

(1975) 11 AHC CK 0033
In the Allahabad High Court
Case No : Writ Petition No. 416 of 1973

Babu Ram

APPELLANT

Vs

Munau and others

RESPONDENT

Date of Decision : 18-11-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1975) 11 AHC CK 0033

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

Final Decision : Disposed Of

Judgement

D.N. Jha, J.

Babu Ram has moved this petition under Article 226 of the Constitution challenging the order passed by the Assistant Settlement Officer, Consolidation dated August 26, 1972 contained in Annexure2 and that passed by the Deputy Director of Consolidation dated January 12, 1973 contained in Annexure6.

The facts of the case are in brief that a pedigree has been set out by the petitioner in paragraph 1 from which it transpires that the petitioner as well as opposite party No. 1 Munau were grandsons in late Smt. Sheo Pyare. The pedigree is as under:

Deota Din

Kalika=:Sm. Sheo Pyari (Widow)

Sant Ram

i Dulara (Married to Ram Sewak)

Kalika (Married to Dua Din)

Munau (O.P. 1)

Babu Ram (Petitioner) Sheo Ram

When the consolidation operation started in the village the entry in the basic year stood with respect to Khata No. 34 of village Janwa, Pargana and Tehsil Biswan, District Sitapur in the name of the petitioner and his deceased brother Sheo Ram. An objection was filed on behalf of opposite party No. 1 Munau claiming cotenancy rights in the disputed Khata. The dispute was referred to the Consolidation Officer who after recording the evidence and framing of the issues rejected the objections filed by opposite party No. 1 Munau. Munau feeling aggrieved by the order went in appeal before the Settlement Officer, Consolidation who vide his order dated August 26, 1972 allowed the appeal to the extent that 1/3rd share in the disputed Khata was allowed to be entered in the name of opposite party No. 1 Munau. The petitioner feeling aggrieved by the Deputy Director of Consolidation who vide his order dated January 12, 1973 rejected the same. It is in these circumstances that the petitioner feeling aggrieved by this order has come before this Court by means of the present petition.

The petition has been contested on behalf of opposite party No. 1 Munau. A counteraffidavit has also been filed.

I have heard the learned counsel for the parties at some length and have perused the record which was summoned under the orders of this Court. The sole contention raised in this petition is to the effect that the petitioner had moved an affidavit copy of which is Annexure 5 dated December 23, 1972 before the Deputy Director of Consolidation in assertion of the fact that he was granted a Patta by the zamindari before abolition of zamindari and thereafter he obtained Bhumidhari Sanad and became Bhumidhar of the disputed Khata. It may be pointed out that the perusal of the record does not indicate any thing whether the petitioner had taken any such plea at the stage of proceedings before the Consolidation Officer. No issue to this effect was framed, nor any such plea appears to have been recorded by the Consolidation Officer. Likewise no plea of claim on the basis of Patta was set up before the Settlement Officer Consolidation. In the memorandum of revision also no such plea was specifically raised by the petitioner. I had my serious doubts when this case for the first time came up before this Court and for that purpose I scrutinized the record of the Deputy Director of Consolidation and I am constrained to observe that the Deputy Director of Consolidation has acted in a most reckless and irresponsible manner. If any application or any affidavit is moved it is the bounden duty of the Presiding Officer to incorporate the same in the order either accepting or rejecting it. Even if he returns a document an endorsement in the ordersheet is to be made to that effect. In absence of such an observation I was not inclined to accept the copy of the affidavit filed for the first time in this Court. However in the counteraffidavit I find that it is stated that some sort of application was moved on behalf of the petitioner. The counteraffidavit is silent with respect to the nature of the document while in the writ petition a categorical assertion has been made on oath that it was Annexure 5 that was presented and no other application besides this was presented. On giving my anxious consideration to

the entire facts brought on the record I am of opinion that the petitioner had moved some application before the Deputy Director of Consolidation. However the exact nature of the same cannot be determined I am satisfied that in the view of the matter the order passed by the Deputy Director of Consolidation, even though concluded by findings of fact, suffers from manifest error of law inasmuch as he appears" to have denied a fair opportunity to the petitioner to put his case and has acted in flagrant violation of the principles of natural justice. Under the circumstances it is impossible to sustain the order passed by the Deputy Director of Consolidation which suffers from manifest error of law inasmuch as he has not adhered to the well settled principles of natural justice. The order is accordingly set aside and since I am of opinion that the matter should go back to the Deputy Director of Consolidation for reconsideration and to decide and investigate about the assertion whether any Patta was executed in favour of the petitioner, he may allow the parties to adduce evidence in this connection and thereafter decide the matter in accordance with law whether he should permit the additional evidence to be adduced by the petitioner.

The result is that the writ petition succeeds and is allowed. The order passed by the Deputy Director of Consolidation contained in Annexure 6 dated January 12, 1973 is quashed. Let certiorari issue accordingly to cancel the original of the same from the record. I further direct that the Deputy Director of Consolidation will restore the revision to its original number and dispose it of in accordance with law and the observations made above. Let mandamus issue accordingly. No stay of the operation of the order passed by the Settlement Officer of Consolidation shall be passed by the Deputy Director of Consolidation before deciding the dispute and possession of the opposite party shall not be disturbed until the right of Munau is decided adversely. In the circumstances of the case I direct that the parties shall bear their own costs.