
(1984) 10 AHC CK 0018
In the Allahabad High Court
Case No : Writ Petition No. 541 of 1979

Girdhari Lal and Others

APPELLANT

Vs

D.D.C. and others

RESPONDENT

Date of Decision : 09-10-1984

Acts Referred:

Evidence Act, 1872 — Section 17, 18

Citation : (1984) 10 AHC CK 0018

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

Final Decision : Dismissed

Judgement

K. N. Misra, J.—This writ petition is directed against the impugned judgment and order dated 24111978 passed by the Deputy Director of Consolidation in revision arising out of proceedings under Section 9A (2) of the U. P. Consolidation of Holdings Act. Briefly stated, the facts of the case are as follows :

2. The dispute relates to khata No. 72 which was recorded in the basic year khatauni in the name of petitioners and opposite party No. 6 Ram Din. Opposite parties No. 2 to 5, namely, Govindey, Nanku, Raja Ram and Mendhai filed objection under Section 9A (2) of the Act claiming cotenancy rights in the said holdings. There was no written objection, but the dispute was got registered with regard to cotenancy rights by them verbally. Opposite party No. 5 Mendhai died prior to the filing of this writ petition and his name was ordered to be deleted from the array of opposite parties vide order dated 2711982. The deceased opposite party No. 5, Mendhai had asserted that some of the plots were of the time of common ancestor Alpi and the remaining were obtained from the joint family funds and the name of Mangali was recorded in the representative capacity. The other objectors had contended that the holding in dispute is joint family property and the name of Maddhu and Ram Charan were entered in representative capacity. Maddhu was the eldest son of Mangali. The objectors also asserted to be in possession over the land in dispute. Since the dispute was raised orally, the Consolidation Officer recorded statement of Ramdin, opposite

party No. 6 and also of Binda Din, petitioner No. 3, before framing the issues. After taking evidence of the parties, the Consolidation Officer, vide order dated 26111966, allowed the objection of the objectors, holding them to be cotenure holders in the disputed holding. The petitioner Girdhari and others filed an appeal before the Settlement Officer, Consolidation. The other recorded tenant Ramdin, the opposite party No. 6, had not filed any appeal against said order passed by the Consolidation Officer. The Settlement Officer, Consolidation dismissed the appeal, vide his order dated 1471967. The petitioners, thereupon, preferred revision before the Deputy Director of Consolidation which was allowed vide order dated 30121969. Aggrieved by this order, opposite parties No. 2 to 5 had filed writ petition No. 264 of 1970 which was heard and allowed by this Court vide order dated 3131976 (Annexure No. 4). The case was remanded to the Deputy Director of Consolidation to dispose it of according to law and in the light of observations made in the order. After remand of the case, the Deputy Director of Consolidation, vide order dated 24111978, dismissed the revision filed by the petitioners and held opposite parties No. 2 to 5 to be cotenure holders along with the petitioners and Ramdin, opposite party No. 6. The petitioners have challenged this order passed by the Deputy Director of Consolidation, in this writ petition.

3. Learned counsel for the petitioner urged that the Deputy Director of Consolidation has erred in placing reliance upon the statement of Ramdin and Bindadin. His contention was that cotenancy rights cannot be recognised merely on the basis of admission of a cotenant. Learned counsel further urged that the petitioners could not be bound by the admission of Ramdin and Bindadin and the Deputy Director of Consolidation erred in upholding the claim of the said contesting opposite parties regarding their claim of cotenancy rights. In support of his contention, learned counsel placed reliance upon a decision of Lahore High Court in *Saidu Vs. Mehr Dad and others* (AIR 1927 Lahore 356) in which the facts were that "A" sued "B" and "C" for possession of land on the ground that the land was sold to him by "B" but "C" was resisting possession. "B" admitted sale of land to "A" in his written statement and "C" denied "A"s title and joined issue on the point No evidence was led by "A" to prove the sale. On these facts it was held that "B"s admission was not sufficient proof of the sale and "A" must fail. Referring to this decision, learned counsel urged that in the present case the admission of Ramdin and Bindadin could not be taken to establish the claim of cotenancy rights which was set up by opposite parties No. 2 to 5. I am unable to accept this contention and the said decision does not support the aforesaid contention of the learned counsel for the petitioners.

4. In the aforesaid case, "A" had sued "B" and "C" for possession of land on the ground that the land was sold to him by "C". "C" had not joined in the sale deed. He was, thus, denying the title of the plaintiff which the plaintiff had claimed on the basis of alleged sale deed executed by "B" in his favour. In these circumstances, the plaintiff had to prove the sale deed. Since the plaintiff had not proved the sale deed, and, as such, the suit was dismissed and it was observed

that B's admission in the written statement regarding execution of sale deed would not prove the sale deed, which was denied by the contesting defendants. Since the contesting defendants had denied the title of "A", which he had claimed on the basis of sale deed, and, as such, the sale deed was required to be proved by the plaintiff and merely on the basis of admission of "B" with regard to the execution of the sale deed in the written statement could not legally prove the sale deed. Thus, the said decision is of no assistance to the petitioner in the present case.

5. It is well settled that admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved to be erroneous (See *Narayan Bhagwantrao Gosavi Balajiwale Vs. Gopal Vinayak Gosavi and others* AIR 1960 SC 100).

6. This court while remanding the case to the Deputy Director of Consolidation had observed that the statement of Ramdin and Binda Dm, who had admitted the claim of the contesting opposite parties, should be considered on merits by the Deputy Director of Consolidation. It was also observed that the question of possession be considered and from the statement of Govindey and Nanku the observation of the Deputy Director of Consolidation was not borne out. The Deputy Director of Consolidation has referred to the statement of Ramdin and Binda Din who were recorded cotenants. Ramdin had very clearly admitted the pedigree. The Deputy Director of Consolidation has observed that the pedigree setup by the opposite parties stands established. It has further been, observed that in his statement Ramdin has admitted the share of the contesting opposite parties in the holding in dispute. Ram Din has not entered in the witness box to withdraw that statement. The said statement has, therefore, not been withdrawn by Ramdin, who is the recorded cotenure holder. Learned counsel urged that the statement of cotenure holder would not be binding on the other cotenant with regard to the title which he has admitted of the contesting opposite parties. I am unable to accept this contention.

7. It appears to be fairly well settled that an admission about a relevant fact by any one of persons having joint interest in the property in dispute would be an admission against all coowners whether they be jointly sued or not, provided it fulfils the triple test; firstly, it should be an admission about the disputed property, secondly, it should be the admission of the person jointly interested in the property as coowner thereof and the admission runs against his own interest in the property, and lastly, it should not have been collusively made in order to defraud or designed to deprive the coowners, of the property in dispute, wholly or partially. Thus, if the admission of coowner fulfils these tests and is genuine and not shown to be mala fide, it would not only bind the maker but also the coowners. And it can be used as an admissible substantial evidence against the maker and his coowners as well and also against all those who claim under them as their heirs, successors and assigns. This view finds support from a number of decisions (See *kowsulliah Sundari Dasi and another Vs. Mukta Sundari Dasi and*

another (ILR (11) Calcutta, 588; Kanta Mohan Mallik and others Vs. Makhan Santra, 39 Calcutta Weekly Notes 277; Mt. Ramihari Kuer and others Vs. Devanand Singh and others, AIR (33) 1946 Patna 278; and Bhura and another Vs. Bahadur Singh and another, AIR 1976 Rajasthan 249).

8. It is equally well settled that an admission is to be presumed to be true unless the contrary is shown. (See Nathoo Lal Vs. Durga Prasad, AIR 1954 SC 355). (In Thiru John Vs. Returning Officer (AIR 1977 Supreme Court 1724) it was observed by Hon''ble Supreme Court that :

?It is well settled that a party''s admission as defined in Sees. 17 to 20, fulfilling the requirements of S. 21, Evidence Act, is substantive evidence proprio vigors. An admission, if clearly and unequivocally made is the best evidence against the party making it and though not conclusive, shifts the onus on to the maker on the principle that what a party himself admits to be true may reasonably be presumed to so and until the presumption is rebutted the fact admitted must be taken to be established.?

9. In this view of the matter I find that the admission of Ramdin and Binda Din have been rightly relied upon as an admissible substantive evidence against them as well as against the petitioners and it has been rightly taken to establish the claim of the contesting opposite parties as it could not be shown to be erroneous and untrue.

10. It is not disputed that Ramdin and Binda Din are members of the same family and their common ancestor was Alpi. The Deputy Director of Consolidation has recorded a finding that the contesting opposite parties have proved their possession and he has referred to rent receipts and irrigation slips and receipts regarding payment of irrigation dues, which were filed by the contesting opposite parties. The statement of Ramdin wherein he has admitted one third share of Maddhu is certainly against his own interest because if that admission had not been made, he would have been entitled to half share in the holding in dispute. Learned counsel for the petitioner could not point out the reason as to why Ramdin has given the said statement against his own interest. The petitioners too claim cotenancy rights along with Ram Din and, as such, his statement is very material for the purpose of determining the title of the parties and it deserved to be considered as an admissible substantive piece of evidence.

11. It is well settled that cotenancy rights can also be established by rule of estoppel. Since both the parties belong to the same family, and as such, the statement of Ramdin wherein he had admitted the claim of contesting opposite parties cannot be treated to be erroneous especially when the contesting opposite parties have been able to establish their possession over the land in dispute. In this view of the matter I do not find that any error has been committed by the Deputy Director of Consolidation in placing reliance upon the statement of Ramdin for upholding the claim of the contesting opposite parties.

12. Learned counsel had further urged that the said statement of Ramdin was

recorded by the Consolidation Officer at the time of framing issues, and, as such, it could not be considered to be an admission with regard to the title of the opposite parties. I am unable to agree with this contention as well.

13. It is not disputed that Ramdin and Binda Din were examined by the Consolidation Officer and the genuineness and veracity of their statement has not been challenged. The facts admitted by them therefore, could very well be considered to be true while determining the title of the parties with regard to their claim of cotenancy rights, which was admitted by Ramdin. Thus, the impugned order passed by the Deputy Director of Consolidation cannot be said to suffer from any error of fact, law or jurisdiction so as to call for interference by this court in exercise of powers under Article 226 of the Constitution.

14. In the result, the writ petition, being devoid of merits is accordingly dismissed.

15. No order as to costs.

(Petition dismissed)