
(1976) 08 AHC CK 0030
In the Allahabad High Court
Case No : Writ Petition No. 12 of 1971

Hans Gopal and another

APPELLANT

Vs

Suresh Chandra Sahai and others

RESPONDENT

Date of Decision : 08-08-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 14(1), 209

Citation : (1976) 08 AHC CK 0030

Hon'ble Judges : D.N.Jha, J

Final Decision : Allowed

Judgement

D.N. Jha, J.—Bans Gopal and others have filed this petition under Article 226 of the Constitution praying for the quashing of the orders passed by the Deputy Director of Consolidation dismissing the second appeal filed by them and the order passed in revision against them dated August 22, 1970.

The brief facts are that between the petitioners and father of opposite party No. 1, Shitla Sahai dispute related to plot No. 139. This plot was recorded in the names of the petitioners. The opposite party filed an objection claiming himself to be sole groveholder of the land in dispute. On the other hand the petitioners claimed to be coBhumidhars. The basis of respective claims as emerges out from the order are that Badri Prasad and one Raj Kishore originally were the owners of the plots. Badri Prasad executed a mortgage deed with possession to one Raja Girdhari Singh some time in the year 1916. Girdhari Singh died and thereafter his widow Rani Inder Kunwar who was alive entered into possession. In 1924 Raj Kishore executed a sale deed of the half share of the land in favour of Sri Shitla Sahai, father of opposite party No. 1. It may be mentioned that Shitla Sahai was the general agent and real brother of Rani under Kunwar in whose husband's favour the earlier mortgage had been executed. This is how Shitla Sahai came in possession over the entire disputed plot. It is also not in controversy that before the U.P. Zamindari Abolition and Land Reforms Act came into force Shitla Sahai

was in possession over the entire land and had also planted grove over it. The controversy was raised during the consolidation operations and by way of objection preferred under Section 9 of the said Act. The matter was referred to the Consolidation Officer who vide his order dated March 31, 1962 allowed the petitioners coBhumidhari rights with respect to the half share of Badri Prasad which was mortgaged while over the rest half portion Shitla Sahai was entered. Shitla Sahai preferred an appeal but that was dismissed vide order dated May 17, 1962. This is Annexure 2. Shitla Sahai then preferred second appeal before the Deputy Director of Consolidation Sri Nandji Ram, Deputy Director of Consolidation, Camp Barabanki who, vide his order dated January 25, 1963 allowed the appeal and was pleased to set aside the order passed by the two authorities mentioned above. This order is Annexure 3. It was held by him that there was reliable oral evidence to prove that the grove in question was planted by Shitla Sahai and it was also recorded as Khudkasht of Shitla Sahai in 1359 Fasli which been recorded as grove in 1357 Fasli. He, therefore, came to the coricrusion that it was exclusively in possession of Shitla Sahai and he alone planted trees as claimed by him and the entry of Badri Prasad in 1363 Fasli was an authorised one. Hence he was of the view that Shitla Sahai had proved for his name being entered as sole Bhumidhar over the entire land. The petitioners then went up in revision and the Deputy Director of Consolidation vide his order dated September 28, 1970 dismissed the" same. This is Annexure 4. Now the petitioners have come up before this Court. In this case no counter affidavit has been filed on behalf of any of the opposite parties. On the date of hearing also none appeared on behalf of opposite parties to assist the Court.

I have heard the learned counsel for the petitioners and perused the orders. The learned counsel for the petitioners argued that due to operation of U.P. Zamindari Abolition and Land Reforms Act from July 1, 1952 the mortgage of the half share in the grove in suit was redeemed in the eyes of law and the possession of Shitla Sahai was permissive and it could not be deemed to be adverse and hostile to the knowledge of the petitioners. He, therefore, maintained that the orders passed by the Consolidation Officer and the Settlement Officer Consolidation were correct. In support of his contention he placed reliance on a decision Balwant v. Deputy Director Consolidation 1975 R.D. 107. In this case the majority view is that possession of the mortgagee whose rights have extinguished under Section 14(1) of the Zamindari Abolition and Land Reforms Act on or after the date of vesting is not per se adverse but is permissive and that the period of limitation for a suit under Section 209 would commence to run not from the date of vesting but from the date of demand for possession. This case has resolved the conflict between the two Bench cases of this court. The various entries have not been filed nor any evidence on the record had been filed The learned counsel his only argued on the basis of the observations made in the judgment and assarted that the mortgage in favour of Sintla Sahai with possession became a sample mortgage when the U.P. Zamindari Abolition and Land Reforms Act came into force, it is on the basis of the record of this case. It

cannot be expressed that because of Section 14 of the Act the consent stood automatically revoked when estates stood vested in the U.P. Government free from all encumbrances. In fact the effect would be that if the mortgagee continues in possession after the date of vesting the nature of his possession will just be permissive and neither the mortgagor or the mortgagee will be entitled to claim any of the rights or subject to any of the limitations attached to an usufructuary mortgage¹. It would be so till the consent is revoked, I have carefully gone through the orders and I do not find anything on record from which I can agree with the submission of the learned counsel for the petitioners that the Deputy Director of Consolidation has held that opposite party had perfected rights by adverse possession and as such was given Bhumidhari rights. I find that mutation has only been allowed on the basis of the possession and because the¹ Deputy Director of Consolidation did not accept the entry recorded in Ibo³ Fasli. I find a great lacuna in the order passed by the Deputy Director of Consolidation in as much as that it does not disclose any reason how Shitla Sahai could be deemed to be since Bhumidhar of the whole plot in dispute. The half portion was undoubtedly mortgaged by Badri Prasad. The Deputy Director of Consolidation after considering the various provisions of the U.P. Zamindari Abolition and Land Reforms Act should have recorded a finding with respect to the issue that had been framed between the parties. To provision whatsoever has been mentioned or discussed and it is not clear how he conferred rights on the opposite party. The order, therefore, in my opinion suffers from an error apparent on the face of the record. The order passed in appeal also suffers from the same defect.

The learned counsel for the petitioners concedes with respect to the legal position and he assures that he will not raise the question whether on remand the Deputy Director of Consolidation should hear as second appeal may be restored and after treating it as revision be disposed of by the Deputy Director of Consolidation. In view of this statement made by the learned counsel Sri Harguru Charan Srivastava I quash both the orders passed by the Deputy Director of Consolidation and direct him to restore the revision and decide it in the light of the observations made above and keeping in view the Full Bench Decision of this Court.

The result is that the writ petition succeeds and is allowed and the orders dated January 25, 1983 and August 22, 1970 passed by the Deputy Director of Consolidation are quashed. I further direct that he will restore the appeal and treat it as revision and proceed to dispose it of after hearing the parties in accordance with observations made above taking into account the Full Bench decision of this Court. I, however, make no order as to costs.