
(1987) 02 AHC CK 0052
In the Allahabad High Court
Case No : Writ Petition No. 1495 of 1978

Chhedhi & Others

APPELLANT

Vs

DDC, Gonda, & Others

RESPONDENT

Date of Decision : 02-02-1987

Acts Referred:

Limitation Act, 1963 — Section 6
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 210, 210, 341

Citation : (1987) 02 AHC CK 0052

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

Final Decision : Dismissed

Judgement

K.N. Misra, J.—These two writ petitions are directed against the judgment and order dated 27.4.1978 passed by the Deputy Director of Consolidation, Gonda and also against the orders passed by the subordinate consolidation authorities, and, as such, these are taken up together for hearing.

2. Briefly stated, the facts of the case are that an objection was filed by Kedar Nath son of Tahloo, Haklehey, Gulley and Karta Ram and fatherinlaw of Smt. Shiv Rani, who are petitioners in Writ Petition No 2352 of 1978. They claimed to have acquired Sirdari rights by adverse possession over the plots of Khata No. 47, situate in village Vijai Garhwa, Pargana, Tahsil and District Gonda. In the basic year khatauni, names of Chhangur and Smt. Shiv Kumari widow of Raghu Nath were recorded as Sirdari tenants on the said disputed holding Khata No. 47. At the time of Partial made by the consolidation authorities, one Chhedhi son of Parsuram, who is petitioner no. 1 in writ petition no. 1495 of 1978 had filed objection claiming to be cotenure holder along with the recorded tenants Chhangur and Smt. Shiv Kumari who have also joined as petitioner Nos. 2 and 3 in writ petition no. 1495 of 1978. Another objection was filed by Smt. Surya Kumari widow of Ayodhya claiming Sirdari rights by adverse possession over plot No. 1826 of aforesaid Khata No. 47. Smt. Surya Kumari appears to have abandoned her claim in respect of said plot, in which, along with other plots,

Kedar Nath had claimed rights by adverse possession. It appears that the recorded tenureholders Chhangur and Smt. Shiv Kumari had entered into compromise with Chhedi son of Parsuram and they admitted that he is cotenure holder along with them in the said disputed holding.

3. After taking evidence of the parties, the Consolidation Officer vide order dated 22.9.1973 dismissed the objection of Kedar Nath and held Chhedi to be cotenure holder along with Chhangur and Smt. Shiv Kumari having 1/3rd share each in the said holding. Aggrieved by said order, Kedar Nath had preferred appeal which was rejected by the Settlement Officer, Consolidation vide order dated 27.11.1974. Thereupon he filed revision which was heard and partly allowed by the Deputy Director of Consolidation vide order dated 27.4.1978. In the revision it was held by the Deputy Director of Consolidation that Chhedi, Chhangur and Smt. Shiv Kumari are tenureholder of the disputed holding and Kedar Nath is Asami tenant of the plots in dispute. He based this order on a finding recorded to the effect that Chhangur is a leper, and as such, a disabled person and Smt. Shiv Kumari is widow for the last 25 years. Thus, upholding the possession of Kedar Nath, a finding has been recorded to the effect that he is merely a Asami tenant as both these; persons are disabled and could let out the land under section 157 of the U.P. Zamindari Abolition and Land Reforms Act. He held Kedar Nath to be Asami tenant in respect of all the disputed plots as a whole by holding that in respect of 1/3rd share of Chhedi, the objector Kedar Nath could not acquire Sirdari rights as Chhedi has been held to be cotenure holder with Chhangur by an order passed by the consolidation authorities. Aggrieved by this order, sons of Kedar Nath and Smt. Shiv Kumari, widow of Sundar, who are heirs and successors of Kedar Nath have preferred writ petition No. 2352 of 1978 and the other writ petition no. 1495 of 1978 has been filed by Chhedi, Chhangur and Shiv Kumari challenging the order passed by the Deputy Director of Consolidation asserting that Kedar Nath could not be ordered to be even an Asami tenant.

4. In the said writ petition No. 2352 of 1978 the petitioners have Challenged the order passed by the Deputy Director of Consolidation urging that it is manifestly erroneous and they should have been held to be Sirdar tenants of the aforesaid plots in dispute and not merely Asami tenants.

5. I have heard learned counsel for the parties at some length and have perused the impugned orders passed by the Deputy Director of Consolidation very carefully.

6. Learned counsel for the petitioners Tahloo and others urged that the Deputy Director of Consolidation has committed manifest error of law in holding the petitioners to be Asami tenants of the land in dispute. It was urged by him that admittedly Chhedi is not a disabled person and he has been held to be cotenure holder along with Chhangur and Smt. Shiv Kumari on the basis of his alleged preexisting rights admitted by the said recorded person. Thus, the petitioner Tahloo and others could not be held to be Asami tenants in respect of the land as a whole ignoring the fact that Chhedi is not a disabled person. It was further

pointed out that the Deputy Director of Consolidation has held that Smt, Shiv Kumari is widow for the last 25 years, but this finding has not been supported by any evidence on record except the bald statement of Smt. Shiv Kumari herself. Learned Counsel further pointed out that the Deputy Director of Consolidation has upheld possession of Kedar Nath for last over 20 years. He urged that no such specific finding has been recorded by the Deputy Director of Consolidation as to when the alleged letting of plots in dispute by Chhangur and Smt. Shiv Kumari, if at all made, was made admitting Kedar Nath as subtenant. It was further pointed out that it has not been the case of the recorded tenure holders that Chhedi whom they have accepted to be cotenure holder, had also joined in the letting out of the land to Kedar Nath. Alternatively it was also urged that after recording a finding to the effect that Kedar Nath has been in possession over the plots in dispute for the last over twenty years and Chhedi is not a disabled person, and as such, in any view of the matter Kedar Nath could not be held to be Asami tenant in respect of the plots in dispute as a whole. Thus, the impugned order passed by the Deputy Director of Consolidation cannot be sustained.

7. Inreply learned counsel for Chhedi and others urged that even in respect of 1/3 share of Chhedi the order passed by the Deputy Director of Consolidation would not call for any interference because the plots in dispute as a whole were let out by Chhangur and Smt. Shiv Kumari and, therefore, Kedar Nath would not be taken to have acquired Sirdari rights by prescription over one third share of Chhedi in the land in dispute. He has, thus, been rightly held to be Asami tenant of the plots in dispute as a whole. I do not find any merit in this contention. Sri Chhedi is admittedly not a disabled person and, therefore, land could not be let out by him nor the other cotenants could let it out on his behalf. Thus, the alleged letting by Chhkngr and Smt. Shiv Kumari would not prevent accrual of Sirdari rights in flavour of Kedar Nath by prescription so, far as one third share of Chhedi is concerned. Thus, in respect of 1/3rd share in the plot in dispute, Kedar Nath could not be held to be Asami tenant. The reasoning given by the Deputy Director of Consolidation appears to be quite .erroneous when he says that since Chhedi has been held to be cotenure holder by the consolidation officer in the disputed holding on the basis of compromise with the recorded tenure holder j and, therefore, in respect of 1/3rd share of Chhedi the objector Kedar cannot mature Sirdari rights by adverse possession. This is altogether erroneous reasoning and the impugned order so far as Chhedi's one third share is concerned cannot be sustained. Kedar Nath did acquire Sirdari rights in respect of Chhedi's 1/3rd share in the land in dispute.

8. So far as the remaining two third share belonging to Sri Chhkngr and Smt. Shiv Kumari is concerned, it was urged by learned counsel that since these persons were disabled and had let out the land to Kedar Nath and, therefore, Kedar Nath will remain Asami tenant at least for 2/3rd share in the plot in dispute as these persons could let out land of their share in view of Section 157 of the U.P. Zamindari Abolition and Land Reforms Act. So far as this argument is

concerned, I find that this fact is hotly disputed that the land was let out to Kedar Nath by these two persons. The Deputy Director of Consolidation has also not recorded any specific finding on that point referring to evidence on record, if any, on that point. He has also not recorded any finding as to when these two persons had let out the land to Kedar Nath and whether they were disabled persons at the time of alleged letting by them.

9. It is no doubt correct to say that a disabled person can let out his land or any portion thereof to the extent of his share as provided under section 157 of the U.P. Zamindari Abolition and Land Reforms Act, but a finding has got to be recorded as to whether the land was in fact let out by them or not and as to when the alleged letting was made and whether at the time of letting Sri Chhangur suffered from the alleged disease of virulent leprosy of such nature that he squarely fell in the category of disabled person so as to entitle him to get benefit of section 157.

10. In the present case I find that Chhangur had filed a medical certificate to indicate that he is suffering from leprosy and when he appeared before the Deputy Director of Consolidation he had found him suffering from leprosy. The Deputy Director of Consolidation has observed that the medical certificate was not proved, but in spite of it he appears to have taken notice of this evidence and has based his findings on it and also on his personal observations. But no finding could be based merely on personal observations and opinion of the Presiding Judicial Officer nor any finding can be based on such personal observation because it cannot be said with certainty as to since when Chhangur had been suffering from leprosy and that at the time of alleged letting out of land by him it was in such acute nature that he was not able to do cultivation himself. Since the medical certificate was not proved, and, as such, it was not admissible in evidence and no reliance could be placed on it. After noticing the fact that the medical certificate is not proved the learned Deputy Director of Consolidation should have, in the interest of justice, afforded an opportunity to Chhangur to prove the certificate if he wanted to rely upon that document. But as it was not done, the said certificate could not be taken into consideration being inadmissible in evidence. Thus, the findings based on such evidence and on personal observations cannot be sustained.

11. It would also be relevant to mention it here that no finding has been recorded by the Deputy Director of Consolidation as to when the alleged letting out was done. Kedar Nath had asserted that he is in adverse possession over the land in dispute since prior to abolition of Zamindari. The learned Deputy Director of Consolidation has observed that Kedar Nath cannot be given Sirdari rights on the basis of adverse possession because Chhangur and Smt. Shiv Kumari were disabled persons and no Sirdari rights could accrue by prescription against disabled persons. I find it to be quite erroneous view taken by the Deputy Director of Consolidation.

12. There appears to be no statutory provision creating a bar to the acquisition

of Sirdari rights by adverse possession under Section 210 of the U.P. Zamindari Abolition and Land Reforms Act, against a tenureholder who suffers from the disability of either being a widow or suffering from such a disease as leprosy etc. The disabled tenureholder can certainly let out land to the extent of his share in accordance with the provisions of Section 157 of the said Act and such lessee would then acquire Asami rights in respect of the share of the disabled lessor in the land in question. This provision, however, cannot be construed to create a bar to the acquisition of Sirdari rights by adverse possession under section 210 of the Act against a disabled tenure holder. If trespass has been committed on the land belonging to any such tenure holder as referred in Section 157 (a) to (g) and no action for his ejectment is taken within the prescribed period of limitation by the tenure holder, then the trespasser will certainly acquire sirdari rights by adverse possession under Section 210 of the U.P. Zamindari Abolition and Land Reforms Act because there appears to be no provision in the Act to prevent accrual of rights by prescription against a tenureholder referred in section 157 (1) of the Act.

13. It appears well settled that when a person enters into possession in assertion of hostile title and adverse possession over the land belonging to the person under disability, the limitation for seeking ejectment of trespasser begins to run from the date of his entering into possession and is not postponed till the cessation of disability except in cases of minor and lunatics who can file suit for ejectment within three years from the cessation of disability (See AIR 1969 Kerala 163 (167) F.B.; AIR 1978 Madras 51; AIR 1941 Nagpur 357 (362) (D. B.). Section 6 of the Limitation Act enables only a minor, insane or an idiot to sue or apply for execution within the same time from the cessation of disability as would have otherwise been allowed under the prescribed limitation. Section 6 of the Limitation Act read with Section 341 of the U.P. Zamindari Abolition and Land Reforms Act would be applicable in the proceedings under the latter Act and the period of Limitation in such case for filing a suit under section 209 U.P. Zamindari Abolition and Land Reforms Act shall commence from the date of discontinuation of disability (See Onkar Nath Dubey v. Dy. Director of Consolidation, Varanasi and others, 1977 AWC 78 ; Bans Bahore v. State of U.P., 1969 All LJ 513; Desh Raj v. Deputy Director of Consolidation U.P. at Etawah and others, 1970 All LJ 116 (DB) ; Shitla Prasad and others v. Bans Bahore and others, 1974 RD 84 (FB). Although Section 6 read with Section 8 of the Limitation Act protects the right of a minor, insane or an idiot and he can institute a suit within three years after the disability has ceased, but if no suit is filed within the prescribed period of Limitation from the date of attaining majority or cessation of said disability of lunacy and idiocy, the trespasser would then perfect Sirdari rights by prescription.

14. It is not disputed that the benefit of Section 6 of the Limitation Act would be available only to minor, insane or an idiot person and not to persons suffering from any other physical disability. Thus, so far as other persons referred in Section 157 (1) (a) to (G) are concerned, they have to take action for ejectment

of the trespasser within the period of limitation prescribed under section 209 of the U.P. Zamindari Abolition and Land Reforms Act from the date of their dispossession. If a widow or a tenure holder suffering from disability on account of any disease like leprosy etc. omits to file a suit for ejectment within the period of limitation prescribed under Section 209 of the said Act against the trespasser, then the law will have its course and Sirdari rights by prescription would accrue to the person under Section 210 of the Act. The learned Deputy Director of Consolidation has, therefore, erred in observing that Sirdari rights cannot be acquired by prescription against a widow or a person suffering from leprosy etc.

15. In the present case I find that the Deputy Director of Consolidation has held Kedar Nath to be Asami tenant by holding that Kedar Nath could acquire only Asami rights as Chhangur suffered from leprosy and Shiv Kumari was widow for the last 25 years and so they could let out the land to Kedar Nath. No specific finding has, however, been recorded as to when the alleged letting out on Batai was made in respect of the plots in dispute by these persons. If letting out was done after abolition of Zamindari and they were disabled on the date of letting, then to the extent of 2/3rd share in the plots in dispute, Kedar Nath would be Asami tenant otherwise he would acquire Sirdari rights by adverse possession if letting out is not established or that on the date of letting out they are not proved to be disabled persons entitled to benefit of Section 157 of the U.P. Zamindari Abolition and Land Reforms Act.

16. Thus, in view of the above, I find that the impugned order dated 27/4/1978 passed by the Deputy Director of Consolidation, Gonda suffers from manifest error and cannot be sustained.

17. In the result, the writ petition No. 2352 of 1978 (Tahloo and others v. Deputy Director of Consolidation and others) succeeds and is "hereby allowed and the order dated 27/4/1978 passed by the Deputy Director of Consolidation, Gonda is hereby quashed and he is directed to restore the revision and decide it in accordance with law and in the light of observations made above after recording such evidence as the parties may like to produce. He may record the evidence himself or direct the consolidation officer to record the evidence as may be led by parties on said point and thereupon the learned Deputy Director of Consolidation would decide the case taking into consideration the evidence so recorded and also evidence already on record. The writ petition No. 1495 of 1978 (Chhedi and others v. Deputy Director of Consolidation and others) fails and is accordingly dismissed.

18. No order as to costs.