
(1984) 11 AHC CK 0049
In the Allahabad High Court
Case No : Writ Petition No. 509 of 1979

Chet Ram

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 07-11-1984

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11C, 45A(2), 5(1)(c)(ii)

Citation : (1984) 11 AHC CK 0049

Hon'ble Judges : K.N.Misra, J

Final Decision : Partly Allowed

Judgement

K. N. Misra J.

1. Both the aforesaid writ petitions are directed against the same judgment and order dated 8.1.1979 passed by the Deputy Director of Consolidation, in proceedings arising out of the case under Section 12 of the U. P. Consolidation of Holdings Act, for short "the Act," and, as such, both these writ petitions are taken up together and are disposed of by this common judgment and order.

2. Briefly stated, the facts of the case are as follows:

3. The dispute in the present case relates to land of Khata No. 310 which was recorded in the name of Smt. Mahesha, widow of Baur. She died and on her death, Chet Ram petitioner in writ petition No. 509 of 1979, got his name mutated in place of Smt. Mahesha, vide order dated 15.4.1976 passed by the Assistant Consolidation Officer on the basis of a registered sale deed dated 23.7.1975 executed by Smt. Mahesha in his favour. This order appears to have been passed in favour of Chet Ram in the lifetime of Smt. Mahesha.

4. It appears that after death of Smt. Mahesha, Lakshman, the petitioner in writ Petition No. 593 of 1979, filed a mutation application under Section 12 of the U. P Consolidation of Holdings Act claiming to be heir of Smt. Mahesha, being her husband's father's brother's son. He thus, claimed that the land in dispute devolved on him upon the death of Smt. Mahesha. Subsequently, when the

petitioner Lakshman came to know that the name of Chet Ram has already been ordered to be mutated, vide order dated 15.4.1976 passed by the Assistant Consolidation Officer on the basis of an alleged sale deed dated 23.7.1975 he preferred an appeal against the said order, before the Settlement Officer, consolidation. It was contended that the sale deed dated 23.7.1975 is invalid and no mutation could be ordered in (he name of Chet Ram because requisite permission to make transfer was not obtained by Smt. Mahesha from the Settlement Officer, Consolidation as was required under Section 5 (1) (c) (ii) of the Act. In the appeal Chet Ram was arrayed as respondent. The Settlement Officer, Consolidation, after hearing the parties made a reference under Section 48 (3) of the Act vide reference order dated 24.10,1978. He had recommended that since the sale deed dated 24th July, 1975 is invalid and void as no prior permission was obtained for making the transfer as was required under Section 5 (1) (c) (ii) of the Act, and as such, the order of mutation dated 15.4 1976 passed by the Assistant Consolidation Officer be set aside. The appeal which was filed by Lakshman was, however, dismissed being timebarred as delay was not condoned. The Deputy Director of Consolidation, after hearing the parties accepted the reference vide order dated 8.7.1979 (Annexure 3) and while setting aside the mutation order dated 15.4.1976 passed by the Assistant Consolidation Officer on the aforesaid ground, further directed that the land in dispute be recorded in the name of Gaon Sabha. Feeling aggrieved by this order, petitioner Lakshman has preferred writ petition No. 893 of 1979.

5. I have heard learned counsel for the parties at some length.

6. Learned counsel for the petitioner Lakshman, Dr. L. P. Misra, urged that the Deputy Director of Consolidation acted illegally and with material irregularity in directing the name of Gaon Sabha to be recorded in place of deceased tenureholder, Smt. Mahesha, although no reference was made to that effect by the Settlement Officer, Consolidation. He further urged that since the Deputy Director of Consolidation had already allowed the revision filed by the other opposite parties 4 to 6, namely, Zamindar, Kashi Ram and Jwala, son of Dalla, who had also claimed mutation on the ground that they are preferential legal heir and representative of deceased tenureholder, and, as such, the name of Gaon Sabha could not be ordered to be recorded in place of deceased tenureholder. His further contention was that since the claim of opposite parties 4 to 6 regarding mutation, on the ground of being legal heir and representative, has to be considered on merits, vide order dated 2.1.1978 (Annexure No. 5), and, as such, the claim of the petitioner Lakshman should also have been permitted to be considered on merits. Thus, according to him, the impugned order passed by opposite party No. 1 deserves to be set aside.

7. In Writ Petition No. 509 of 1979, filed by Chet Ram, learned counsel for the petitioner, Sri Z. Jilani, urged that besides claiming title on the basis of registered sale deed dated 23.7.75 the petitioner Chet Ram also claims mutation being a preferential heir and legal representative of deceased tenureholder Smt.

Mahesha, He has given the pedigree in para 2 of the writ petition, which is mentioned hereunder:

Ishwari

Prag Baur (Mst Mahesha wife)

Ram Milan (died issueless on 15.6.78) Ghaseetey

Chet Ram (Petitioner)

8. Lakshman, in his writ petition, has mentioned the pedigree which is given below:

Tulsiram alias Asharfi

Baldi Ramautar Suraj Bali (died issueless) Ramcharan

Baur (dead) Indrabali (died issueless) Jaskaran Nanku

Mst. Mahesha Mst. Mohar Basa (d/o Jaskaran married to Dalla) Gopal Lakshman (Petitioner) Guru

Zamindar Kashi Ram Jwala

9. Learned counsel, Sri Z. Jilani, has further urged that the Deputy Director of Consolidation has erred in holding the said sale deed to be void. His contention was that although on the basis of the said sale deed mutation could not be effected by the consolidation authorities, but sale deed itself could not be said to be void abinitio and the petitioner got valid title under the sale deed.

10. Having heard learned counsel for the parties, I find that the impugned order dated 8.1.79 (Annexure 3) passed by the Deputy Director of Consolidation, cannot be sustained insofar as it relates to recording the name of Gaon Sabha in place of Smt. Mahesha. The question whether Smt. Mahesha died heirless and the land vested in Gaon Sabha could be determined only after giving opportunity to the parties to prove their case, who claim to be heir and legal representative of deceased tenureholder, it appears that the Deputy Director of Consolidation, vide order dated 2.1.1978 passed in revision filed by Zamindar and others had remanded the case to the Consolidation Officer with the direction to consider the question regarding heirship of deceased tenureholder Smt. Mahesha. Since question regarding heirship of deceased tenureholder was yet to be determined by the Consolidation Officer, and, as such, the Deputy Director of Consolidation erred in directing the name of Gaon Sabha to be recorded in the place of Smt. Mahesha. The name of Gaon Sabha could be recorded only when Smt. Mahesha is held to have died heirless. Petitioner Lakshman claimed to be the legal preferential heir of Smt. Mahesha. His objection under Section 12 is still pending before the Consolidation Officer which was reentered as case No. 1418 of 1978. The petitioner Chet Ram, in whose favour the aforesaid sale deed is said to have been executed by Smt. Mahesha, also claims to be preferential heir and has given the aforesaid pedigree. Although he had not filed a separate objection

under Section 12 of the Act on the ground of being preferential heir of Smt. Mahesha but since his name was already mutated, and as such, he had no occasion to apply under Section 12 for mutation on the ground that he is preferential heir. Since order dated 16.4.1976 which was passed by the Consolidation Officer mutating his name on the basis of the aforesaid sale deed dated 26.7.1975, has been set aside and, as such, in my opinion, his claim for mutation on the ground of being preferential legal heir of Smt. Mahesha deserves to be considered on merits and he can be permitted to file his objection before the Consolidation Officer, urging said ground. He was arrayed as a party in the appeal filed by the petitioner Lakshman. The objections of Lakshman as well as of Zamindar and others, who claimed to be preferential heir of deceased Smt Mahesha, are already pending before the Consolidation Officer. Thus the claim of Chet Ram also deserves to be considered by the Consolidation Officer while determining as to which of the parties, if any is preferential legal heir of deceased Smt. Mahesha. The Gaon Sabha will also be impleaded as party in all these cases because in the event if it is found that none of the parties is legal preferential heir as provided under Section 171 of the U. P. Zamindari Abolition Act, the land will certainly vest in the Gaon Sabha, The Consolidation Officer would, therefore, give an opportunity to Chet Ram to file his detailed objection with regard to his claim of being legal preferential heir of deceased Smt. Mahesha.

11. Thus, in view of what has been said above, the impugned order dated 8.7.1979 (Annexure 3) passed by the Deputy Director of Consolidation, deserves to be quashed insofar as it relates to the direction regarding recording the land in dispute in the name of Gaon Sabha and it is hereby quashed. The Consolidation Officer will now proceed to decide the case according to law, in the light of the observations made above.

12. Before parting with the case I may deal with the argument of the learned counsel for Chet Ram who has urged that the sale deed dated 23.7.75 cannot be held to be invalid and void. Learned counsel had urged that under subsection (2) of Section 45A, it is provided that a transfer made in contravention of the provision of Section 5 (1) (c) (i) cannot be valid or recognized but it does not say that the transfer would be void. His contention was that since it is not provided in subsection (2) of Section 45A of the Act that transfer would be void if it is made in contravention of provision of section 5 (1) (c) (ii) of the Act and, as such, the consolidation authorities have erred in holding it to be void transfer. I am unable to agree with this contention. Similar question cropped up for consideration in Janta Junior High School Vs. Dy. Director of Consolidation, U P. & Ors. (1969 RD, Page 424), wherein Hon'ble Satish Chandra, J. (as he then was) held:

?Under Section 5 (c) a previously obtained permission is necessary for transfer by way of sale, gift or exchange.

The entire land held by a tenureholder under one tenure would be his holding.

Where two chaks were held by tenureholder as a Bhumidhar both the Chaks would together constitute his holding. The making of a gift of one Chak was really a gift of a part of his holding and it came within the prohibition of Section 5 (c) (ii). So even if it is assumed that phrase any part of his holding" does not include the entire holding the making of the gift of one of the Chaks of the holding of the tenureholder in the instant case would not improve his case and make the provision of Section 5 (e) inapplicable, it cannot be said that each Chak constitutes a separate holding and where a person holds two Chaks under one tenure the two Chaks together constitute one holding.

Hence in the instant case the Deputy Director of Consolidation was justified in holding that the gift deed was hit by the prohibition contained in Section 5 (c) (ii) of the Act and void under Section 45A (2) of the Act.?

Similar view was taken in Nathi Singh son of Ram Sahai Singh and others Vs. Kanchhida son of Chhajjan and Others (1962 RD 226) wherein considering similar provisions contained in Section 16A (old) equivalent to Section 5 (c) (ii), it was held:

?If prior permission is not obtained, there can be no transfer and if there is such a transfer, the transfer cannot have any legal effect. In fact being in contravention of express provision of law, the transfer will be illegal and void, (emphasis supplied).

13. The provision contained in Section 5 (c) (ii) was amended with effect from 7.12.1974 making it applicable also to transfer of entire holding. Thus, after the aforesaid date the transfer of part or whole of the holding is prohibited and it cannot be made without obtaining prior permission of the Settlement Officer, Consolidation, as is required under subsection (ii) of Section 5 (i) (c). Any transfer made in contravention of this provision would be invalid and no right can be claimed by the transferee on the basis of a transfer made by a tenureholder without obtaining prior permission of the Settlement Officer, Consolidation, to make transfer as required under Section 5 (1) (c) (ii) of the Act.

14. In this view of the matter, I find no substance in the arguments of the learned counsel for petitioner Chet Ram. It may, however, be mentioned that petitioner Chet Ram would be entitled to file objection before the Consolidation Officer, claiming to be preferential legal heir of deceased tenureholder Smt. Maheaha and the Consolidation Officer will proceed to decide the claim of the parties on merits after giving them full opportunity of leading evidence in support of their claim of being preferential legal heir of the deceased tenureholder. As already mentioned above, Gaon Sabha will also be provided an opportunity to lead evidence contesting the claim of the parties.

15. In the result, both writ petitions partly succeed and are hereby partly allowed and the impugned order dated 8.1.1979 (Annexure 3) passed by the Deputy Director of Consolidation, is set aside only to the extent it relates to the direction contained in the order for recording the land in dispute in the name of Gaon

Sabha. The case is remanded to the Consolidation Officer who shall now proceed to determine as to which of the claimants is the legal preferential heir of the deceased tenureholder Smt. Mahesha. If none of the claimants would be found to be legal heir of the deceased tenureholder, the land in dispute would then be ordered to be recorded in the name of Gaon Sabha. The Consolidation Officer will decide the case according to law after giving due opportunity to parties to lead their evidence. In the circumstances of the case I direct the parties to bear their own costs.

(Petitions partly allowed.)