
(2000) 04 AHC CK 0045
In the Allahabad High Court
Case No : C.M.W.P. No. 23770 of 1994

Bishan Pal Singh

APPELLANT

Vs

Giriraj Singh and others

RESPONDENT

Date of Decision : 24-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A(2)
Uttar Pradesh Tenancy Act, 1939 — Section 180, 80
Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A(2)
Uttar Pradesh Tenancy Act, 1939 — Section 180, 80
Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A(2)
Uttar Pradesh Tenancy Act, 1939 — Section 180, 80

Citation : (2000) 2 AWC 1783 : (2000) 91 RD 357

Hon'ble Judges : Shitla Pd. Srivastava, J

Bench : Single Bench

Advocate : K.R. Sirohi, for the Appellant; S.C., A.D. Prabhakar, for the Respondent

Judgement

Shitla Pd. Srivastava, J.—This writ petition, under Article 226 of the Constitution of India, has been filed by the petitioners for quashing the order dated 19.5.1994 passed by the Deputy Director of Consolidation. Ghaziabad.

2. The brief facts as stated by the petitioners in the present writ petition are that the land in dispute was recorded as bhumidhar of one Giriraj Singh in the basic year khatauni. At the time of portal, Bishan Pal Singh and Om Pal Singh (petitioners") sons of Har Bhajan Singh also claimed co-bhumidhari right along with Giriraj Singh. The petitioners have given pedigree, which does not appear to be disputed.

3. Respondent No. 1, Giriraj Singh, filed objection u/s 9A (2) of the U. P. Consolidation of Holdings Act claiming that the land in dispute to be his self-

acquired property and also claimed to be recorded as a sole bhumidhar. The petitioners contested the claim of the respondent No. 1 and alleged that the property in dispute is joint property as the family is Joint Hindu family and petitioners' share is 2/3. The Consolidation Officer on 30.11.1972 held that the respondent No. 1 was sole bhumidhar of the land in dispute. The petitioners filed an appeal against the aforesaid order which was allowed with a finding that the respondent No. 1 and petitioners were members of the Joint Hindu family and the property was of the joint and petitioners were ordered to be recorded as co-bhumidars. A revision was filed by the respondent No. 1. The Deputy Director of Consolidation on 31.5.1973 dismissed the revision of the respondent No. 1 and held that the land in question has been acquired while family of the parties was a joint Hindu family. The respondent No. 1, Giriraj Singh, filed a Writ Petition No. 5331 of 1973 which was decided on 30.8.1982. The order of the Deputy Director of Consolidation was set aside and the matter was sent back to the Deputy Director of Consolidation to decide afresh. The Deputy Director of Consolidation has decided the case against the petitioners, therefore. Present writ petition has been filed. The petitioners have challenged the aforesaid order of the Deputy Director of Consolidation on number of grounds.

4. The main ground of attack is that the burden of proof that there was nucleus, was wrongly placed on the petitioners. It is also stated that the statement of respondent No. 1, Giriraj Singh, regarding the acquisition of property and sources of money out of which it was acquired was on record, which has not been considered by the Deputy Director of Consolidation. It is also submitted that kutumb register should not have been discarded which was relevant document.

5. Lastly it has been submitted that the entire evidence should have been taken into consideration as per direction Issued by the High Court in Writ Petition No. 5331 of 1973.

6. Sri K. R. Sirohi, learned counsel for the petitioner has submitted that the direction issued by this Court in a writ petition filed by the petitioners was clear, therefore. It was the duty of the Deputy Director of Consolidation should have followed the direction Issued by this Court in remand order but the Deputy Director of Consolidation has not followed the same.

7. Sri A. D. Prabhakar, appearing for the contesting respondent, has submitted that the finding of fact has been recorded that the property was acquired by the respondent No. 1, Giriraj Singh, out of his own effort and further finding is that there was no Joint family, therefore, the question of nucleus has been considered by the Deputy Director of Consolidation.

8. Heard learned counsel for the parties. To appreciate the arguments of the learned counsel for the parties as to whether the Deputy Director of Consolidation has given correct finding as per direction and observation made by this Court while remanding the case back or not. It is necessary to see the actual

order of remand and observations made by this Court on 30.8.1982. The aforesaid order is quoted herein below :

"Since in the present case, there is no categorical finding by the last court of fact on the point whether there was any nucleus in the family which could be sufficient for acquiring the disputed property, yet the disputed property has been held as joint family property. I think it proper to quash the impugned judgment and ask the revisional court to re-examine the question as to whether the disputed property can be treated as Joint family property in the circumstances of the present case. It would be open to the parties to invite the attention of the revisional court to the relevant evidence on the record and the relevant law in that connection. As the revisional court has not recorded categorical finding on relevant question, its Judgment cannot be sustained.

In the result, the writ petition succeeds and the impugned judgment of the revisional court dated 31.5.1973 in Revision No. 501. u/s 48 of the U. P. Consolidation of Holdings Act, Giriraj Singh v. Bishan Pal Singh and others, is hereby quashed and the revisional court is directed to re-examine the claim of the parties in the light of the observations made above and in accordance with law, parties are directed to bear their own costs."

9. From a perusal of the judgment. It is apparent that the revisional court was required to re-examine as to whether the disputed property can be treated as Joint family property in the circumstances of the present case and parties were given opportunity to Invite the attention of the revisional court to the relevant evidence on record and the relevant law in that connection. It is also apparent that the Court was directed to re-examine the claim of the parties in the light of the observations made in the body of the judgment. Therefore, it was necessary for the Deputy Director of Consolidation to have considered the relevant evidence on record while examining the claim of the parties in accordance with law.

10. The claim of the parties is apparent on the face of record. The respondent No. 1. Giriraj Singh, was claiming sole bhumidhari right whereas the petitioners were claiming co-bhumidhari right. The respondent No. 1, Giriraj Singh, was claiming his self-acquisition while the petitioners were alleging acquisition in representative capacity by Giriraj Singh as a member of Joint Hindu family. Therefore, the Deputy Director of Consolidation was required to see the following facts :

1. Whether the family was joint at the time of acquisition of the property in dispute?
2. Whether there was nucleus in the Joint Hindu family out of which the property was acquired?
3. Whether Giriraj Singh acquired the property as a member of the joint Hindu family and out of the Income of Joint Hindu family or the income of the joint Hindu family property?

4. Whether the property was acquired without help of the joint Hindu family property or its income?

11. It is stated in the writ petition that there was statement in the shape of admission of respondent No. 1, Giriraj Singh, that the property was acquired out of the earning of the joint Hindu family property by Giriraj Singh but this admission has not been considered by the Deputy Director of Consolidation. A bare perusal of the judgment of the Deputy Director of Consolidation would show that he has considered the revenue entry of 1336 fasli which mentions Badam Singh son of Prithvi Singh, Durjan Singh son of Dal Chandra and the tenancy is entered as mauroosi tenancy with five years period. The names of these two persons are shown in the pedigree. The petitioners and the respondent No. 1 are from the branch of Badam Singh. The Deputy Director of Consolidation has considered 1356 fasli khasra entry. In 1357 fasli Giriraj Singh has been shown as tenure-holder with one year period. In 1359 fasli, period of Giriraj Singh has been shown as three years in part second khatauni. Then he has considered the judgment, which was delivered in a suit filed u/s 180 of U. P. Tenancy Act against Giriraj Singh. The suit was dismissed and the name of Giriraj Singh was recorded. He has considered the entry of 1359 fasli in which after depositing ten times of land revenue, the name of Giriraj Singh was recorded as bhumidhar. On the basis of this document, the Deputy Director of Consolidation held that the land in question is not an ancestral property of the parties. While considering the nucleus point, the Deputy Director of Consolidation has taken the help of the earlier judgment passed by the Deputy Director of Consolidation has considered the entry of kutumb register and its evidentiary value, the statement of Giriraj Singh dated 24.11.1972, the statement of the petitioner Bishan Pal Singh and ultimately arrived at the conclusion that Giriraj Singh was sole bhumidhar.

12. To appreciate the argument of Sri K. R. Sirohi, learned counsel for the respondent, that the Deputy Director of Consolidation, has not considered the admission made by Giriraj Singh on the point of acquisition, it is necessary to see the statement of Giriraj Singh as this Court directed the Deputy Director of Consolidation to see the relevant evidence on record. The statement of Giriraj Singh has been filed as Annexure-7 to the writ petition, though exercising power under Article 226 of the Constitution of India, this Court is not required to reappraise the evidence but if there is some thing in shape of admission, the Court may consider the evidentiary value of that statement. Learned counsel for the respondent has placed before the Court the statement of Giriraj Singh but he could not point out that particular line wherein Giriraj Singh has made admission that he acquired land from the earning earned by him by cultivation of 15 or 16 bighas of, parties' ancestral property. From the statement, it is clear that he had said that his father gave him 16 bighas of land for cultivation and he still lives with his brothers that does not amount admission as argued by Sri Sirohi.

13. So far as the kutumb register is concerned, the Deputy Director of Consolidation has observed that the kutumb register, which is on record, shows

the name of the father of the petitioners and Giriraj Singh was different one. Therefore, he has not placed reliance on it.

14. Now the question which has been urged by the learned counsel for the petitioners regarding the presumption of joint Hindu family, he has submitted that in view of the admission made by the respondent Giriraj Singh in his statement on oath that he was living Jointly with his brothers and there was no separation, the presumption of Joint Hindu family is there. Therefore, he acquired the land as karta of the joint Hindu family and the petitioner will be co-sharer in the property in question. For that purpose, he has placed reliance in a case K.V. Narayanaswami Iyer Vs. K.V. Ramakrishna Iyer and Others, . In this case, head-note "A" is as under :

"Where in fact at the date of acquisition of a particular property the joint family had sufficient nucleus for acquiring it, the property in the name of any member of the Joint family should be presumed to be acquired from out of family funds and so to form part of the joint family property unless the contrary is shown."

15. He has placed reliance in paragraph 15 of the aforesaid judgment wherein it has been observed that the legal position is well settled that if in fact at the date of acquisition of a particular property the joint family had sufficient nucleus for acquiring it, the property in the name of any member of the Joint family should be presumed to be acquired from out of the family funds and so to form part of the Joint family property, unless the contrary is shown. Reliance was placed in Amritlal a. Surath Lal. AIR 1942 Cal 553 and Appalaswami v. Suryanarayanamurthi AIR 1947 PC 189 . The facts of this case are different to the facts of the present case. Here Giriraj Singh was recorded in the revenue record in 1357 fasli without rent for a period of one year and in 1359 fasli he was entered in part second of the khatauni as sub tenant and deposited ten times of land revenue and acquired bhumidhari right. Acquisition of bhumidhari right by a person who was sub-tenant stands on different footing because this is the right which is acquired under the provisions of U. P. Zamindari Abolition and Land Reforms Act, and this right can be acquired by a person even though he is a member of joint Hindu family. But if law offers right on him, it shall not be treated to be a property of joint Hindu family. Sri Sirohi placed reliance in a case Achuthan Nair Vs. Chinnamu Amma and Others, . Relevant portion of paragraph 7 of this Judgment is quoted below :

"Under Hindu Law, when a property stands in the name of a member of a joint family. It is incumbent upon those asserting that it is a Joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition the law raises a presumption that it is a joint family property and the onus is shifted to the individual members to establish : that the property was acquired by him without the aid of the said nucleus. This is a well settled proposition of law...."

16. Sri Sirohi has submitted that in view of the admission made by Giriraj Singh

that he was cultivating 16 bighas of land which was given by his father, it shall be presumed that there was nucleus in the family, which was in hand of Giriraj Singh. After seeing the judgment of the case Achuthan Nair Vs. Chinnamu Amma and Others, . I am of the view that this case is not applicable to the facts of the present case. Here the petitioners alleged that there was joint Hindu family whereas the finding recorded by the Deputy Director of Consolidation is that the petitioners have failed to prove that the property was acquired by Giriraj Singh as karta of the Joint Hindu family. This finding of fact cannot be interfered with under Article 226 of the Constitution of India.

17. Sri Sirohi has further placed reliance in a case Mst. Rukhmabai Vs. Lala Laxminarayan and Others, , on the point that there is a presumption in Hindu Law that a family is Joint. There can be a division in status among the members of a joint Hindu family by definement of shares which is technically called "division in status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds". His further submission is that whether movable or immovable, held by a member of a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular property is joint family property to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the member of the family setting up the claim that it is his personal property to establish that the said property has been acquired without any assistance from the joint family property.

18. From the judgment, it is clear that the property in dispute has not been purchased by Giriraj Singh rather he has acquired right under the statute U. P. Zamindari Abolition and Land Reforms Act. Therefore, it cannot be said that he has acquired right with the help of joint Hindu family. It is also apparent that Smt. Surjo filed suit u/s 80 of U. P. Tenancy Act against Giriraj Singh in respect of the property in dispute, which was dismissed and Giriraj Singh was recorded over the property in dispute and he deposited ten times of land revenue for becoming bhumidhar. Therefore, it can be said that the right of Giriraj Singh was recognized by the provisions of Section 80 of U. P. Tenancy Act and Deputy Director of Consolidation has considered this aspect of the case also. The finding recorded by the Deputy Director of Consolidation does not suffer from any error of law, therefore, it requires no Interference by this Court.

19. The writ petition falls and is dismissed. But there will be no orders as to cost.