
(2015) 01 AHC CK 0118
In the Allahabad High Court
Case No : Writ B No. 67567 of 2014

Harihar

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Evidence Act, 1872 — Section 50, 90
Hindu Adoptions and Maintenance Act, 1956 — Section 16
Uttar Pradesh Land Revenue Act, 1901 — Section 34

Citation : (2015) 5 ALJ 148 : (2015) 109 ALR 759 : (2015) 3 AWC 2805 :
(2015) 127 RD 144

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

Bench : Single Bench

Advocate : Pradeep Kumar Rai, for the Appellant; D.R.S. Chauhan, Advocates
for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.

1. Heard Sri Pradeep Kumar Rai, for the petitioner and Sri D.R.S. Chauhan, for respondent-3. The writ petition has been filed against the orders of Settlement Officer Consolidation dated 18.1.2014 and Deputy Director of Consolidation dated 1.12.2014, passed in title proceedings under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute relates to the land of khatas 416, 463 and 464 of village Bakari, tahsil Mohammadabad Gohna, district Mau. In basic consolidation records, khata 416 was recorded in the name of Khedani widow of Soti and khatas 463 and 464 were recorded in the names of Harihar and Harinam, sons of Soti. Udasi (respondent-3) filed an objections for recording her name over khata 463, claiming herself as the daughter of Soti and for deleting the names of Harihar and Harinam. Harihar (the petitioner) filed other objections for recording his name as adopted son of Soti, over khatas 416, 463 and 464, claiming that after

death of Soti, his widow Smt. Khedani adopted him, according to Hindu rites and thereafter she executed registered adoption deed on 12.8.1964. Both the cases were consolidated and heard by Consolidation Officer, who by his order dated 8.10.2003 accepted the adoption of the petitioner and allowed his objection and directed for recording his name over khatas 463 and 464 and for deleting the name of Harnam. The objection of the petitioner in respect of the land of khata 416 was allowed by order dated 9.7.2003. Recall applications filed by Udasi were rejected by order dated 16.12.2004. There was an objection of the petitioner in respect of area of plot 20, which was decided by Consolidation Officer by order dated 28.9.2000.

3. Udasi filed four appeals from the aforesaid orders of Consolidation Officer, who consolidated the appeals and after hearing the parties by order dated 10.3.2006 held that adoption deed dated 12.4.1964 was not signed by natural father and mother of the petitioner as such under section 16 of Hindu Adoption and Maintenance Act, 1956, presumption regarding actual ceremonies of adoption on its basis cannot be raised. Ceremonies of adoption has not been proved by any independent evidence. On the other hand it was proved that Udasi was daughter of Soti and Khedani. On these findings, he allowed the appeals and directed for recording the name of respondent-3 over the land in dispute. The petitioner filed a revision against the aforesaid order. Deputy Director of Consolidation, by order dated 30.8.2006 held that although Consolidation Officer had noticed about five daughters of Soti but had not given any findings in respect of remaining four daughters. On these findings, revision was allowed and orders of Consolidation Officer and Settlement Officer Consolidation were set aside and the matter was remanded to Consolidation Officer for framing an issue in respect of the daughters of Soti and decide afresh. After remand, Consolidation Officer dismissed objection of Udasi by order dated 12.12.2007.

4. Udasi filed an appeal (registered as Appeal No. 914/971 of 2013-14) from the aforesaid order. The appeal was heard by Settlement Officer Consolidation, who by order dated 18.1.2014, held that in Pariwar Register of village Bakari relating to Soti and Khedani, except Udasi, no other daughter had been mentioned nor any such daughter has claimed for recording her name as an heir of Soti as such Udasi was the only daughter of Soti and Khedani. The petitioner could not prove his adoption by Smt. Khedani. Although, objection of Udasi was in respect of khata 463 only but once it is decided that Udasi was the heir of Soti and Khedani then, the consolidation authorities are duty bound to correct the entries in the records. On these findings the appeal was allowed and her name was directed to be recorded as an heir of Soti and Khedani over khatas 416, 463 and 464. The petitioner filed a revision (registered as Revision No. 434/693 of 2014-15) against the aforesaid order which was dismissed by Deputy Director of Consolidation, by order dated 1.12.2014. Hence this writ petition has been filed.

5. The Counsel for the petitioner submits that the petitioner was adopted by Khedani after death of Soti according to Hindu rites. Ram Autar, an independent

witness has proved the adoption. Subsequently, Khedani executed a registered adoption deed dated 12.8.1964. The name of the petitioner was mutated over the land of khatas 463 and 464 in the proceedings under section 34 of U.P. Land Revenue Act, 1901. Adoption deed dated 12.8.1964 is more than twenty years old document and is admissible in evidence under section 90 of the Evidence Act, 1872. Adoption deed contains an admission of Khedani relating to adoption. Udasi never filed any suit for cancellation of adoption deed nor she filed any objection in respect of khatas 416 and 464, even then her name was directed to be recorded over these khatas. Respondents-1 and 2 have illegally ignored the adoption deed.

6. I have considered the arguments of the Counsel for the parties and examined the record. Admittedly, the ceremonies of adoption have not been proved by any witness. Thus the only evidence relating to adoption is adoption deed dated 12.8.1964. The arguments of the Counsel for the petitioner that the document, being twenty years old was admissible in evidence without any formal proof under section 90 of the Act as such the consolidation authorities are bound to raise presumption of the ceremonies of adoption as provided under section 16 of Hindu Adoption and Maintenance Act, 1956. Section 16 of which is relevant is quoted below:-.

"16. Presumption as to registered documents relating to adoption.- Whenever any document registered under any law for the time being in force is produced before any Court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the Court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved."

7. In order to raise presumption regarding adoption on the basis of adoption deed, the deed must have been signed by the person giving and the person taking the child in adoption both. Admittedly, deed dated 12.8.1964 was not signed by natural father and mother of the petitioner. As such presumption regarding ceremonies of adoption on its basis cannot be raised. In order to be valid adoption, the child must have been adopted according to the rites and custom of Hindu law. So far as admissibility of the document being 20 years old under section 90 of Evidence Act, 1872, it has nothing to do with ceremonies of the adoption which has to be proved either by direct evidence or presumption has to be raised according to the provisions of section 16 above. Findings regarding Udasi being daughter of Soti and Khedani is based upon Pariwar Register as well as oral evidence of Udasi, which is admissible under section 50 of the Evidence Act, 1872. There is no illegality in respect of findings of fact in this respect and no interference is required by this Court in exercise of writ jurisdiction. Similarly, the consolidation authorities have jurisdiction to correct the revenue entries of other khatas, even there was no objection by Udasi. In view of aforesaid discussions, orders of respondents-1 and 2 do not suffer from any illegality. The writ petition has no merit and is dismissed.