
(2010) 09 AHC CK 0190
In the Allahabad High Court
Case No : Writ B. No. 2751 of 1974

Ganga Prasad Pandey

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2010) 09 AHC CK 0190

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vikram Nath, J.—This Writ Petition under Article 226 of the Constitution has been filed for quashing the judgment and order dated 5.2.1974 passed by the Deputy Director of Consolidation and the order dated 17.10.1973 passed by the Settlement Officer, Consolidation.

2. The dispute relates to Plot No. 51 of the Khata No. 6 situate in Village Pattupur, Pargana Bihar, Tehsil Kunda, district Pratapgarh (hereinafter referred to as the land in dispute). In the basic year records the petitioner and respondent Nos. 3 to 5 were recorded with equal share over the land in dispute. It may be noted that petitioner, Ganga Prasad and respondent No. 5, Harakh Narain are own brothers whereas respondent No. 3, Deo Narain and respondent No. 4, Jai Narain are own brothers. It is also admitted case that the land in dispute is coming down from the common ancestor Janki Das. Janki Das had three sons Munnu, Gajadhar and Payag. Gajadhar had married Smt. Parvati. However they died issue less. Munnu had two sons Nagesar and Chandra Shekhar Nagesar had two sons Ganga Prasad (petitioner) and Harakh Narain (respondent No. 5). Chandra Shekhar brother of Nagesar died issue less. Payag had two sons Avadh Bihari and Ram Lakhan. Ram Lakhan said to have died issue less. Avadh Bihari had one daughter Smt. Nimra who was married to Raghav Ram and they had two

sons Jai Narain (respondent No. 4) and Devo Narain (respondent Nos .3).

3. Two sets of objections were filed before the Consolidation Officer, u/s 9A(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act). Petitioner and respondent No. 5 filed one objection, claiming exclusive rights over the land in dispute alleging that after the death of Gajadhar and Smt. Parvati their share went to Payag and thereafter to Ram Lakhan as Avadh Bihari predeceased Ram Lakhan. As Ram Lakhan died issue less and Avadh Bihari predeceased him, the share of Gajadhar and also Payag reverted to Nagesar father of the petitioner and respondent No. 5. On the other hand objections were filed by respondent Nos. 3 & 4 on two grounds. Firstly that as Munnu predeceased Gajadhar and Gajadhar predeceased Payag, his share went to Payag and as such they would become Bhumidhar of 2/3 share. The same was inherited by Avadh Bihari as Ram Lakhan had predeceased him. Other reasons on which the objections were filed was that Smt. Parvati widow of Gajadhar had executed a gift deed in their favour. The Consolidation Officer consolidated both the objections and framed two issues namely as to what is the share of the parties and secondly whether the name of Dev Narain and Jai Narain (respondent No. 3 & 4) were wrongly recorded over the land in dispute. The Consolidation Officer held, firstly, that it was not possible to determine the sequence of death of Munnu, Gajadhar and Payag and secondly he recorded a finding that Ram Lakhan predeceased Avadh Bihari. On these findings he proceeded to hold that the branches of Munnu and Payag would be entitled to 1/2 share each.

4. Two appeals were filed before the Settlement Officer, Consolidation, one by the petitioner and other by the respondent Nos. 3 & 4. The Settlement officer, Consolidation dismissed the appeal of the petitioner. However it allowed the appeal of respondent Nos. 3 & 4 and held them to be entitled to 2/3 share and the petitioner to 1/3 share. The order of the Settlement Officer, Consolidation is based upon a finding that the share of Gajadhar would be inherited by Avadh Bihari on his death. No reasoning had been given and no basis had been given as to how share of Gajadhar would be inherited by Avadh Bihari. Unless findings are recorded by the Settlement Officer, Consolidation that Smt. Parvati widow of Gajadhar had predeceased him, the share of Gajadhar would not be inherited by Avadh Bihari. The petitioner filed a revision, which was dismissed by the Deputy Director of Consolidation. It is against these orders that the present writ petition has been filed.

5. I have heard Sri Shri Kant, learned Counsel appearing for the petitioner. However the case proceeded ex parte against the respondents, in view of the order dated 9.9.2010.

6. The submission advanced on behalf of the petitioner is that the Deputy Director of Consolidation had throughout in his judgment recorded submissions of the parties and thereafter he abruptly arrived at the conclusion that the order of the Settlement Officer, Consolidation is just and proper, not warranting interference. Learned Counsel for the petitioner has initially pressed for the

matter being remanded and decided by the Deputy Director of Consolidation afresh. But as the writ petition is of the year 1974 and this Court under Article 226 of the Consolidation is not inclined to exercise its extraordinary jurisdiction to remand the matter to the consolidation authority after 36 years, it is proceeding to examine it on merits.

7. From a perusal of the judgment of the Settlement Officer, Consolidation, it transpires that the findings recorded by the Consolidation Officer had not been up set. The Settlement Officer, Consolidation abruptly arrived at the conclusion that the share of Gajadhar would be inherited by Avadh Bihari. No discussion had been made on this point. No findings had been recorded with regard to the sequence of the death of Gajadhar, Parvati, Payag, Ram Lakhan and Avadh Bihari.

8. In that view of the matter, in the opinion of the Court, the judgment of the Consolidation Officer, as he had adjusted the equities between the parties, by allowing 1/2 share each to the branch of Munnu and Payag on the basis of the evidence led by the parties would be just and proper. The orders passed by the Deputy Director and the Settlement Officer cannot be maintained for the reasons recorded above .

9. The writ petition succeeds and is allowed. The impugned judgment and orders of the Deputy Director of Consolidation and the Settlement Officer, Consolidation are hereby quashed and that of the Consolidation Officer is maintained. Records be corrected accordingly. There shall however be no order as to costs.