
(2015) 02 AHC CK 0152
In the Allahabad High Court
Case No : Writ-B No. 68216 of 2014

Ghayas

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Evidence Act, 1872 — Section 73

Transfer of Property Act, 1882 — Section 52

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 48(3), 9

Citation : (2015) 110 ALR 288 : (2015) 127 RD 316

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Ashish Kumar Singh and Ajay Kumar Singh, for the Appellant; J.J. Munir and Mahesh Narain Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.

1. Heard Sri Ashish Kumar Singh, for the petitioner and Sri J.J. Munir, for the contesting respondent. This writ petition has been filed against the orders of Deputy Director of Consolidation, dated 16.10.1980, 4.12.1984 and 3.4.2014, passed in the reference proceeding under section 48(3) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute between the parties was in respect of share in the land of basic consolidation year khata 443 (total area 24-11-10 bigha) of village Kalchhina, pargana Jalalabad, district Ghaziabad. Smt. Bashiran widow of Hasham filed an objection under section 9 of the Act, claiming her 7/144 share (inherited by her from her son, after his death) + 1/16 share (purchased by her from Smt. Nania widow of Mohd. Hussain through registered sale-deed dated 17.3.1967, on the basis of this sale-deed name of Smt. Bashiran was mutated and name of Smt. Nania was deleted by order of Sub-Divisional Officer dated 28.11.1967). Ali Hasan and Ali Sher (now represented by respondents-2 to 7) filed an objection

under section 9 of the Act, for recording their names over entire share of Smt. Bashiran and Smt. Nania, on the basis of registered sale-deed dated 24.6.1968 executed by Smt. Bashiran in their favour. It was stated by them that sale-deed dated 24.6.1968 was in respect of an area of 3-7-0 bigha land of khata in dispute which included entire share of Smt. Bashiran and Smt. Nania. Smt. Bashiran contested the objection of Ali Hasan and Ali Sher, denying execution of the sale-deed dated 24.6.1968. Other co-sharers of remaining share had not contested the dispute. The consolidation authorities held that Smt. Nania was not bhumidhar on 17.3.1967 as such she did not have transferable right. On the basis of sale-deed dated 17.3.1967, share of Smt. Nania was not transferred to Smt. Bashiran as such her objection was dismissed. So far as objection of Ali Hasan and Ali Sher was concerned, it was held that due execution of the registered sale-deed dated 24.6.1968, was proved by marginal witness Bhure Khan and sale-deed was not cancelled by Civil Court as such sale-deed was held as valid for 7/144 share of Smt. Bashiran. Final order in title proceeding was passed by Deputy Director of Consolidation on 6.2.1975, in Revision No. 31 filed by Smt. Bashiran and Revision No. 32 filed by Ali Hasan and Ali Sher.

3. The petitioner claims that as the name of Ali Hasan and Ali Sher were not mutated in the basis of sale-deed dated 24.6.1968 in consolidation records as such chak was carved out in the name of Smt. Bashiran, who sold the land in dispute to him through registered sale-deed in the year 1972 and his name was mutated by order of Assistant Consolidation Officer, dated 19.1.1973 passed in Case No. 1559 (under section 12 of the Act). Thereafter, CH Form 45 was prepared in his name. This order was not challenged by any one. Although, the name of the petitioner was recorded, since 19.1.1973 but he was not impleaded as party, before Consolidation Officer, Settlement Officer Consolidation and Deputy Director of Consolidation, either in title proceeding or in reference.

4. On the basis of order of Deputy Director of Consolidation, dated 6.2.1975, Ali Hasan and Ali Sher filed an application for demarcation of the chak of their share and delivery of possession over it. The Consolidator submitted his report dated 6.5.1975 that after adjusting the share of all the co-sharers, 1/16 share remained in excess in the land in khata No. 443. Then again Smt. Bashiran on one side and Ali Hasan and Ali Sher on the other side contested the matter and claimed that excess 1/16 share be given to them. Settlement Officer Consolidation forwarded the reference along with his report. The matter was heard by Deputy Director of Consolidation, who by order dated 16.10.1980 held that as Smt. Bashiran had already transferred her share and share of Smt. Nania through sale-deed dated 24.6.1968 to Ali Hasan and Ali Sher as such doctrine of estoppel would apply against her. The sale-deed dated 24.6.1968 was in respect of 3-7-0 bigha land while total area of the land of khata 443 was 24-11-10 bigha. In which 7/144 share of Smt. Bashiran + 1/16 share Smt. Nania would be 1/9 share, which was less than 3-7-0 bigha as such excess 1/16 share would go to Ali Hasan and Ali Sher. This order has again become final.

5. After order dated 16.10.1980, proceedings for reservation of the chak was started. As admittedly land of Smt. Bashiran was recorded in the name of the petitioner, Assistant Consolidation Officer prepared a reference for carving out the area of disputed land from the chak of the petitioner. Deputy Director of Consolidation, in his order dated 4.12.1984 noted that the petitioner had filed his objection to the effect that in stead of taking land from abadi side from his chak, it would be taken from opposite side of abadi. Thereafter, after hearing the parties, Deputy Director of Consolidation by order dated 4.12.1984, rejected the objection of the petitioner and accepted reference. This order was challenged by Ahmad Hussain and Rahmat Hussain, other co-sharers in Writ-B No. 30688 of 1990 before this Court which was dismissed by judgment dated 18.2.2002.

6. Now the petitioner filed an application dated 19.2.2014 for recall of the order dated 4.12.1984, along with delay condonation application. In the affidavit filed in support of this application, the petitioner has stated that chak was carved out in the name of Smt. Bashiran, who sold the land in dispute to him through registered sale-deed in the year 1972 and his name was mutated by Assistant Consolidation Officer by order dated 19.1.1973 passed in Case No. 1559 (under section 12 of the Act). Thereafter, CH Form 45 was prepared in his name. This order was not challenged by any one. Although, the name of the petitioner was recorded, since 19.1.1973 but he was not impleaded as party, before Consolidation Officer, Settlement Officer Consolidation and Deputy Director of Consolidation either in main title proceeding or in reference and orders were passed ex-parte. The petitioner was bona fide transferee for valuable consideration without notice. In any case, Ali Hasan and Ali Sher would not get excess share of Smt. Nania as their revision in this respect was dismissed by order of Deputy Director of Consolidation dated 6.2.1975, which was binding upon them and operate as res-judicata. Ex-parte order dated 4.12.1984 was liable to be recalled.

7. Recall application was heard by Deputy Director of Consolidation, who by impugned order dated 3.4.2014, held that in the record of Reference Case No. 1872 decided on 16.10.1980 and Reference Case No. 1278 decided on 4.12.1984, vakalatnama and application of the petitioner were on record and the petitioner had failed to prove that his signatures on these papers were forged. The name of the petitioner was recorded by making forgery in consolidation record over the land in dispute and he had no right over the land of Smt. Bashiran. On these findings the recall application was rejected. Hence this writ petition has been filed.

8. The Counsel for the petitioner submitted that the petitioner has purchased the property in dispute from Smt. Bashiran in the year 1972 and her name was mutated by the order of ACO dated 19.1.1973. The order was duly incorporated in CH Form 23 and on its basis, CH Form 45 was prepared in the name of the petitioner. The petitioner was bona fide transferee for valuable consideration and was in possession over the land in dispute, but he was not impleaded as a party

before the CO, SOC and DDC, neither in title proceeding, nor in reference. The order has been secured ex parte against the petitioner and by the subsequent order dated 4.12.1984, the land has been taken from the khata of the petitioner. He further submits that Ali Hasan and Ali Sher have lost their title in respect of their claim of 1/16 share, belonging to Smt. Nania. The judgment of DDC dated 6.2.1975 passed in Revision No. 32 (Ali Hasan v. Smt. Bashiran) is final and operates as res judicata against them. In this judgment, the DDC has clearly held that Ali Hasan and Ali Sher will not be entitled for 1/16 share of Smt. Nania. In spite of the judgment dated 6.2.1975, they have been able to secure a collusive and fictitious order of DDC dated 16.10.1980, by which 1/16 share of Smt. Nania was given to them. At that time, the entire land, including the share of Smt. Bashiran and Smt. Nania were sold to the petitioner and his name was mutated, as such, he was necessary party for being heard, but neither notice was issued to him, nor he was given any opportunity of hearing.

9. The DDC has recorded a vague finding that vakalatnama of the petitioner as well as application filed by the petitioner was on record. The petitioner has denied filing of any such vakalatnama or application by him. In the absence of any expert evidence, the finding that vakalatnama has been filed by the petitioner, was incorrect. In the circumstances, the DDC ought to have obtained expert report and decided the controversy, but he straightway recorded a finding, ignoring the denial of the petitioner. The order was ex parte and was liable to be recalled.

10. I have considered the arguments of Counsel for the parties and examined the record.

11. DDC in the order dated 3.4.2014 has recorded a finding that the name of the petitioner was recorded over the land in dispute by making forgery in the consolidation records. The petitioner has not challenged that finding. Although it is alleged that the land in dispute was purchased by the petitioner in the year 1972, but neither date of sale-deed, nor the original sale-deed has been filed to prove that he has purchased the land in dispute and the finding of fact recorded by the DDC that the name of the petitioner has been recorded by fabricating the consolidation records, could not be rebutted by the petitioner.

12. DDC has further found that at the time of passing the order dated 4.12.1984, the petitioner put his appearance and raised objection that instead of taking the land from the abadi side from his holding, it should be taken from the opposite side. In the order dated 3.4.2014, again the DDC found that application and vakalatnama filed in Case No. 1278 fully tallied with the admitted signature of the petitioner in his restoration application and affidavit. Under section 73 of the Evidence Act, the Court is competent to compare the signatures and after comparing the signatures, the Court has recorded a finding which cannot be said to be perverse. Although the petitioner has denied that no notice was served upon him and the order was ex parte, but the burden was upon him to prove that the application and Vakalatnama filed in Reference Case No. 1278 was not of

him. In the absence of any evidence, the finding of fact recorded by the DDC in this respect cannot be set aside by this Court.

13. Further, the petitioner is a pendente lite transferee and his right is governed under section 52 of Transfer of Property Act. Although the DDC by order dated 6.2.1975 dismissed Revision No. 31 filed by Smt. Bashiran and Revision No. 32 filed by Ali Hasan and Ali Sher both, and held that both of them were not entitled for 1/16 share of Smt. Nania, but subsequently, a reference has been made by the SOC that after adjusting the share of all the co-sharers, 1/16 share remains in excess, then the matter was again heard by the DDC in the reference proceeding in Reference Case No. 1872 and the Assistant Director of Consolidation by subsequent order dated 16.10.1980 held that Smt. Bashiran had executed the sale-deed dated 24.6.1968 in respect of an area of 3-7-0 bigha in favour of Ali Hasan and Ali Sher, as such, this sale-deed was in excess of the land falling the share of Smt. Bashiran and Smt. Nania. Therefore, the Principle of Estoppel has been applied against Smt. Bashiran and it has been held that excess share will go to Ali Hasan and Ali Sher, as other co-sharers have not raised any claim in this respect. The judgment dated 16.10.1980 was against Smt. Bashiran (the predecessor of the petitioner), as such, in view of section 52 of Transfer of Property Act, the petitioner is bound by this judgment and this judgment has not been challenged by the petitioner in any way.

14. In pursuance of the order dated 16.10.1980, the reservation of chak as well as delivery of possession was again undertaken and a reference was sent by the SOC through his report dated 20.12.1983 and the case was registered as Reference Case No. 1278 before the Assistant Director of Consolidation, in which appearance of the petitioner was noted and an order was passed on 4.12.1984. The order dated 4.12.1984 is merely a consequential order and has been passed in compliance of the previous orders dated 6.2.1972 and 16.10.1980. The petitioner being a pendente lite transferee, is bound by the aforesaid orders. In view of the aforesaid discussions, I do not find any illegality in the order dated 4.12.1984. The writ petition has no merit and is dismissed.