
(2012) 02 AHC CK 0016
In the Allahabad High Court
Case No : C.M.W.P. No. 22400 of 1990

Bechan (D) through L.Rs.	Vs	APPELLANT
Dy. Director of Consolidation, Varanasi and others		RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 02 AHC CK 0016

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Ashok Kumar Singh, Vinod Kumar Rai and Sankatha Rai, for the Appellant; Awadhesh Kumar Singh, Jeevan Prakash Sharma, K.K. Roy, K.N. Rai, Yatindra and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—The dispute In this petition is about the title to the holding of several plots of khata No. 46. village Daudpur, Gangapur, district Varanasi. The original petitioner-Bechan [since deceased and now substituted by his heirs) was the recorded tenure holder over the holding in question. The father of respondent Nos. 2 and 3 Ram Khelawan filed objections claiming cotenancy rights over the said khata on the ground that the parties belong to the same family tree and since their ancestors were common, therefore, the objector-Ram Khelawan has 1/3 share in the holding in question. The litigation has a chequered History; details whereof will be narrated herein after but in short, the Consolidation Officer rejected the objection on 23.4.1984 filed by Ram Khelawan father of respondent Nos. 2 and 3. and the appeal filed against the same was also dismissed on 5.2.1988. A revision came to be filed by the contesting respondent-Ram ball which was allowed on 29.6.1990 reversing the orders of the authorities below which has given rise to the present petition questioning the correctness of the said order of the Deputy Director of Consolidation. Ram Khelawan, the original objector and father of respondent Nos. 2 and 3, set up the following

pedigree contending that his father Jageshwar and grandfather of the original petitioner (Bechan), Rameshwar and one Magan were three real brothers, sons of Jattan. The pedigree as set up initially by the respondents is quoted herein below :

2. The parties proceeded to lead evidence but Ram Khelawan, who was about 70 years of age and was the objector, did not get himself examined nor did he get his statement recorded. On his behalf his son, the respondent No. 2-Ram Bali was produced as a witness and his statement was recorded on 29.3.1979. Another witness Kauleshwar was set up by them whose statement was recorded on 17.9.1979. The evidence of the parties was closed on 7.11.1979.

3. The petitioner-Bechan objected to the aforesaid pedigree set up by the respondents. The pedigree set up by the petitioner in relation to his family tree is as follows :

Thus, it was clearly stated that the pedigree set up by the respondents has got nothing to do with the genealogical table of the petitioner and they were two entirely different families. To further substantiate the claim, the petitioner also disclosed the correct pedigree/family tree of the respondent-objector as follows :

4. It appears that the contesting respondent having realized some error in the pedigree set up by them, filed an amendment application on 16.11.1979 which was allowed. The objector-Ram Khelawan through this amendment set up the following pedigree :

The petitioner reiterated his stand and contended that the objector has been taking different stands on the pedigree and, therefore, the same as set up by Ram Khelawan should be rejected.

5. The Consolidation Officer vide order dated 30.11.1979 rejected the objections filed by Ram Khelawan and upheld the entry in favour of the petitioner as was contained in the basic year. Ram Khelawan filed a restoration for a re-hearing in the matter, which was rejected by the Consolidation Officer on 19.12.1979. Aggrieved by both these orders, two appeals were filed by Ram Khelawan that were allowed on 5.4.1980 and the matter was remanded back to the Consolidation Officer for decision afresh. Aggrieved Bechan filed a revision, which was allowed on 26.6.1980 by the Deputy Director of Consolidation and the matter was remanded to the Settlement Officer, Consolidation in appeal to decide the matter. The appeals were again dismissed on 21.10.1980 thereby maintaining the order of the Consolidation Officer dated 30.11.1979.

6. Ram Khelawan filed a revision against the same which was allowed on 22.3.1982 and the matter was remanded back to the Consolidation Officer on the ground that once the amendment application filed by the respondents had been allowed in relation to the altered pedigree, then an opportunity should be given to lead evidence on that score. Ram Bali-respondent No. 2 got his fresh statement recorded on 22.11.1982 before the Consolidation Officer and also

produced one Durjan as witness in support of the objection. The petitioner-Bechan and his witness also entered the witness-box and after recording of statements the Consolidation Officer vide order dated 23.4.1983 again rejected the objection filed by the contesting respondent.

7. At this stage, it would be relevant to point out that the branch of Magan, represented by Kalloo and Malloo, had filed their written statement on 21.12.1982 accepting the pedigree as set up by the petitioner and denying the pedigree as set up by the respondents.

8. An appeal was preferred by the respondent against the order of Consolidation Officer, which was dismissed on 5.2.1988 where after a revision was filed before the Deputy Director of Consolidation. At this stage Bhagirathi-respondent No. 3 and real brother of respondent No. 2 also filed an affidavit supporting the claim of the petitioner and denying the pedigree set up by the respondents.

9. The Deputy Director of Consolidation discarded the oral evidence of both sides as being contradictory and thereafter proceeded to allow the revision on the ground that the predecessor-in-interest of the petitioner, namely Jattan was also the father of Magan alias Bhaggan. He further held that Jattan was described as alias Jitan and Jittan alias Jeo Lal. On the basis of this reasoning of alias names of Jattan, and Magan as Bhaggan, he concluded that Jattan was the common ancestor and Magan being the real brother of Jageshwar also led to the conclusion that Jageshwar was the son of Jattan. Accordingly, the respondent-Ram Bali being the grandson of Jageshwar was entitled to 1/3rd share. The documentary evidence relied upon by the Deputy Director of Consolidation was a khatauni of 1291 fasli in relation to plot Nos. 19 and 65 where one Bhaggan was shown as son of Jattan. He further relied on two additional documents that were adduced as evidence at the stage of revision, namely an affidavit said to have been sworn by Jageshwar in a Suit of 1918 and a death certificate dated 15.2.1920. The Deputy Director of Consolidation consequently having found the oral evidence to be Shaky relied upon the aforesaid documentary evidence to conclude that the subsequent pedigree set up by the respondents was correct and, accordingly, allowed the revision.

10. Sri Ashok Kumar Singh and Dr. Vinod Kumar Rai for the petitioner submit that the Deputy Director of Consolidation has carved out an altogether new case of the alias name of Jattan and Magan, which was not the case set up by either of the parties. He further submits that the khatauni of 1291 fasli relied upon by the Deputy Director of Consolidation is in relation to plot Nos. 19 and 65. which are not the plots in dispute and are of a different khata. They further submit that the Deputy Director of Consolidation has inferred that there appears to be similarity of names which finding is absolutely perverse with no evidence to support the same. They contend that if the oral testimony of the respondent has been discarded and not believed, then there was nothing to support the pedigree as set up by them. It is, therefore, urged that the order of the Deputy Director of Consolidation is founded on a deliberate misreading of the names in the pedigree

and the evidence on record and perverse findings of fact have been recorded against the weight of evidence on record. The impugned order, therefore, is manifestly erroneous and illegal hence deserves to be set aside.

11. Replying to the aforesaid submissions, Sri Awadhesh Kumar Singh for the respondent No. 2 contends that the pedigree that was subsequently set up by the contesting respondent through an amendment, had been proved on the basis of documentary evidence and the Deputy Director of Consolidation has rightly relying on the same, rejected the pedigree as set up by the petitioners. He submits that the shares have been correctly determined and the impugned order is based on findings of facts which need not be interfered with in the exercise of jurisdiction under Article 226 of the Constitution of India as this Court cannot reappraise the facts and the evidence that has been accepted by the Deputy Director of Consolidation.

12. I have also heard the learned standing counsel for respondent No. 1. Needless to mention that it is only Ram Bali-respondent No. 2, who is now contesting this dispute even before this Court. The respondent Nos. 3 to 5 have already accepted the claim of the petitioner as referred to hereinabove and they have not put in any contest before this Court.

13. The dispute, therefore, crystallises on the issue of the correct family pedigree and as to whether the contesting parties belong to the same family or not. The respondent-Ram Bali and his father Ram Khelawan initially set up a pedigree that indicated that Jattan had only three sons. They altered their position by way of an amendment and then set up a pedigree indicating that Jattan had five sons. This is clearly reflected in the narration of facts set out hereinabove and the stage of the alteration brought about in the pedigree relied by Ram Khelawan father of Ram Bali. Ram Khelawan himself was about 70 years of age and it was noticed by the Consolidation Officer and Settlement Officer, Consolidation that he did not enter the witness-box to prove the pedigree. On the contrary his son Ram Bali came in the witness-box changing stands on the pedigree. What is to be noticed is that neither the respondent-Ram Bali nor the petitioner ever set up a case of alias names of Jattan as Jeo Lal or the name of Magan alias Bhagan. The Deputy Director of Consolidation after the additional evidence was entertained by him at the revisional stage, by a long drawn reasoning, inferred the alias name of Jattan as Jeo Lal. There was no other evidence led by the respondents except for the introduction of that additional evidence of two documents at the stage of revision. The Deputy Director of Consolidation, therefore, should have treated the same as an afterthought instead of drawing an inference without any further material to corroborate the said pedigree. The Deputy Director of Consolidation, in my opinion, stretched his reasoning too far to record a conclusion on the basis of the alias name of Jattan which was not even pleaded by the parties either in their pedigree or pleadings.

14. One of the arguments raised by Sri Awadhesh Kumar Singh is that the petitioner has accepted Jageshwar to be the brother of Magan and since Magan is

the son of Jattan alias Jeo Lal, therefore, Jageshwar is also the son of Jattan. This process of reasoning does not appeal at all inasmuch as the alias name of Jattan as Jeo Lal is being utilized for the said purpose when Jeo Lal, according to the pedigree, set up by the petitioner, was an altogether different person. The Deputy Director of Consolidation has overlooked this aspect of the matter and has drawn a conclusion against the weight of evidence on record hence the finding is perverse. Needless to cite yet necessary that the High Court can exercise its jurisdiction under Article 226 of the Constitution if the order is found to be perverse. Reference be had to the Full Bench decision of our Court in the case of Nanha and Another Vs. Deputy Director of Consolidation, Kanpur and Others, .

15. The affidavit, which has been relied on as evidence said to have been sworn by Jageshwar, does not bear any case number, nor can an affidavit be treated as evidence which was set up at the stage of the revision before the Deputy Director of Consolidation. An affidavit is no evidence unless it is corroborated by any further material. The death Certificate, which was relied upon dated 15.2.1920, is nowhere referable to the name of the ancestors of the parties as claimed by the respondents. Thus, the Deputy Director of Consolidation committed a manifest error by relying on the said additional evidence which in no way improves upon the case set up by the respondents.

16. The respondent-Ram Bali, therefore, miserably failed to prove the pedigree that was set up by him later on and contrary to what had been pleaded earlier. The Consolidation Officer and the Settlement Officer, Consolidation had, therefore, rightly rejected the objection filed by the respondents.

17. Apart from this, the branch of Magan represented by Kalloo and Malloo, had already accepted the claim of the petitioner and Bhagirathi the real brother of respondent-Ram Bali has also disowned the pedigree set up by his brother. In such a situation, there was absolutely no material before the Deputy Director of Consolidation to have taken a view contrary to that of the Consolidation Officer and the Settlement Officer, Consolidation. The writ petition is allowed. The impugned order dated 29.6.1990, therefore, is unsustainable for the reasons aforesaid and is hereby quashed. The petitioner is entitled to retain the holding as declared by the Consolidation Officer.