
(2016) 12 AHC CK 0027
In the Allahabad High Court
Case No : Writ B. No. 58750 of 2015

Guddi	Vs	APPELLANT
Dy. Director of Consolidation Pilibhit		RESPONDENT

Date of Decision : 02-12-2016

Acts Referred:

Citation : (2017) 121 ALR 598 : (2017) 134 RD 391

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Sanjeev Kumar Tyagi and B.N. Upadhyay, Advocates, for the Petitioners; C.S.C., Manish Kumar Rajvanshi and Manoj Kumar Rajvanshi, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Anjani Kumar Mishra, J. - Heard B. N. Upadhyay, learned counsel for the petitioners and Sri N. C. Rajvanshi, Senior Advocate for the respondents.

2. The instant writ petition arises out of title proceedings, under the Consolidation of Holdings Act and seeks quashing of the order dated 05.10.2015 passed by the Deputy Director of Consolidation in Revision No.124. Although, the order dated 09.10.1967 passed by the Consolidation Officer is also under challenge, however, this Court is of the view that this order has wrongly been, challenged.

3. The dispute in the writ petition pertains to plot no.38/1, area 1 Bigha 8 Biswa situated in village Noor Nagar, Pargana, Tehsil and District Meerut.

4. It appears that an entry was made in the basic year Khatauni and CH Form-11, whereby the name of one Deewan Singh son of Nanhey was recorded over the land, after deleting the name of Saroop Singh son of Buddhan. This entry was made on the basis of an order passed by the Consolidation Officer on 09.10.1967, in case No.2822.

5. A time barred appeal was filed against this order along with an application for condonation of delay.

6. The Settlement Officer Consolidation, by order dated 11.04.2011, on the basis of a report obtained from the record room that the record of Case No.2822 had not been consigned nor the respondents could produce copy of the order dated 09.10.1967, found the entry made in the basic year Khatauni and CH Form-11 to be a forged entry. It was therefore, ordered to be deleted.

7. The contesting respondents filed a revision, which was allowed on 30.12.2011 and the appellate order was set aside.

8. Aggrieved, petitioners preferred writ petition No.7947 of 2012, Smt. Guddi and others v. Deputy Director of Consolidation and others. This writ petition was allowed, the order passed by the Deputy Director of Consolidation on 30.11.2012 was set aside and the matter was remanded back for a fresh decision. The operative portion of the order of the High Court dated 06.04.2015 is extracted below -

"In the results, the writ petition succeeds and is allowed. The order of Deputy Director of Consolidation dated 30.12.2011 is set aside. The matter is remanded to the Deputy Director of Consolidation who shall verify the genuineness of the case after summoning the misalband register as well as goswara register and give reasonable opportunity to the parties to adduce their evidence and decide the case afresh in accordance with law within a period of three months from the date of producing a certified copy of this order."

9. Upon remand, the Deputy Director of Consolidation has again allowed the revision, by his order dated 05.10.2015. It is this order, which is impugned in this writ petition.

10. The order of the Consolidation Officer dated 09.10.1967 was in favour of the respondents. This order was set aside by the appellate Court on appeal, filed by the petitioners. The appellate order has been reversed by the revisional Court. Upon the appeal being allowed, the order of the Consolidation Officer merged in the order of the appellate Court, which was passed in favour of the petitioners.

11. Under the circumstances, therefore, this Court is of the opinion that the order of the Consolidation Officer dated 09.10.1967 is not required to be challenged, as has been observed in the earlier part of this judgement. The Court is therefore, required to consider the illegality or otherwise of the impugned revisional order only.

12. The contention of counsel for the petitioner is that the matter had been remanded back to the Deputy Director of Consolidation for deciding the revision afresh after verifying as to whether Case No.2822 had ever been filed or not. This was to be done by summoning and examining the misalband register as also the goswara register.

13. It is submitted that upon remand an altogether new plea that Saroop Singh had executed a sale deed in favour of Deewan Singh son of Nanhey on 11.06.1962 was set up.

14. Despite, the Deputy Director of Consolidation having noticed, that this sale deed had never been produced before any Court, nor any claim had been set up on its basis earlier, he has wrongly and illegally, accepted the same. It was not open for the respondents to raise an altogether new plea, upon remand by the High Court. The case on remand was necessarily required to be decided only on the basis of the directions contained in the order of remand and a fresh and altogether new plea could neither be raised nor considered.

15. Sri N.C. Rajvanshi, Senior Counsel had supported the impugned order. He has submitted that the directions of the High Court were duly complied with and the matter has been rightly decided since it was found that the record of Case No.2822 had been wedded out and the goswara register shows that a case bearing this number is entered therein.

16. He has further submitted that the Deputy Director of Consolidation has rightly held that though this case does not find mention in the misalband register, it is possible that there existed another misalband register and has therefore, rightly accepted the contention of the respondents.

17. He also submits that the impugned order calls for no interference as the petitioners have ceased to have any concern with the land in question. The orders passed against Saroop Singh were never challenged by him during his life time. It is therefore, not open to the petitioners, who are admittedly the heirs of Saroop Singh and claim title to the land in question through Saroop Singh on the ground that it was ancestral property, cannot be permitted to raise their claim and the same has rightly been discarded by the revisional order.

18. I have considered the submissions made by counsel for the parties and have perused the record.

19. The Deputy Director of Consolidation has allowed the revision on the reasoning that a certified copy of the sale deed dated 11.06.1962, was produced. Even though admittedly it was never produced earlier, nor any claim on its basis raised, yet the certified copy cannot be ignored.

20. He has further opined that the order of the Consolidation Officer appears to have been rightly passed because the plot number and the area of the plot in dispute and that mentioned in the sale deed are the same and therefore, it appears that the mutation order was rightly passed by the Consolidation Officer.

21. As regards, the aforesaid reasoning, the contention of the counsel for the petitioners in the Court below was that the Case No.2822 does not find the name of Deewan Singh and is a case whose cause title reads as "State v. Saroop Singh". This relevant fact was ignored and discarded on surmises and conjectures.

22. The revisional Court has also glossed over the absence of any entry regarding case No.2822 in the misalband register on the reasoning that it is possible, that some other misalband register also be existed. Since the goswara register contains an entry regarding case No.2822, merely because the misalband register does not contain its reference, the goswara entry cannot be ignored.

23. The case of the petitioners is that the entry in favour of the respondent is fraudulent. A categorical finding in this regard, was recorded by the appellate Court. Even the High Court, while remanding the matter for a fresh decision, had clearly directed that the misalband register as also the goswara register be summoned and examined.

24. Although, these registers have been summoned and examined, the finding returned upon the examination of these registers does not appear to be justified. The impugned order categorically observes that Case No.2822, decided on 09.10.1967 is mentioned in the Goswara register, as State v. Saroop Singh. No cogent reason has been given in the impugned order as to why the contention of counsel for the petitioners that Deewan Singh was not named as a party in this case, is not liable to be accepted.

25. It is not in dispute that the revenue entry was in favour of Saroop Singh. The objection therefore, must necessarily have been filed by Deewan Singh. The array of the parties, therefore should read as Deewan Singh v. Saroop Singh. The name of Deewan Singh is not mentioned. It therefore, cannot be accepted that this order was passed at the instance of Deewan Singh, the objector.

26. The Deputy Director of Consolidation has further observed that there is no mention of Case No.2822 in the misalband register. This crucial fact has been glossed over by observing that there might be another misalband register, in existence.

27. In my considered opinion, this does not amount to a finding but is mere speculation or surmise.

28. A case cannot be decided on the basis of surmises and conjectures. This Court is therefore constrained to hold that the reasoning given by the Deputy Director of Consolidation, cannot be accepted and that the respondents have failed to prove that the case No.2822 allegedly filed by Deewan Singh was ever filed and any order was passed thereon. In absence of such a finding, the categorical finding of the fact, recorded by the Settlement Officer Consolidation, that the revenue entry made allegedly on the basis of this order, was forged and fraudulent, cannot be interfered with.

29. I also find substance in the submission of counsel for the petitioner that an altogether new plea has been raised by the respondents at the revisional stage upon remand by the High Court.

30. The Deputy Director of Consolidation has observed that the registered sale

deed, said to have been executed by Saroop Singh in favour of Deewan Singh was never produced before any forum earlier. This sale deed was never set up before the appellate Court, revisional Court and the High Court in the earlier round of litigation. Moreover, I do not find any cogent explanation as to why, in case a registered sale deed executed in favour of Deewan Singh was in existence right from 1962, the same was never set up or filed earlier.

31. From the perusal of the record, it appears that the claim of Deewan Singh was based on a Class IX entry in his favour. He was therefore, claiming on the ground of adverse possession. In case, he had obtained a sale deed of the same land over which he claimed to be in adverse possession, in 1962, there appears no justification, why his claim was not raised earlier.

32. It has also not been held that this document, the registered sale deed by Saroop Singh in favour of Deewan Singh, has been produced from the proper custody.

33. It has come on record that Deewan Singh executed an agreement to sale in favour of Shanti Devi but did not execute any sale deed forcing Shanti to file a suit for specific performance of contract to sale, which was decreed and that the sale deed was executed in favour of Shanti Devi.

34. In a normal transaction, a purchaser always obtains the title deed in favour of the vendor. There is no explanation why this was not done. The Deputy Director of Consolidation has again glossed over this aspect of the matter, relying upon surmises, when he states that since the sale deed in favour of Shanti Devi was executed on the basis of the decree in a suit for specific performance, it is possible that the registered sale deed in favour of Deewan Singh was never handed over to purchaser, decree holder. This reasoning which, as observed above, is a mere surmise of the revisional Court, also cannot be accepted.

35. Even otherwise, a categorical and specific finding of fraud, recorded in the appellate Court order, has not been specifically reversed by the Revisional Court and the submission of the counsel for the petitioner, in this regard has substance.

36. The case of the petitioner is one of fraud, which was specifically accepted by the appellate Court. This Court also fails to understand as to how the Deputy Director of Consolidation, while passing the impugned order, reached a conclusion that Saroop was aware of the order passed by the Consolidation Officer.

37. This Court finds no substance in the reasoning given in the impugned order that since Saroop never challenged the order during his life time, his heirs cannot challenge it now.

38. For the same reason, reliance placed by counsel for the respondent upon the judgment in the case of Sunil Kumar and another v. Deputy Director of Consolidation, Ghazipur and others, 2007 (102) RD 248, is miss placed. This case pertains to a compromise order and holds that a person, who enters into a

compromise and chooses not to challenge it, during his life time, his heirs are thereafter left with no right to challenge the same. In my considered opinion, this case has no application in the facts and circumstances of the instant case especially since this Court finds no material on record, whereby it can be held that Saroop Singh was aware of the order passed by the Consolidation Officer.

39. Besides, it is not established on record that Case No.2822 was a case between Deewan Singh and Saroop Singh. The evidence in this regard is to the contrary. Case No.2822 was a case between the State and Saroop Singh. The name of Deewan Singh, the alleged objector, does not find mention in the array of the parties and till such time some evidence was available on record to show that Deewan Singh was also a party thereto, it was not possible to hold against the petitioners.

40. As already observed, the impugned judgment has been passed on surmises and conjectures, ignoring the evidence on record which indicated that Case No.2822 was not between Saroop Singh and Deewan Singh.

41. In view of the aforesaid discussion and since this Court finds that the impugned order is passed on surmises and conjectures and ignores evidence which supported the case of the petitioners, the same cannot be sustained and is liable to be set aside.

42. Accordingly, this writ petition succeeds and is allowed. The impugned order dated 05.10.2015 passed by the Deputy Director of Consolidation is hereby set aside and the order passed by the appellate Court on 11.04.2011 is affirmed.

43. There shall be no order as to costs.