

(2004) 08 AHC CK 0048
In the Allahabad High Court
Case No : Writ Petition No. 4062 of 1982

Babu Lal (deceased) through L.Rs. and Others	APPELLANT
Vs	
Sunder and Others	RESPONDENT

Date of Decision : 24-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11A, 48, 9A

Citation : (2005) 2 AWC 1858

Hon'ble Judges : Khem Karan, J

Bench : Single Bench

Advocate : S.C. Mishra and D.C. Mukharjee, for the Appellant; Nirmal Tiwari, for the Respondent

Final Decision : Allowed

Judgement

Khem Karan, J.—This writ petition is directed against the order dated 21.9.1978 (Annexure-7) passed by opposite party No. 2 and order dated 4.8.1982 (Annexure-9) passed by opposite party No. 3.

2. The dispute relates to the land of khata No. 76 having several plots, measuring about 23 bighas and few biswas, which was earlier recorded in the name of Sunder (opposite party No. 1) in the basic year. There commenced consolidation operation in the area. Petitioner Nos. 1, 2 and 3 (sons of Jagannath) put a claim, saying that since the property was ancestral and was acquired by Hindu joint family and since the name of Sunder was recorded in representative capacity, therefore, they had a share therein. Descendants of Pancham, brother of Jagannath, though filed no objection as such but did file written statement, claiming their share in that holding. The Consolidation Officer decided the matter, vide order dated 14.1.1975 giving 1/3 share to Sunder, 1/3 to descendants of Pancham and 1/3 to petitioner Nos. 1, 2 and 3, descendants of Jagannath, brother of Pancham. Bhola, who was not an objector before the Consolidation Officer, preferred an appeal and the Settlement Officer,

Consolidation remanded the matter for decision afresh. The Consolidation Officer considered the matter again, but reaffirmed his earlier order, vide order dated 24.6.1976 (Annexure-6). It may be mentioned that Bhola, who had filed an appeal before the Settlement Officer, appeared as a witness after remand, to support the case of Sunder. Against this subsequent order dated 24.6.1976 of the Consolidation Officer, Opposite Party No. 1 Sunder filed an appeal. The appellate authority confirmed the finding of Consolidation Officer, vide order dated 21.9.1978, but gave 2/3 share to Sunder and 1/3 to petitioner Nos. 1, 2 and 3.

3. Aggrieved of it, petitioner Nos. 1, 2 and 3, Pancham and Sunder filed separate revisions u/s 48 of U.P.C.H. Act. During the pendency of these revisions, descendants of Pancham filed a belated objection u/s 9A, which the Consolidation Officer decided, vide order dated 31.7.1980 (Annexure-A8). That order was also filed before the revising authority at the time those revisions were heard. The Deputy Director of Consolidation allowed the revision of Sunder holding that the property in question was not ancestral as claimed by descendants of Jagannath or Pancham, but was self acquired property of Sunder. Consequently, revisions filed by petitioner Nos. 1, 2 and 3 and by descendants of Pancham were dismissed. Aggrieved of this order of Deputy Director of Consolidation dated 4.1.1982, descendants of Jagannath and Pancham have come to this Court under Article 226 of the Constitution of India.

4. Sunder contested the claim of the petitioners by filing counter-affidavit, reiterating the stand taken by him earlier in different hierarchy of Consolidation Courts. His case was that the land in question was taken by him on patta, from the then zamindar and it was totally incorrect to say that it was of the time of Ramdeen or Sitladeen or Smt. Mona, wife of Sheetladeen.

5. The Court heard Sri D.C. Mukherji. None appeared for opposite parties at the time the matter was heard.

6. What Sri D.C. Mukherji submits is that in view of the law laid down by the Apex Court in a series of decisions including in Ram Dular Vs. Dy. Director of Consolidation, Jaunpur and Others, ; Gaya Din v. Hanuman Prasad. 2001 (1) AWC 344 (SC) : (2001) 1 SCC 501 and Ram Avtar and others Vs. Ram Dhani and others, , the scope for interference in revision like one u/s 48 of U.P.C.H. Act is limited one and normally concurrent finding of fact as recorded by the lower authority cannot be interfered with, unless, of course, the same appears to be totally perverse or unless it is shown that the same is based on some inadmissible or irrelevant material. Sri Mukherji has contended that when there was a concurrent finding of the Consolidation Officer as well as of appellate authority that the property in question was not a self acquired property of Sunder, but was ancestral and Hindu joint family property and name of Sunder was recorded in representative capacity only, the revising authority could not have interfered with the same without there being a finding that concurrent finding of fact was perverse or no reasonable person could have come to that

finding. Sri Mukherji says that no doubt on the basis of the finding recorded by the Consolidation Officer, Bhola being grand son of Pancham could have claimed share, but since he never filed objection and he supported the claim of Sunder by appearing in the witness-box, he lost his claim. Sri Mukherji has drawn the attention of this Court towards Section 11A of U.P.C.H. Act in the context of the claim of Bhola. It has been brought to the notice of the Court, by referring to the material on record that the land in question was earlier recorded in 1346 fasli, in the name of Smt. Mona, widow of Shitladeen. Sri Mukherji says that those entries continued even upto 1356 fasli. It is said that it is not known as to on what basis the same land came to be recorded in 1359 fasli in the name of Sunder with a period of 30 years. Sri Mukherji has taken the Court through the orders of Consolidation Officer, appellate court and the revisional court, with a view to convince the Court that interference of Deputy Director of Consolidation with the finding of Consolidation Officer that the property was not self acquired, property of Sunder was an ancestral property of Hindu Joint Family, was totally unjustified.

7. There appears to be no debate on the point that scope for interference in revision like one u/s 48 of U.P.C.H. Act is limited one. Unless it is shown or found that the view taken by the lower authorities was not possible at all or unless it is shown that some irrelevant or inadmissible material has been taken into consideration for recording a finding of fact, interference in revision will not be justified. In the instant case, there was a documentary proof to the effect that the land in question was earlier recorded in the name of Smt. Mona, widow of Shitladeen, with a period of 17 Years. These entries continued till 1356 fasli. Sunder was not able to explain as to how the land was recorded in the name of Smt. Mona, widow of Shitaldeen, if it was acquired by him on patta from the then Zamindar. The Deputy Director of Consolidation attempted to meet this situation by saying that after ejectment of Smt. Mona, Sunder had obtained it on patta, but the same was not supported by any acceptable material. Moreover, if Sunder had obtained it, after 1356 fasli, how the period of 30 years was shown in 1359 fasli. The question of taking the land on patta could have arisen only after 1356 fasli, as till then it was recorded in the name of Smt. Mona and in that case the period of 30 years could not have been mentioned in 1359 fasli against the entries in the name of Sunder. Oral evidence of Sunder and Bhola and other evidence led in the Court of Consolidation Officer was evaluated by the authority concerned and it was after that a finding was recorded to the effect the property in question was recorded in the name of Sunder in his representative capacity, in which descendants of Pancham and Jagannath had shares. The Settlement Officer, Consolidation agreed with the Consolidation Officer on the point that property was ancestral and joint but fell in error by denying share to the descendants of Pancham. His reasoning was that since the descendants of Pancham had not filed any objection, therefore, they could not be given 1/3 share, but he lost sight of the fact that descendants of Pancham had filed written statement before the Consolidation Officer, asserting their share and in view of

the decision dated 18.1.1981 in Writ Petition No. 2666 of 1974, Mahabir and Anr. v. Deputy Director of Consolidation, even the claim in written statement constitute an objection for purpose of proceedings u/s 9A.

8. The Court is of the view that the Deputy Director of Consolidation fell in error by interfering with the finding of fact earlier recorded by the Consolidation Officer and affirmed by the appellate court. He also fell in error by not correcting the mistake committed by the appellate court in denying the share to the descendants of Pancham. The writ petition deserves to be allowed and the order dated 4.8.1982 of the Deputy Director of Consolidation deserves to be quashed and the order of Settlement Officer, Consolidation denying 1/3 share to the descendants of Pancham deserves to be set aside and the order of Consolidation Officer is to be maintained.

9. The writ petition is accordingly allowed. The order of Deputy Director of Consolidation dated 4.8.1982 (Annexure-9) is quashed and the order of Settlement Officer Consolidation to the extent it deprives the descendants of Pancham from 1/3 share as given by Consolidation Officer is set aside and the order of Consolidation Officer is affirmed. No order as to costs.