Petitioner was already decided. Revision has also been dismissed on the ground that in case the predecessor-in-interest of the Petitioner failed to challenge the order in respect of other khatahs, it was not open to the Petitioner to file revision again against the same order.

7. I find no illegality in the impugned order passed by the Deputy Director of Consolidation in as much as predecessor-in-interest of the Petitioner chose to file revision against the order of the Settlement Officer Consolidation for limited purpose and did not challenge the entire order as such it is not open to the Petitioner to challenge the order by filing another revision. In so far as the order dated 23.1.1990 is concerned, it cannot be said that the predecessor-in-interest of the Petitioner did not have any knowledge of the order. If he was aggrieved, he could have challenged the same but he failed to do so. Now after 21 years, the Petitioner cannot be permitted to challenge the order on the ground that he did not have any knowledge of the order in as much as the predecessor-in-interest of the Petitioner had full knowledge of the order and he did not challenge the same.

8. In view of the above facts and discussions, the writ petition is devoid of merits and accordingly stands dismissed in limine.