
(2009) 11 AHC CK 0237
In the Allahabad High Court

Dhoom Singh

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 1 AWC 645

Hon'ble Judges : Rakesh Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard Sri Siddharth Srivastava, learned Counsel for the petitioners and Sri P.K.S. Paliwal, learned Counsel appearing for the respondent Nos. 4 to 8. Sri Rajesh Kumar Chitragupt, advocate, has filed vakalatnama on behalf of proposed respondents, who have now been impleaded as respondent Nos. 9 to 12. Learned standing counsel represents respondent Nos. 1 to 3.

2. Through this writ petition, the petitioner has sought to assail the order passed on 24.1.2004, by the Deputy Director of Consolidation, Ghaziabad, dismissing the revision, appellate order dated 28.4.2003, passed by the Settlement Officer, Consolidation, Ghaziabad and the order dated 14.11.2002, passed by the Consolidation Officer.

3. It is relevant to mention here that all the three consolidation courts, that is, the Consolidation Officer, Settlement Officer, Consolidation and the Deputy Director of Consolidation have recorded concurrent findings of fact in arriving at same conclusions that the agricultural land in dispute was acquired by a joint Hindu family or a joint family of agriculturists for the purposes of the said family. The contesting parties were admittedly members of the same family (khandan) and were living together in the same house. The admitted pedigree was also taken into account. The concurrent findings recorded by all the three consolidation courts have been challenged by this writ petition, filed under Article

226 of the Constitution of India.

4. For convenience, the admitted pedigree of the contesting parties is being quoted below:

Har Gopal _____ | _____ | | Mangat Kishan Sahay | _____ |
_____ Jagpal | | | | | Rampat (Now re- Bhauti |
presented by L.Rs.) _____ | _____ |
| | | | | | | | | | | Rajendra Gyandendra Virendra Devendra Jainendra |
_____ | _____ | | | | Rampat (Now Dharam Singh (Dhoom Singh)
represented by L.Rs.) (petitioner herein) Two sons Pradeep Kumar and Anil
Kumar

5. The dispute arose between the parties at the time of consolidation proceedings in respect of Khata No. 80 of Village Harampur, Pargana and Tehsil Loni and District Ghaziabad. In the revenue/khatauni entries, the names of Ram Singh and Dharam Singh, sons of Bhauti and Rampat, sons of Kishanlal Sahai were recorded. Objections were filed by Rajendra Singh, Jagendra Singh, Gyanendra Singh, Virendra Singh and Devendra Singh claiming that they have 1/2 share in the said land. It was pleaded before the Consolidation Officer that it was a joint family's agricultural land. The land was jointly acquired by the grandparents of the contesting parties. The respondent Nos. 4 to 8 were left to be recorded at some time due to some mistake. They claimed that their names be recorded as co-tenureholders having 1/2 share in the agricultural land. Ram Singh etc. had opposed the claim by taking the ground that the agricultural land was, in fact, acquired by Kishan Sahai, Rampat and Bhauti, who were granted patta by the erstwhile zamindars as asamis. It was never a joint family property.

6. Following issues were framed for the purposes of resolving the dispute:

1. Kya vadigan evam prativadigan ek hi family se sambandhit hain?
2. kya vivadit bhoomi pakshon ki dada Ilahi Sampati hai, yadi haan ton prabhav?
3. kya vivadit bhoomi mein apattikartagan sahkatedar hain, yadi haan ton prabhav?
4. Vivadit bhoomi pakshon ke ansh kya hain?

7. On being afforded opportunity to adduce evidence, the respondents produced parivar register on 28.8.2002 and oral witnesses were also produced. The petitioners' side also produced their witnesses.

8. All the three consolidation courts, that is, the Consolidation Officer, Settlement Officer, Consolidation and the Deputy Director of Consolidation, on the basis of evidence adduced, pleadings of the parties and the materials on record, have recorded concurrent findings of fact that there existed a joint family, whose head was one Hargopal and after his death, one Branch was of Mangat and Jagpal and other Branch was of Kishan Sahai, who had two sons Rampat and Bhauti. As per parivar register, Hargopal, Mangat and Kishan Sahai were residing in village

Badshahpur, Salauli, in the same house, that is, House No. 481. Karta, head of the family, Hargopal was born in 1902. Later on Ram Singh etc. started residing in village Harampur and Katiyagarhi. Most of the witnesses and deposed that at the time of acquisition of the disputed land, the family was living in jointness. Jagpal was cultivating half of the land and another half part was being cultivated by Kishan Sahai. It was ancestral land acquired by the joint family.

9. It is also relevant to note here that the pedigree has been admitted by both the sides. In this Court also, the parties have admitted the pedigree as has been indicated in the judgment of the Deputy Director of Consolidation.

10. Legal heirs of Kishan Sahai and Mangat could not give any explanation to the Court as to how the land was acquired by Kishan Sahai and Mangat, at what price the land in dispute was purchased when it was purchased. It was also not indicated what was the area of the land allegedly purchased and which plots were being cultivated by whom.

11. All the three consolidation courts have recorded that khatauni placed before the Court relating to 1352 fasali and 1359 fasali also did not clarify as to how the land came to be recorded in these revenue records/khatauni and was the same land. A categorical finding has been recorded that the petitioners were unable to establish as to what was the Gata number and the area of the land. The petitioner had failed to prove before the consolidation courts the factum of possession. No khatauni or entry was produced to demonstrate that they were in possession.

12. Sri Siddharth Srivastava, learned Counsel for the legal heirs of petitioner, Dharam Singh, has submitted that the land was never recorded in the name of Hargopal or his sons Mangat or Jagpal. The Consolidation Officer has erred in holding that the petitioners did not file khasra to prove their case of exclusive ownership or possession. It was burden of the private respondents to prove their case.

13. Sri Siddharth Srivastava, learned Counsel for the petitioners has referred to some judgments of the Hon'ble Apex Court to demonstrate as to in what manner the appellate and revisional court should have dealt with the dispute. In the present case, the Settlement Officer, Consolidation and the Deputy Director of Consolidation.

14. Sri P.K.S. Paliwal, learned Counsel for the respondent Nos. 4 to 8, has oppose the writ petition and has defended the findings recorded by all the three consolidation courts. He has highlighted that the petitioners and the respondents belong to the same family and karta, head of the family was Hargopal. After Hargopal, the joint family's property devolved upon the legal heirs of Hargopal and as such the respondents were having their respective shares in the property. He has further highlighted the findings recorded by all the three consolidation courts, that is, the Consolidation Officer, Settlement Officer, Consolidation and the Deputy Director of Consolidation in support of his submissions. He has also

drawn attention of the Court to the pleadings put-forth before the courts below. He has laid stress that there was admission of petitioners' own witness that the property was jointly held and the family was living jointly. After the admission of the petitioners' own witness, now they cannot be permitted to take a turn around in this Court and take a plea that the family was not living jointly and the land in dispute was acquired separately. The petitioners have even denied that the property was recorded in the name of Kishan Sahai. The theory of self acquired property is a new story, which has been taken as plea of convenience not on the basis of the materials on record.

15. Considered arguments of learned Counsel for the parties and perused the record.

16. In the present case, all the three consolidation courts have recorded concurrent findings of fact regarding status of the land. From the testimony of the witnesses, parivar register and other records, it was fully proved before all the three consolidation courts that the family was headed, by Hargopal, who was karta of the joint Hindu family, which was living in jointness. The family was living jointly in the same house. They were jointly cultivating the land as a joint family. No explanation was given by the petitioners that if their ancestors were the exclusive owner and in possession of the land in dispute, as to how the funds were generated by the petitioners' ancestors and how much land, which land, amounting to what area was purchased. Vague, bald and sweeping pleas were taken before the consolidation courts. The petitioners have failed to satisfy all the consolidation courts and this Court as to how the land in dispute came in exclusive ownership and possession of the land in dispute and what price was paid when the land in dispute was purchased. The pleadings of the petitioners were silent on these points. The jointness of the family was proved on the basis of the materials on record. Even the revenue entries do not draw a clear picture. The entries do not indicate Gata number, khasra and other details of the land. All the three consolidation courts have recorded concurrent findings of the fact about the co-ownership of the land. This Court has also taken note of the fact that there existed a joint family. The fact of the joint family was proved as no one had denied the entries in the parivar register and the pedigree indicated in the judgment of the Deputy Director of Consolidation. It was also not proved how it was a marusi land. An agreement was signed between the parties on 11.2.1991 which showed that the parties were agreed to sell 1/2 part of the land. This Court, while sitting under Article 226 of the Constitution of India cannot reappraise the evidence or upset the concurrent findings of fact arrived at by all the three consolidation courts on the basis of the pleadings, appraisal of evidence adduced by the parties and materials brought on record.

17. Reliance can be placed on the judgments of the Hon'ble Apex Court in K.V. Narayanaswami Iyer Vs. K.V. Ramakrishna Iyer and Others, and Baikuntha Nath Paramanik (Dead) by his L.Rs. and Heirs Vs. Sashi Bhusan Pramanik (Dead) by his L.Rs. and Others, In K.V. Narayanaswami Iyer Vs. K.V. Ramakrishna Iyer and

Others, it has been held that:

The legal position is well-settled that if in fact at the date of acquisition of a particular property the joint family had sufficient nucleus for acquiring it, the property in the name of any member of the joint family should be presumed to be acquired from out of family funds so to form part of the joint family property, unless the contrary is shown.

18. In the present case, a joint family owned substantial agricultural land in the village. The nucleus formed by the joint family income was sufficient to acquire the agricultural land which was being cultivated by the family members. The witnesses in their testimony had supported this fact. The family members were participating in the management of the land. No account books or details were produced before the courts below and in this Court to substantiate that the petitioners and their parents or their ancestors had their own income to acquire the land exclusively. Where a joint family was having a nucleus funds sufficient for making acquisition of the agricultural land, may be from the erstwhile zamindars, a presumption can be drawn, as has been rightly drawn by all the three consolidation courts, that such acquisitions were, in fact, joint family acquisitions.

19. This case is also covered by the said decisions of the Hon''ble Apex Court to say that the petitioners cannot claim exclusive ownership and possession of the disputed land.

20. In view of the discussions made above, this Court does not find any illegality or infirmity in the findings recorded by all the three consolidation courts. The writ petition lacks merits and is accordingly dismissed.