
(1997) 06 AHC CK 0001
In the Allahabad High Court
Case No : C.M.W.P. No. 18916 of 1989

Gorakhnath

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 02-06-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 109B, 109B(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 175

Citation : (1997) RD 496

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : S.K. Mishra and V.K. Chaudhari, for the Appellant; H. S. Nigam, Dhan Prakash, Sudhir Aganwal and S.C., for the Respondent

Judgement

S.P. Srivastava, J.—Being aggrieved by the order passed by the Deputy Director of Consolidation in a revision filed by the Petitioner u/s 48 of the U.P. Consolidation of Holdings Act whereunder setting aside the order of remand passed in the appeal filed by the Petitioner the revising authority had itself considered the evidence in the materials on the record and restored the order passed by the Consolidation Officer rejecting the objections of the Petitioner claiming to be the only successor-in-interest of Nandrani, the deceased tenure-holder in respect of her Bhumidhari rights in the land in dispute and had upheld the objection of Smt. Shiv Pyari in this connection and ordered for the recording of her name as the heir of deceased tenure-holder, he has now approached this Court seeking redress praying for the quashing of the impugned order.

2. I have heard Sri V. K. S. Chaudhary, learned Senior Advocate, and Sri H. S. Nigam learned Counsel representing the contesting Respondent.

3. The facts shorn of details and necessary for the disposal of the case lie in a narrow compass. In the basic year, the land in dispute stood recorded in the

name of Smt. Shiv Pyari and Smt. Nandrani showing them to be the Bhumidhars thereof. During the consolidation Partal, Smt. Nandrani was found to be dead. Two objections were filed before the Consolidation Officer claiming to be the heir and legal representative of deceased Smt. Nandrani. One objection was filed by Smt. Shiv Pyari claiming to be the daughter of the brother of the husband of deceased Smt. Nandrani. She also claimed that Smt. Nandrani had executed a will in her favour on 26.6.1983. Second objection was filed by the Petitioner claiming to be the successor-in-interest of Smt. Nandrani on the strength of the will said to have been executed by her in his favour on 29.6.1983. A perusal of the order of the Consolidation Officer indicates that although Smt. Shiv Pyari has also put forward a claim on the basis of the will" but that had not been pressed by her and even the "will" relied upon by her had not been produced. The Consolidation Officer, therefore, considered the claim in regard to her being successor of deceased Smt. Nandrani on the basis of her being a co-tenure-holder and entitled to the benefits of Section 175 of the U.P. Zamindari Abolition and Land Reforms Act. The will set up by the Petitioner in support of his claim was found to be fictitious and unreliable. His objection was, therefore, rejected.

4. On an appeal filed by the Petitioner, the Settlement Officer (Consolidation) without going into the merits remanded the case for being decided on merits afresh with the direction that the case relating to village Abhaipur and village Ashiqpur in regard to the question of succession of Smt. Nandrani who had her holdings in both the villages and similar objections had been filed be consolidated.

5. The Deputy Director of Consolidation in the impugned order has observed that since the holdings situate in the two different villages were different, it was not necessary that the objections in regard to the revenue entries In the record of rights relating to the holding situate in the two villages be heard together as the consolidation proceedings in both the villages were at different stages and, therefore, both the cases could be heard independently. The revising authority, however, further observed that the conclusions reached by the Consolidation Officer in respect of the will, set up by the Petitioner were correct and endorsed the finding of the Consolidation Officer holding the said will to be farzi and unreliable. In the aforesaid view of the matter holding Smt. Shiv Pyari to be entitled to the benefit of Section 175 of the U.P. Zamindari Abolition and Land Reforms Act. she was found to be the successor-in-interest of Smt. Nandrani and the order of the Consolidation Officer was restored.

6. The learned Counsel for the Petitioner has strenuously urged that the appellate authority in the present case had not gone into the merits of the evidence and had remanded the case for being decided afresh consolidating the cases of both the villages. In the circumstances, the Deputy Director of Consolidation while exercising the jurisdiction envisaged u/s 48 of the U.P. Consolidation of Holdings Act could not assume the role of the appellate authority and appraise the evidence on record in order to arrive at a finding on a question of fact. It has further been urged that a perusal of the impugned order passed by

the revising authority does not indicate that he has even reappraised the evidence as it has been simply observed that the revising authority agreed with the conclusion reached by the Consolidation Officer which were correct. Learned Counsel for the Petitioner has urged that this cannot be taken to be an appraisal of evidence as required to be done by the appellate authority. The contention is that the revising authority has In fact exceeded the jurisdiction vested in him while passing the impugned order.

7. The learned Counsel for the Petitioner has also urged that Rule 109B of the Rules framed under the U.P. Consolidation of Holdings Act specifically provides that where there are more than one case or proceeding involving substantially the same question for determination and based on the same cause of action are pending before two or more consolidation authorities, they shall upon an order passed on an application made by any party to, or sua motu by the authority to which the authorities, before whom cases or proceedings are pending or all subordinate, be consolidated before one authority and decided by a single judgment. The contention is that the appellate authority had exercised suo motu the Jurisdiction envisaged under Rule 109B of the Rules indicated above and simply because the two cases in respect of holdings in the two villages were at different stages by the date when the appellate order had been passed could not be a ground to refuse the consolidation of both the cases as held by the Deputy Director of Consolidation.

8. So far as the question in regard to the consolidation of two cases in respect of holdings recorded in the name of Smt. Nandrani in the two villages Abhaipur and Ashiqpur, is concerned, the order of the appellate authority does not indicate the difference in the stages of the two cases. There may be a situation were in one case the evidence has been closed and in the other the evidence is yet to start. The pleadings in the two cases may be entirely different, though the cause of action may be same. It all depends on the facts and circumstances of each case. It seems to me that the provision contemplated under Rule 109B of the Rules framed under the Act is only to avoid duplication and provide convenience to the parties. If the cause of action is the same the pleas raised by the contesting parties are identical giving rise to identical issues and the evidence is yet to be led, in that event on the application of any of the parties, both the cases should be consolidated and decided together as it will ensure avoiding contradictory findings. There may be a case which has reached the stage of arguments after the evidence is closed and the other case may be just in the initial stages where evidence is yet to be led. In such a case, the consolidation of both the cases will bound to result in the delay in the disposal of the cases which has reached the stage where evidence has already been led and only hearing is to be done. In such a circumstance, the decision arrived at earlier will be binding In the other cases. The consolidation, therefore, has to be sought for, as envisaged under the aforesaid provision, at the earliest. It is In these circumstances that the Rule 109B specifically provides that the consolidation shall be done upon an order passed on an application made by any party to the case. It can be done suo

motu also but the discretion in the matter has to be exercised after taking into account the factors indicated hereinabove.

9. It may further be noticed that Rule 109B (2) of the Rules provides that the consolidation authority may consolidate suo motu cases or proceedings pending before it if it is satisfied for reasons to be recorded that such a course is necessary for proper and expeditious disposal of the cases or proceedings and that it would not prejudice the interest of any party to the cases or the proceeding. In the present case, what I find is that neither the Assistant Settlement Officer of Consolidation nor the Deputy Director of Consolidation has taken into consideration the Implications arising under Rule 109B of the U.P. Consolidation of Holdings Rules framed under the U.P. Consolidation of Holdings Act.

10. So far as the question in regard to the impugned order passed by the Deputy Director of Consolidation being in excess of the jurisdiction is concerned, it may be noticed that the Implications arising under a provision which stands paramateria with Section 48 of the U.P. Consolidation of Holdings Act came up for consideration before the Apex Court in the case of Bhoolchand and Another Vs. Kay Pee Cee Investments and Another, . In Its aforesaid decision, the Apex Court pointed out that the revisional power envisaged under the provisions referred to above cannot be equated with the appellate power and must fall short of the appellate powers of interference with a finding of fact where the finding on a question of fact depends upon the credibility of witnesses there being a conflict of oral evidence of the parties.

11. In its another decision in the case of Ram Dular v. Deputy Director of Consolidation, Jaunpur 1994 RD 290 (SC), the Apex Court had observed, while interpreting, the scope of Section 48 of the U.P. Consolidation of Holdings Act that for considering the correctness, legality or propriety of the order or correctness of the proceedings or irregularity thereof, the revising authority could not assume to itself the jurisdiction of the original authority as a fact finding authority by appreciating itself those facts de novo. It was further observed that the revising authority has to consider whether the legally admissible evidence had not been considered by the authority in recording a finding of fact or law or the conclusion reached by it is based on no evidence or any patent Illegality or Impropropriety had been committed or there was any procedural irregularity going to the root of the matter had been conducted in recording the finding.

12. Taking into consideration the scheme underlying the U.P. Consolidation of Holdings Act and the observations made by the Apex Court referred to herein before, there can be no escape from the conclusion that the jurisdiction with which the Deputy Director of Consolidation stands vested under the provisions contained in Section 48 of the aforesaid Act cannot be deemed to be such an appellate power as is vested in the appellate authority envisaged under the Act. The revisional power contemplated u/s 48 of the U.P. Consolidation of Holdings Act, therefore, must fall short of the appellate power of interference with a

finding of fact where the finding of fact depends on the credibility of the witnesses there being conflict of oral evidence led by the parties.

13. In its decision in the case of Ram Avtar and others Vs. Ram Dhani and others, , the Apex Court had made observations to the effect that "this Court has repeatedly pointed out that howsoever, wide the power under statutory provision may be in contrast to Section 115 of the CPC still while exercising that power the authority concerned cannot act as court of appeal so as to re-appreciate the evidence on record for recording findings on questions of fact". It was further observed that the High Court should have set aside the order of the Deputy Director of Consolidation on that ground alone.

14. Considering the facts and circumstances indicated hereinabove, sufficient ground has been made out for interference of this Court.

15. In the result the writ petition succeeds in part. The order passed by the Deputy Director of Consolidation dated 29.7.89, a true copy of which has been filed as Annexure 3 to the writ petition is quashed with the direction that the appeal No. 485 disposed of vide the order of the Assistant Settlement Officer (Consolidation) dated 9.9.1987 shall stand restored to its original number and shall be decided finally by the appellate authority in accordance with the law within a period not later than four months from the date of production of a certified copy of this order before the said authority.

16. The parties, shall, however, bear their own costs.