

(1979) 11 AHC CK 0078
In the Allahabad High Court
Case No : Civil Misc. Writ No. 2447 of 1974

Chattar Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 23-11-1979

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (1980) AWC 24 : (1980) RD 63

Hon'ble Judges : R.S. Singh, J

Bench : Single Bench

Advocate : S.S. Tyagi, for the Appellant; H.S. Nigam, for the Respondent

Final Decision : Allowed

Judgement

R.S. Singh, J.—This writ petition is directed against the order of the Board of Revenue dated 27-4-1974 and 15-4-1974, by which the review petition and the second appeal, filed by the Petitioners were dismissed.

2. The facts of the case in brief are—that the Petitioners and the Respondent No. 6 (hereinafter referred to as Respondent) belong to a Hindu family. During the consolidation of holdings proceedings, in the basic year khatauo, some of the khataas were recorded jointly in the name of both the parties, some khataas were exclusively recorded in the name of the Petitioners and some of the khataas were exclusively recorded in the name of the Respondent, but according to the Petitioners, their father was entitled to a land of total valuation of Rs. 142-78 and the Respondent was entitled to a land of total valuation of Rs. 129.17, as determined during the consolidation operation. Before the close of the consolidation of holding operation, at the request of both the parties, all the aforesaid khataas were amalgamated. After sometime, in 1971, the Respondent filed a suit u/s 176 of the U.P. Z. A. & L. R. Act for division of holdings. The Respondent claimed 1/2 share in the land in dispute. The suit was contested by the Petitioners on the allegations that at the time of amalgamation, there was no prior condition that the share of the parties will be half and half in the

amalgamated khatas. Therefore, the Respondent is entitled only to the land, which will be equal to land of total valuation of Rs. 129-17 and the Petitioners are entitled to the land of total valuation of Rs. 142.78. The Respondent is not entitled for half share, as claimed by him. The trial court decreed the suit in favour of the Respondent, declaring his share to the extent of half in the land-in-dispute. The Petitioners filed an appeal against the order of the trial court, which was dismissed by the Addl. Commissioner. A second appeal was filed by the Petitioner, which was dismissed by the Board of Revenue. The Petitioners filed a review petition, which too was dismissed. The Petitioners have challenged the aforesaid orders before this Court.

3. It has been contended by the learned Counsel for the Petitioners that when the parties amalgamated their khatas without any condition or defining any share, the original share of the parties will continue, whereas the contention of the learned Counsel for the Respondent is that when at the time of amalgamation of the khatas of the parties, there was no condition regarding share, the Respondent will have half and the Petitioner will have half share in the land in dispute.

4. I have considered the arguments advanced by the learned Counsel for both the parties. The only question, which requires consideration in this case is whether amalgamation of the Khatas of the parties took place without any condition and if so, in that case whether the parties are entitled to equal shares or the original share will continue which was before the amalgamation of the khatas of the parties. It is nobody's case that before the amalgamation, the valuation of the total land of each party was equal. The Respondent has not given any specific valuation of the land of the parties, whereas the Petitioners has clearly alleged that the Petitioners' father was entitled to the land of a total valuation of Rs. 142-78 and the Respondent was entitled to the land of a total valuation of Rs. 129-17 as determined during the consolidation of holdings proceeding. From this assertion made by the Petitioners, the valuation of land of the Petitioners was more than the valuation, of the land of Respondent, In other words, the Petitioners' title was in more land and the Respondents' title was in lesser land. The Respondent cannot have equal land unless he acquires title in some of the land of the Petitioners by sale, gift or any other mode of law. No provision of law has been pointed out by the learned Counsel for the Respondent to the effect that on amalgamation of land of unequal valuation of the parties, the share of the parties on amalgamation will become equal. This may be possible in a case where the khatas belonging to the parties are amalgamated with expressed condition for having equal share or any share agreed upon between the parties. But in no circumstances, the parties will have equal share in the amalgamated khatas where valuation of the land amalgamated by the parties were not equal and the share of the parties will remain in the same ratio in which the land of each party was amalgamated. Respondent Nos. 1 to 3 have not given any reason how the share of each party will become equal on amalgamation, when before amalgamation, it was not equal. In my opinion, the impugned

orders of Respondent Nos. 1 to 3 are erroneous in law and the parties will continue to have the same share in the amalgamated khata, which originally belonged to them before amalgamation. Therefore, the Plaintiff is entitled in his suit, only to the share which originally belonged to him before the amalgamation. The impugned orders of Respondent Nos. 1 to 3 cannot be sustained in law and they deserve to be quashed.

5. In the result, I allow this writ petition, quash the impugned orders of Respondent Nos. 1 to 3 and direct the trial court to decide the suit afresh in accordance with law and in the light of the observations made above. However the parties shall bear their own costs.