
(1994) 02 AHC CK 0008

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7216 of 1973

Baldeo (since deceased) by LRs. and Others

APPELLANT

Vs

Dy. Director of Consolidation and Another

RESPONDENT

Date of Decision : 01-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A(5)

Citation : (1994) 1 AWC 634

Hon'ble Judges : S.R Misra, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary and Yatindra Singh, for the Appellant; G.N. Verma, for the Respondent

Final Decision : Allowed

Judgement

S.R. Misra, J.—The dispute given rise to this writ petition pertains to khata nos. 270 and 272 of village Gondasara, Pargana Jamania, District Ghazipur and plot no. 2337 of Khata no. 209. The Deputy Director of Consolidation while deciding the dispute u/s 9-A (5) of the U.P. Consolidation of Holdings Act (from hereinafter referred to as the "Act") passed an order dated 20-8-1973 against the Petitioners. Aggrieved by the said order Petitioners have approached to this Court under Article 226 of the Constitution of India. The brief facts given rise to this writ petition are as follows.

2. In the basic year records in respect of Khata nos. 209, plot no 2337 was recorded in the name of the Petitioner and Respondent nos. 6 to 10 and one Sitaram minor son of Mahesh. Khata no. 270 was recorded in the name of the Petitioners, Munir Khan, Sajjad Husain (Respondents 4 and S) and Sitaram minor son of Mahesh as tenure holder. Khata no. 272 was recorded in the name of Petitioner, Munir Khan, Sajja Khan and Babulal Respondent nos. 4 and 5 tiled objection (registered as case no. 4748) alleging that they are in possession over the plot no. 2337 (area 4 Biswa 15 dhur) through a sale deed and were its

bhumidhars. They "have also alleged that they are in possession over the plot no. 2546 (area 6 biswa 8 dhur) for the last more than 12 years and they became sirdars". All the consolidation authorities have recorded concurrence finding of facts and in view of the admitted fact that the sale deed was executed by the Petitioners in favour of Respondents no. 4 and 5 in respect of plot no. 2337 pertaining to Khata no. 209 the right and interest of the Petitioners have come to an end and the judgments of the Consolidation Authorities are final so far as this plot is concerned. Respondents Nos. 4 and 5 filed another objection alleging that they having in possession over the plot no. 270 through a sale deed and the name of all the other persons entered therein should be deleted. According to the Petitioners they have half share in khata no. 270 and they have not sold any share in khata No. 270 to Respondents 4 and 5 and Respondents 4 and 5 are only entitled to the share of Jangn and others, respondents 6 to 11. The other set of objection was filed by the Respondent nos. 4 and 5 claiming that they are entitled to 3/8 share each i.e. 3/4 share while Babulal was entitled to 1/4 share in khata no. 272. The Petitioners also filed an objection that the objection of Respondents 4 and 5 was incorrect and the Petitioners are entitled to 1/4 share while Babulal was entitled to half share.

3. The Consolidation officer by his order dated 19-5-1972 held that the Respondents 4 and 5 were entitled to plot no. 2337 on the basis of sale deed executed in favour of the Respondents 4 and 5, but held that the Petitioners have half share in khata no. 270 and 1/4 share in Khata no. 272 and Babulal is having one half share.

4. The Respondent NOS. 4 and 5 filed an appeal and the Petitioners have also, filed an appeal in respect of plot no. 2337. The Assistant Settlement Officer (Consolidation), Ghazipur by his order dated 2-9-1972 dismissed both the two appeals and upheld the findings of the Consolidation Officer. Thereafter Respondent nos. 4 and 5 filed a revision and the Petitioners have also filed a revision in respect of plot no. 2337. The Deputy Director of Consolidation by his order dated 20-9-1973 dismissed the revision of the Petitioners in respect of plot no, 2337 but allowed the revision of Respondents no. 4 and 5 in respect of Khata nos. 270 and 272. Aggrieved the Petitioners have come to this Court under Article 226 of the Constitution of India.

5. I have heard Sri Yatendra Singh, appearing on behalf of the Petitioners and Sri" G. N. Verma for the Respondents 4 and 5.

6. The learned Counsel for the Petitioner has urged that the Petitioner have not executed any sale, deed in respect of khata nos. 270 and 272 and any compromise in mutation Court alleged to be in between Respondent nos; 4 and 5 and the Petitioners will not be binding in a regular suit or proceedings. It is also urged that the said compromise was never given effect in the revenue record and the parties continued on possession on the spot as usual. Petitioners have sold some share to the Respondent- nos. 4 and but not the whole share of khata nos. 270. and 272. According to him Respondent nos. 4 and 5 have only purchased

the share from Jangn and others (Respondents 6 to 11) and the Deputy Director of Consolidation without deciding the crucial controversy that whether the Petitioners have executed a sale deed qua their shares pertaining to khata nos. 270 and 272. the Deputy Director of Consolidation was not entitled to decide the case on the assumption that since there was a mutation proceedings in which the compromise was entered into and on that basis plots were given by means of family arrangement and since it does not amount to a transfer, it do not require registration and the right and interest of the parties will be .governed on the basis of said compromise in mutation. Since the Respondent nos, 4 and 5 are only entitled to the shares over the plots purchased from Respondent nos 6 to 11 or any area purchased from the Petitioner but beyond the sale deed they are not entitled to get their names mutated and the Deputy Director of Consolidation without considering this aspect of the matter allowed the revision.

7. Sri Verma, appearing on behalf of the contesting Respondent nos. 4 and 5 tried to justify the order of the Deputy Director of Consolidation. According to him on the basis of two sets of sale deeds one of 1955 pertaining to plot no. 2337 of khata no 209 and another sale deed, copy of which has been annexed as annexure-2 to the writ petition he has made his submission that the Petitioners have executed a sale deed in respect of plots which are the subject matter of Khata nos, 270 and 272, and in a mutation proceedings by .means of a family arrangement the mutation Court passed an order and since the order of the Deputy Director of Consolidation is based On the compromise as well as on the sale deed, no interference is called for in writ jurisdiction.

8. Having heard the counsel for the parties, I am of the view that a perusal of, the order of the Deputy Director of consolidation would go to show that it, does not indicate that any sale deed pertaining to the shares of the Petitioners or consisting of plot nos. 270 and 272 has been considered by the Deputy Director of Consolidation and if, in fact, the Petitioners have executed a registered sale deed, pertaining to the khata nos. 270 and 272, the Respondent nos. 4 and 5 are entitled to get the mutation over the plots for which they have got their sale deed. But the perusal of the order of the Deputy Director of Consolidation indicates that he has discussed the controversy as has been advanced by Sri G. N. Verma, counsel for the Respondent nos. 4 and 5 that the order of mutation is on the basis of some registered sale deed executed by the Petitioners. On the other hand the trend of the order indicates that as there was a compromise in mutation between the parties and in the said compromise there was a settlement by means of family settlement, the right and interest of the Petitioners have come to an end and the further observation of the Deputy Director of Consolidation that since it was a family settlement in mutation the transfer if any will not require registration. This part of the observation of the Deputy Director of Consolidation is erroneous.

9. Sri G. N. Verma has also placed reliance on a decision of the Apex Court referred in 1976 SC 807. On the basis of this decision he has urged that the

family settlement or compromise in mutation will be binding and the registration is not necessary.

10. Without going into this controversy, once I am satisfied that there is no material before the Deputy Director of Consolidation nor there is any finding that in respect of Khata nos. 270 and 272, the Petitioners have executed a sale deed in conformity of the right on the basis of compromise in mutation will not take the light of the Petitioners. However, in case it is found as a fact by the Deputy Director of Consolidation that the Petitioners have executed registered sale deed in favour of Respondent nos. 4 and 5 in respect of plot nos. 270 and 272 or a portion of the plots in dispute, the Respondent nos. 4 and 5 will be entitled to get the benefit of the said sale deed. .

11. So far as whether the compromise in mutation will confer right or not, is the matter arising out of the finding of the execution of the sale deed. The Deputy Director of Consolidation will pass appropriate order in this regard.

12. Accordingly the writ petition succeeds and is allowed. The order of the Deputy Director of Consolidation dated 20-9-93 is set aside. He is directed to decide the revision afresh on merits in accordance with law. Parties, are directed to bear their town costs.