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(2003) 07 AHC CK 0002

In the Allahabad High Court

Case No : C.M.W.P. No. 629 of 1974

Buddhu through L. Rs. and Others — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 33
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 19, 229B, 331

Citation : (2003) 6 AWC 4709

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : G.N. Verma, Shesh Kumar, P.K. Bisharia, M.C. Dwivedi and Chandra Shekhar, for the Appellant; V.S. Dwivedi, R.K. Srivastava, P.S. Nigam and S.C., for the Respondent

Final Decision : Allowed

Judgement

Janardan Sahai, J.—Heard Shri Chandra Shekhar holding brief for Sri G. N. Verma, learned Counsel for the Petitioners and Dr. V. S. Dwivedi learned senior counsel representing Respondent No. 4.

2. Ram Bharose was the tenant of the land in dispute. He was the common ancestor of the parties. He had three sons, the Petitioner Buddhu, Bhulai father of the other Petitioners and Lalloo father of Panna Lal Respondent No. 4. A suit u/s 229B of the U.P. Zamindari Abolition and Land Reforms Act was filed by Panna Lal Respondent No. 4 for declaration that he is the sole sirdar of the property described in Schedule ''A''. In paragraph No. 2 of the plaint, copy of which has been filed along with supplementary-affidavit, it was stated that the land described in Schedules ''A'', ''B'' and ''C'' was ancestral and in paragraph No. 4 it is stated that during his life time Ram Bharose had got the name of the first Defendant Buddhu entered over the land of Schedule ''B'' and of Bhulai, father of Defendant Nos. 2 to 5 over the land of Schedule ''C''. Alternatively it was claimed

by Respondent No. 4 that if he is not declared sole sirdar of the property described in Schedule ''A'', he may declared co-tenant of all the properties described in Schedules ''A'', ''B'' and ''C''.

3. The Defendants denied that the Plaintiff is sole sirdar of the land in schedule A. It was alleged by the contesting Defendant Nos. 1 to 5 that the land mentioned in paragraph 16 of the written statement was acquired by Bhulai, the father of Defendant Nos. 2 to 5 and was his separate property and the land mentioned in paragraph No. 18 of the written statement was the tenancy of Ram Bharose which devolved on the Plaintiff and the Defendants and as such the Plaintiff is co-sirdar thereof along with the Defendants.

4. Issue No. 1 framed by trial court is: "Whether the Plaintiff is sole sirdar of the land mentioned in Schedule A of the plaint or in the alternative co-sirdar along with Defendant Nos. 1 to 5 of the land mentioned in Schedules B and C of the plaint?" The trial court found that the name of Ram Bharose was never recorded over the plots of Schedules B and C and he was not the tenant thereof. The trial court held that Plaintiff was unable to prove his case that the land in suit was acquired by Ram Bharose and as such the Plaintiff is neither sole sirdar of the land mentioned in Schedule ''A'' nor co-sirdar along with Defendant Nos. 1 to 5 of the land mentioned in Schedules ''B'' and ''C'' of the plaint.

5. An appeal was preferred by Plaintiff-Respondent Panna Lal. The Additional Commissioner by his order dated 6.7.1965 has affirmed the findings of the trial court and dismissed the appeal. A Second Appeal was then preferred by Panna Lal before the Board of Revenue. Reliance was placed by 4th Respondent upon certain admissions made in previous proceedings. Copies of those papers have been filed along with counter-affidavit as Annexures-C.A. 1, 2 and 3. Annexure-C.A. 1 is the copy of the application dated 23.6.1961 in a case filed by Panna Lal against Buddhu and Bhulai before the Pargana Adhikari, Orai for correction of papers. In this application it is stated that Ram Bharose had acquired the land described at the foot of the application and had made an oral gift to ''Mujhe'' which learned Counsel for the Respondent agrees describes Respondent No. 4 Panna Lal. The application has been signed by all the parties Panna Lal, Buddhu and Bhulai and it is stated in the application that the name of Panna Lal alone ought to have been recorded and the name of Buddhu and Bhulai be expunged. It is also stated therein that Panna Lal is in possession over the last 20 years. Annexure-C.A. 2 is the copy of the deposition of Buddhu, the Petitioner in the same case. Buddhu stated that Ram Bharose had before his death given the land to Panna Lal and that Panna Lal is cultivating the land and that the names of Buddhu and Bhulai are recorded farzi and he has expressed his wish that the name of Panna Lal be recorded. Annexure-C.A. 3 is a copy of the statement of Ram Sewak son of Bhulai in the same case. He has stated that he has seen the possession of Panna Lal in his life time and the name of Buddhu and Bhulai has been recorded farzi. In paragraph 2 of his deposition he has stated that the land in dispute was the acquisition of Ram Bharose and at the time of death he had

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given the land to Panna Lal. Relying upon these admissions, the Board of Revenue set aside the finding of the trial court and has held that the admission having not been explained was binding upon Buddhu and Bhulai and has decreed the suit of Panna Lal, 4th Respondent.

6. Learned Counsel for the Petitioner submitted that the land in dispute was admittedly sirdari. He refers to the plaint in the suit filed in 1964 giving rise to this petition in which the land has been described as sirdari. The contention is that the admissions made in the proceedings relating to correction of papers in respect of sirdari land or at all cannot be relied upon in a regular suit for title u/s 229B of the U.P. Zamindari Abolition and Land Reforms Act. A Division Bench of this Court in Algoo and Ors. v. Dy. Director of Consolidation, Jaunpur and others, 1979 AWC 299, held that in mutation proceedings, the Court makes a direction as to mutation of names on the basis of possession. A finding given after contest or by consent of parties on the question of possession is within the jurisdiction of that Court. Such a finding or admission would be relevant and material in subsequent title proceedings but on the question of possession alone at the time when the compromise was entered into in the mutation proceedings. Reliance was placed in that decision upon Bhurey v. Pir Bux, 1973 AWR 279, for the proposition that any consent or admission made in the mutation proceedings has no relevance in the regular title proceedings. Stated in such a wide form the correctness of the proposition is a matter of doubt because the Evidence Act does not confine the admissibility of admissions only to those made in title proceedings. But it is not necessary to go into that question in this case. However, admissions made in mutation proceedings as to possession over tenancy land which was not transferable are relevant for determining their effect even upon title.

7. In Budhlal and Anr. v. Dy. Director of Consolidation, Gorakhpur, 1982 RD 324, it was held that sirdari right cannot be acquired by co-option or acquiescence or estoppel.

8. I have considered the decisions cited by the learned Counsel for the Petitioners. The recital in Annexure-C.A. 1 to the counter-affidavit which was an admission, signed by Panna Lal, Buddhu and Bhulai, was that Ram Bharose had made an oral gift of the property to Panna Lal. At the time the admissions were made in the year 1961, the land in dispute was not bhumidhari as the plaint in the suit filed in 1964 giving rise to this petition still describes it as sirdari. The effect of the admission is that rights in respect of sirdari land were being created in favour of Panna Lal which was impermissible as held by the Division Bench in Budh Lal (supra) that rights even by co-option or acquiescence in respect of sirdari land cannot be created. Taking it that the admissions made in the year 1961 related to a transaction of gift by Ram Bharose made before the U.P. Zamindari Abolition Act, the position is not in any way different. Even u/s 33 of the U.P. Tenancy Act, transfer of such tenancy holdings which after Zamindari Abolition have come to be covered u/s 19 of the U.P. Zamindari Abolition Act into

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sirdari tenancy was not permissible. Section 33 of the U.P. Tenancy Act, however, permitted release in favour of a co-tenant or co-option, which meant a tenant taking in a co-tenant. But in the present case, there was no co-option of another tenant but a transfer by gift. As transfer of the tenancy was not permissible, any arrangement made by Ram Bharose in favour of his son during his life time was not valid as there can be no estoppel against the statute. There is nothing on the record to show that Ram Bharosey was a tenant having a right to transfer. The admissions as to title made in the application (Annexure-C.A. 1 to the counter-affidavit) and in the depositions (Annexures-C.A. 2 and 3 to the counter-affidavit) are, therefore, not binding in a regular title proceeding. The Board of Revenue has erred in law in basing its finding solely upon the admission.

9. Learned Counsel for Respondent Dr. Dwivedi relied upon the decision in Avadh Kishore Das Vs. Ram Gopal and Others, Para 23. It was held:

"evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and shift the burden of proof on to the person making them or his representative-in-interest. Unless shown or explained to be wrong, they are an efficacious proof of the facts admitted."

10. The decision cited by learned Counsel for Respondent is clearly distinguishable. It is well settled that there can be no estoppel against the statute. I have taken the view that admission in Annexures-C.A. 1, 2 and 3 in respect of title are not binding as rights were being created in respect of such tenancy land which was not transferable at the time the admissions were made or even when the land is said to have been transferred by oral gift.

11. It was then submitted by the learned Counsel for Respondent that Respondent No. 4 is in possession for a long period of time and his possession has been admitted for more than 20 years by Ram Sewak son of Bhulai in Annexure-C.A. 3 to the counter-affidavit. Admissions on the fact of possession are certainly relevant and binding unless explained. To that extent, the admissions could well be relied upon. Other evidence has also to be considered. In the circumstances, it is appropriate that the case be reconsidered by the Board.

12. The result of the aforesaid discussion is that the writ petition is allowed. The orders of the Board of Revenue dated 18.11.1972 and 5.11.1973 are quashed. The Board of Revenue shall decide the second appeal afresh ignoring the admissions referred to above made as regards title alone. However, admissions as regards possession and their effect even upon title and other evidence may be considered by the Board of Revenue in accordance with law.

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