

(1994) 05 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2440 of 1976

Bhallan

APPELLANT

Vs

Dy. Director of Consolidation, Varanasi and Others

RESPONDENT

Date of Decision : 20-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9

Citation : (1994) 05 AHC CK 0010

Hon'ble Judges : S.K. Keshote, J

Judgement

S.K. Keshote, J.—This writ petition arise out of the proceedings under Section 9 of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred as the Act, 1953) initiated by the respondent No. 2, The dispute in this writ petition between the parties is in respect of Khata No. 26 Kha, 7 Kha and 35 of village Siwaripur. The respondent No. 2 Smt Kabili filed objections under Section 9 (2) of the Act, 1953 before concerned authority. She claimed cotenancy in the land in dispute on the allegation that she is widow of late Shri Kallu who is the son of Shri Ram Nanda (deceased). The claim of the respondent No. 2 was contested by the petitioner. On the ground that she is not the widow of Kallu. She is an imposter. Shri Kallu died unmarried and since then the petitioner is in possession over the land in dispute. The Consolidation Officer after considering evidence both oral and documentary produced by the parties recorded a finding of fact that the respondent No. 2 is not the widow of Shri Kallu, Copy of order dated 31373 of the said officer is on record as Annexure 1. The respondent No. 2 filed an appeal against this order before the appellate authority who vide its order dated 261273 (Annexure2 on the record) confirmed the order of the Consolidation Officer. The respondent No. 2 then filed a revision petition before the respondent No. 1 against the order dated 261273 of the appellate authority. The revisional authority vide its order dated 161176 (Annexure No. 3 on the record) allowed the revision petition of the respondent No. 2 and she was held to be widow of Shri Kallu and declared to be content in the land in dispute and her share was

declared to 1/8 in khata No. 7 kha and 26 kha and 1/2 in khata No. 35. The petitioner filed this writ petition against the aforesaid order before this Court which has been admitted on 14.12.1976 and stay has been granted in his favour. The writ petition has been contested by affidavit and the petitioner filed a rejoinder affidavit. In the writ petition Shri U.P. Singh the then Deputy Director, consolidation of Holdings, has been impleaded in his personal capacity as seriously allegation of mala fide have been made against him by the petitioner in this case. Service of the notice on the respondent No. 3 was held sufficient on drawing a presumption as per this court's rules. In case where the allegations of mala fide are being made ordinarily personal service of the notices should be insisted and normally court should not proceed on the presumptive service of summons. An objection has been raised by the counsel for the respondent No. 2 during the course of argument that the respondent No. 3 has not been served with the summons of this case. Though the petitioner has argued on the mala fide of the respondent No. 3 in passing of the impugned order by him and said order is prayed to be quashed on this ground alone but in the facts and circumstances of this case and for want of personal service I think it is not a fit case in which the validity of the impugned order should be tested on the ground of alleged mala fide of the respondent No. 3 in passing of the same.

2. Shri R.N. Singh, learned counsel for the petitioner has firstly submitted that the respondent No. 1 has exceeded its jurisdiction in reversing the concurrent finding of the facts recorded by the lower authorities on appreciation of the evidence produced by both the parties. Shri Singh next argued that though the revisional court has wide power under Section 48 of the Act, 1953 but even then without recording of its own reasons of disagreement with the findings recorded by the lower authority no interference could have been made with the concurrent finding of the facts. The revisional authority has passed the order without even making reference to the material and important evidence though the lower authorities relying on the said evidence recorded a concurrent finding on facts. The evidence which has not been relied by the lower authorities on the good and cogent reasons has been relied by the respondent No. 1 without disturbing the finding of those authorities. The order of the revisional court is perverse as it has been passed without considering the material evidence produced by the petitioner. The learned counsel for the petitioner by reading all the three orders has illustrated that the respondent No. 1 has decided the matter ignoring the relevant and material evidence from consideration. In support of his argument the learned counsel for the petitioner has placed reliance on the decision reported in 1979 AWC 174 (Para No. 15), AIR 1976 SC 2037 (Para No.12) and 1994 CRC 106 (All).

3. Shri Sankathja Rai the learned counsel for the respondent No. 2 on the other hand submitted that scope of revision under Section 48 of the Act, 1953 is very wide and revisional authority can go both on questions of law and fact. Even the revisional scope under Section 48 of the Act, 1953 is wide then the scope of appeal. It has next been submitted by the learned counsel that the findings

recorded by the respondent No. 1 are based on consideration of all the material evidence produced by both the parties and such this Court while sitting under Article 226 of the Constitution of India should not interfere with the same. In support of his last argument the learned counsel for the respondent No. 2 has placed reliance on the decision of Apex Court reported in AIR 1954 SC 440, AIR 1955 SC 223, AIR 1958 SC 398, AIR 1960 SC 1168 and Swaran Singh v State of Punjab, AIR 1976 SC 232. The cases which have been cited by the learned counsel for the respondent No. 2 relate to the scope of interference of this court in writ of certiorari with a finding of fact reached by an inferior court or Tribunal as a result of appreciation of the evidence or inference of fact drawn by the said court or Tribunal from the material produced before it. It is true that interference with the findings of fact recorded by the inferior Tribunal will not be made by this Court in a writ of certiorari only on the ground that the evidence relied upon is insufficient or appreciation of the evidence made by it is wrong. But certainly a writ of certiorari can be issued against a finding on fact of an inferior Tribunal where the said authority has recorded the finding on a fact altogether ignoring the material evidence or finding based on no evidence or the finding which is recorded by the inferior Tribunal is such which would not have arrived at by a reasonable man on the material before it. Similarly the inferior court reversed the decisions of its subordinate authorities arbitrarily this court certainly can interfere with the finding of fact.

4. In the present case the consolidation officer did not accept the case of the respondent No. 2. While giving the finding against the respondent No. 2 the said officer did not accept the document "Kutumb Register" produced by the respondent No. 2 on the ground that this document has been prepared by Girja Shankar Dubey who was enemical to the petitioner. To discard and not to rely on the "Kutumb Register" produced by the respondent No. 2 the Settlement Officer recorded very cogent and material reasons and grounds. The said authority to decide the case against the respondent No. 2 relied upon the Kutumb Register of the year 1960 produced by the petitioner, the electoral of the year 1970, order of supervisor Kanoongo dated 28.11.67, the fact that Smt. Kabili did not raise any objection against the mutation of the name of the petitioner in revenue record as heir of Shri Ram Nandan and proceedings of a suit etc. From the order of the appellate authority it comes out that the petitioner to disprove the case of Smt. Kabili produced the following documents namely :

- (1) Kutumb Register of the year 1960.
- (2) Electoral of the years 1966 and 1970.
- (3) Khatoni Intalkal 1373 Fasli : to 1377 Fasli : in which there is order of mutation of land after death of Ram Nandan in favour of the petitioner.
- (4) Copy of plaint of the suit under Section 229 Bhola v. Bhallan dated 9.5.72 in which the petitioner has been shown only heir (son) of Ram Nandan.
- (5) Copy of written statements dated 21.12.67 in which the petitioner has only

been shown son of late Ram Nandan and name of Smt. Kabili is not there. This written statement had been filed immediately after the death of Ram Nandan and in which pedigree of the family has been given.

5. The appellate authority after detailed discussion and consideration of materials which were on record has decided that the Kutumb Register filed by the respondent No. 2 is not the real register but the register produced by the petitioner is the real Kutumb Register. Then the said authority considered the electoral of the year 1966, statements of Girja Shankar Dubey, Ram Deen and the oral and documentary evidence produced by the petitioner and has affirmed the decision of the settlement officer that the respondent No. 2 is not the widow of Kallu, Kutumb Register filed by the respondent No. 3 was disbelieved by both the authorities after recording cogent and good reasons, Oral evidence produced by her has also not been believed. The revisional authority has observed in its order as under :

6. After making the aforesaid observation the revisional authority proceeded to decide the revision petition and relevant portion of the order are as under :

Revisional court though at one hand observed that the entry in Kutumb Registers produced by the parties cannot be made base for decision of this case but at the same time the Kutumb Register produced by the petitioner has been discussed and omission of the name of Smt. Kabili there has been justified on the ground that in villages name of widows are not entered in such register or she may have gone to her parents house when such register would have been prepared. The respondent No. 1 has recorded this finding merely on conjectures and surmises. Secondly the respondent No. 1 has acted arbitrarily in excluding altogether the Kutumb Register filed by the petitioner. Findings which have been recorded by the lower authorities regarding nonacceptance of the Kutumb Register filed by the respondent No. 2 have not been reversed by the respondent No. 1 but even then such a material and substantive piece of evidence has been excluded from consideration. The lower authorities did not believe the oral evidence produced by the respondent No. 2 but the respondent No. 1 without recording any ground for its disagreement with the findings of these authorities relied on the said oral evidence and reverse the concurrent finding of fact. The revisional authority did not consider that the Register produced by the respondent No. 2 was found to be forged prepared by the then Pradhan Shri Girja Shankar Dubey who was enemical to the petitioner. It is a case where to decide the matter against the petitioner the revisional authority has relied on the statement of Girja Shankar Dubey who prepared the forged document for the respondent No. 2. The evidence which has been filed by the petitioner both oral and documentary has not been considered by the revisional authority. The electoral of the years 1966 and 1970 have not been considered though the lower authority has recorded its finding in this case in favour of the petitioner relying on those documents. The other documentary evidence that is, Khatauni Intaalleal of 1373 fasli has not been considered. The copy of the plaint of the suit dated 9.5.72 title Bhola v.

Bhallan and the copy of the written statement in another suit dated 211267 have not been considered. The petitioner also produced the oral evidence of two persons but their statements have also not been referred what to say to consider the same. Both the authorities after considering the statements of the witnesses which has been produced by Smt. Kabili, recorded findings against her. It is not a case where the evidence produced by Smt. Kabili has not been considered by the lower authority. The revisional court has proceeded as if it has to decide the matter in favour of Smt. Kabili. At, one stage the revisional authority observed that the statement which has been given by the petitioner are not been supported by any witness of the village but the witnesses which have been produced by the petitioner of Shri Balkaran and Shri Kharapattu were not considered, Smt. Kabili has come up with a case that from the Kallu, she got six children out of which five already died but one daughter named Shanti is there who has been married. The revisional court has held that none of the party has produced Smt. Shanti in the evidence and production of her would have thrown light on the question whether Smt. Kabili is widow of Kallu or not. The revisional Court have considered the nonproduction of Smt. Shanti as witness in the case to be adverse to the case of the petitioner. Smt. Shanti was in fact a material and important witness and she would have been produced by the respondent No. 2. The nonproduction of Smt. Shanti by the respondent No. 2 in the case creates a serious doubt in her case. It is a case where the learned revisional court should have considered this matter from a point of drawing an adverse inference for nonproduction of Smt. Shanti against the respondent No. 2. The revisional court has committed a serious and material illegality and there in an error of the law apparent in order of the said authority and as such its impugned order cannot be allowed to sustain.

7. In the result this writ petition is allowed. The order of the Deputy Director of Consolidation, Varanasi dated 16.11.76 is set aside and the matter is remanded back to the said authority with the direction to decide the case fresh after considering all the evidence which has been produced by the parties and taking into consideration the observation made by this court in this judgment. This is an old matter. The respondent No. 1 is directed to decide the revision petition within a period of three months from the date on which a certified copy of this judgment is submitted by either of the parties before it.

The parties are left to bear their own costs of this litigation.