
(2006) 01 AHC CK 0166

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26936 of 1990

Chandra Shekhar and Ors.

APPELLANT

Vs

D.D.C.,Jaunpur & Ors.

RESPONDENT

Date of Decision : 20-01-2006

Acts Referred:

Citation : (2006) 01 AHC CK 0166

Hon'ble Judges : Krishna Murari, J

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Sri R.N. Upadhayay, learned Counsel for the petitioner and Sri RN. Tripathi appearing for contesting respondent No. 2.

2. During consolidation procaedings, an objection under Section 9 of the U.P Consolidation of Holdings Act (for short "the Act") was filed by the petitioners claiming 1/3rd share in the land in dispute. The Consolidation Officer vide order dated 611 1990 decided the objection. Aggrieved the petitioners filed an appeal before the Settlement Officer, Consolidation. During the pendency of the appeal, the petitioners moved an application seeking amendment, in the pedigree set out by them before the Consolidation Officer. It was stated that name of Ram Swaroop and Mata Pher the two sons of Nayak who was the common ancestor "of the parties were inadvertently left out to be mentioned. In support of the application, the petitioners filed some order passed in suit No. 858 of 1941 and death register of Ram Swaroop and Mata Pher which went to show that they were also sons of Nayak.

3. The Settlement Officer, Consolidation vide order dated 1281988 allowed the amendment application which was challenged by the respondents in revision. The Deputy Director of Consolidation vide impugned order dated 2261990 allowed the same and set aside the order of the Settlement Officer Consolidation.

4. The Deputy Director of Consolidation held that amendment has been sought with a mala fide intention and will change the nature of the dispute. He has

further held that once the petitioners set out the pedigree they cannot be permitted to make any changes as the same may affect the shares of the parties.

5. It has been urged by learned Counsel for the petitioners that by inadvertent mistake the name of only four sons of Nayak was mentioned in the pedigree and two were left out. Question of share is a question of law and a person is entitled to get only his lawful share. He cannot be allowed to take advantage of bona fide mistake and obtain share in excess to which otherwise, he is legally entitled to.

6. In reply it has been contended that the amendment not only changes nature of the suit but also causes prejudice in as much as the proposed amendment, if allowed, Would vary the shares of the parties and as such, the same cannot be allowed. Reliance has been placed oh decision of Hon''ble Apex Court in the case of Heeralal v. Kalyan Ma/ & Ors., 1998(1) JCLR 153 (SC) : 1998 (89) RD 140 (SC): 1998 (32) ALR 442, wherein it Was held that no inconsistent of alternative plea can be allowed which would displace the plaintiff's case and cause him irretrievable prejudice. In this case the suit filed for partition wherein the defendants had admitted that seven out of ten were joint family properties and subsequently, sought amendment of written statement withdrawing admission made by them in regard to seven properties. In these circumstances, the Court did not permit the defendants to withdraw their admission.

7. In the present case while setting out the pedigree before the Consolidation Officer the petitioners had mentioned that Nayak had only four sons. By mistake two of his son were left out and the said mistake was sought to be corrected by way of amendment. Documentary evidence to establish the fact was filed by the petitioners which was analyzed by the Settlement Officer, Consolidation and after being satisfied that the two persons namely, Ram Swaroop and Mata Pher were also sons of Nayak, the amendment was allowed by him.

8. It is wellsettled that question of share is a question of law and nobody is entitled to have a share in excess to what he is legally entitled to. The respondents cannot be permitted to take advantage of a bona fide mistake committed by the petitioners in setting out the. pedigree and there by claim share in excess of their local entitlement

9. In the case of Haridas Aildas Thadani & Ors. v. Godrej Rustom Kermani, the Hon''ble Apex Court has ruled that the Court should be extremely liberal in granting prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side, lit the present case by allowing the amendment no injustice or irreparable loss would be caused to the respondents rather complete justice done between the parties as it would aid in determining the correct and lawful share of the parties. In the circumstances, the Settlement Officer, Consolidation was justified in allowing the amendment application. The Deputy Director of Consolidation in the circumstances ought not to have interfered and set aside the order of the Settlement Officer, Consolidation in exercise of the revisional jurisdiction.

10. In view of the above, the writ petition stands allowed. The impugned order of the Deputy Director of Consolidation dated 22 61990 is quashed.

11. The Settlement Officer, Consolidation is directed to decide the appeal expeditiously preferably, with in a period of six months from the date of production of a certified copy of this order before him.

12. The parties shall bear their own costs.