

(2014) 11 AHC CK 0082

In the Allahabad High Court

Case No : Writ-B Nos. 13471 and 13472 of 1989

Dukhit and Others

APPELLANT

Vs

A.D.C. and Others

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A(2)

Citation : (2015) 126 RD 307

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Faujdar Rai and C.K. Rai, Advocates for the Appellant; B.D. Mandhyan, S.C., Satish Mandhyan and Sc. Mandhyan, Advocates for the Respondent

Judgement

Anjani Kumar Mishra, J.—Heard Sri C.K. Rai, learned Counsel for the petitioners in these connected petitions, Sri B.D. Mandhyan, learned Senior Counsel, assisted by Sri Om Prakash Lohia, who appears for contesting respondents as also the learned Standing Counsel who appears for the State-respondents. The writ petitions are directed against the order dated 7.8.1989 passed by the Assistant Director of Consolidation (for short. Assistant Director of Consolidation) which has been passed in revision No. 383/23: Laldhar and five others v. Ram Bilas and another. By the same order connected revision No. 384/24: Laldhar and five others v. Dukhit and others, has also been decided. Hence two separate petitions.

2. The dispute in the first writ petition is with regard to plots of khata Nos. 22, 23 and 145 and in the second writ petition regarding plots of khata Nos. 192 and 89, situate in village Kodar, Post Office Manjha Narain, District Deoria, which in the basic year record were entered in the name of the petitioners, namely, Ram Bilas and Kedar, sons of Ram Lochan.

3. An objection under section 9A(2) of the U.P. Consolidation of Holdings Act (for short, the Act) was filed on behalf of respondent Nos. 2 to 7, who are

descendants of Gokul claiming cotenancy in the khatas in dispute to the extent of 1/3rd. The following pedigree was set up by the objectors:

4. The case of the objectors was that the parties are the descendants of the common ancestor, Shiv Datt, who had four sons, namely, Ramai, Nihal, Bipat and Gokul. Ramai is said to have died issueless. The objectors claim to belong to branch of Gokul, while the petitioners belong to branch of Nihal. Since Ramai is alleged to have died issueless, the share of each of the surviving three sons of Shiv Datt was 1/3rd, hence the claim of co-tenancy to the extent of 1/3rd.

5. The objection was contested by the petitioners. It was their claim that Ramai did not die issueless and that he was survived by his heirs. It was denied that Gokul was the son of Shiv Datt. Therefore, the objectors were not entitled to any share in the property in dispute. It was lastly contended that cotenancy could not be granted as the alleged common ancestor, Shiv Dutt, was never recorded over the land in dispute.

6. The objection was dismissed by the Consolidation Officer (for short, CO) by his order dated 16.6.84. Appeal No. 2019 filed by the contesting respondents was also dismissed vide order dated 18.1.1987. The consequential revisions have been allowed by the order dated 7.6.1989, whereby the objectors have been granted 1/4th share in the disputed khatas. It is this order passed by the Assistant Director of Consolidation which is impugned in the instant writ petitions.

7. Sri C.K. Rai, learned Counsel for the petitioners, has submitted that the objection was dismissed by the CO, as also the Settlement Officer, Consolidation (for short, SOC) with a finding that there was sole entry in favour of Gokul in 1322 Fasli. Gokul was never recorded either prior to 1322 Fasli or at any time thereafter. The CO, as also the SOC, after examining this entry and on the basis of the oral testimony of the Record Keeper, recorded a finding that the entry in 1322 Fasli was a forged one. It was further recorded that Gokul died in 1313 Fasli and, therefore, there was no question of his being recorded in the khatauni of 1322 Fasli. The SOC further recorded a finding that it was not proved that Ramai died issueless and that, on the contrary, it was proved that he was survived by a son, named Jokhan, whose name was entered in the revenue records.

8. On the aforesaid findings, both the Courts below held that since the sole entry in favour of Gokul in the khatauni of 1322 Fasli was doubtful, no rights could be granted to the objectors.

9. It is further submitted that the Assistant Director of Consolidation has allowed the revisions and granted cotenancy rights in favour of the objectors to the extent of 1/4th share without adverting to the findings recorded by the subordinate consolidation authorities. The findings returned by the Assistant Director of Consolidation are purely conjectural and, therefore, the impugned order cannot be sustained.

10. Sri B.D. Mandhyan, learned Senior Counsel, appearing for the contesting respondents in rebuttal has submitted that the Assistant Director of Consolidation in the impugned order has recorded a categorical finding that the pedigree set up by the objectors was not disputed by the petitioners. In this pedigree, Gokul has been shown to be the fourth son of Shiv Dart and, therefore, for all practical purposes, it was admitted to the petitioners that Gokul belonged to their family and, therefore, Assistant Director of Consolidation has rightly allowed the revisions.

11. I have considered the rival submissions of the parties and have perused the record.

12. The Assistant Director of Consolidation has, almost at the very beginning of the impugned order, recorded that the respondents in the revision, namely, the petitioners have admitted that the branch of Ramai was not extinct. He has further recorded that in the counter objection/written statement filed by the petitioners before the CO, the pedigree was not denied. It was only stated that the disputed khatas belong exclusively to the petitioners.

13. Thus the basis of the impugned order is the finding that the pedigree set up in the objection was not denied in the counter objection.

14. A supplementary affidavit was filed by the petitioners annexing thereto the counter objection filed by them before the Consolidation Officer.

15. The certified copy of the counter-objection/written statement filed by the petitioners reveals that in paragraph 2 the pedigree has been denied and in para 3 it is stated that objector does not belong to the family of the petitioner and has no share or right in the land in question.

16. It is, therefore, established on record that the pedigree set up by the contesting respondents in their objection had been categorically denied. The finding recorded by the Asstt. Director of Consolidation in the impugned order that the petitioners in their counter objection had not denied the pedigree set up by the contesting respondents is therefore vitiated by a clear misreading of record.

17. It is to be noted that no specific finding has been recorded by the Assistant Director of Consolidation and the submission of the learned Counsel for the petitioners that the order has been passed on conjectures is not wholly without substance.

18. Since the crucial and only finding, which is the basis of the revisional Court is found to be vitiated by a misreading of the record, the impugned order cannot be sustained and is liable to be set aside. The contention of the learned Counsel for the respondents that the pedigree set up by the respondents not having been denied, the impugned order suffers from no illegality, also cannot be accepted. The impugned order is vitiated also because the reasoning and findings recorded by the Consolidation Officer and the SOC were neither adverted to nor reversed

while passing a judgement of reversal Learned Counsel for the respondents have also not been able to show that the common ancestor, Shiv Dutt, was ever recorded over the land in question and, therefore, cotenancy could not have been granted to the respondents in view of the case-law relied upon by Shri Dhanai and Others Vs. The Deputy Director of Consolidation and Others, , namely.

19. I, therefore, set aside the impugned order dated 7.8.1989 passed by the Assistant Director of Consolidation. Both the writ petitions are accordingly allowed and the orders passed by the Consolidation Officer, as also the Settlement Officer, Consolidation, are affirmed. However, there will be no orders as to costs.