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(2017) 01 AHC CK 0279

In the Allahabad High Court

Case No : Writ B No. 2360 of 2017

Jagar Nath — APPELLANT

Vs

Deputy Director, Consolidation Varanasi — RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 9
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229-B

Citation : (2017) 134 RD 718

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Anil Kumar Tripathi, Advocate, for the Petitioners; C.S.C., Ashutosh Gupta and Rajendra Kumar Pandey, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—Heard learned counsel for the petitioners and Shri Rajendra Kumar Pandey, who has filed caveat on behalf of respondent nos.7 to 9.

2. The instant writ petition arises out of an objection, under Section 9-A(2) of the Consolidation of Holdings Act, filed by the respondent nos.7 and 9.

3. The dispute, in the writ petition pertains to plot no.20/2, area 65 decimal. In the basic year record, the land in question was recorded in the name of Ram Lochan son of Late Kauleshwar.

4. All the three Courts below have decided against the petitioners and therefore, the orders passed by the Consolidation Officer, Settlement Officer Consolidation and the Deputy Director of Consolidation dated 22.04.2006, 01.06.2007 and 19.11.2016 respectively, are impugned in this writ petition.

5. The contention of learned counsel for the petitioner is that asuit, under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act regarding the land in dispute, had been filed. Admittedly, this suit abated and therefore,

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the orders impugned are vitiated, inasmuch as, the three Consolidation Courts have relied upon the judgments passed in the proceedings, which ultimately abated, to hold against the petitioners.

6. Upon abatement of the suit, the evidence in the suit as also many judgment that were passed in those proceedings and could not be made the basis of the orders impugned.

7. The second contention raised is that, in fact, the respondent nos.4 to 6 were the aggrieved persons. The objection, under Section 9-A(2) should have been filed by them. They however did not file any objection and despite abatement of their suit under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act. The objection has been filed by their transferees and therefore, in this objection, the title of the respondent nos.4 to 6 could not have been subject matter of the consideration.

8. Lastly, it has been submitted that contradictory findings have been recorded on issues 4 and 8. These findings are contradictory to each other and therefore, the same are clearly vitiated and the impugned orders passed on the basis of such contradictory findings are vitiated and warrant interference.

9. Learned counsel for the caveator, refuting the submissions made on behalf of the petitioners has submitted that the consolidation courts have decided the issues on the basis and upon consideration of the relevant evidence available on record. The findings returned, are independent findings, arrived at after due consideration of the entire evidence available on record. The findings have not been returned exclusively on the basis of any judgment passed by the Revenue Court in the suit, under Section 229-B, which admittedly abated on the start of the consolidation operations.

10. I have considered the submissions made and have perused the impugned orders.

11. The first question to be addressed is whether, the findings that have been returned by the Consolidation Courts are their independent findings arrived at after due consideration of the evidence available on record or they are findings recorded in the suit under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act, which has admittedly abated, on the start of the consolidation operations.

12. Upon perusal of the impugned orders, this Court finds that the findings that have been returned, are based upon the appreciation of the evidence available on record. The findings are independent findings of the consolidation authorities. Merely, because it has also been mentioned that a suit was filed, which ultimately abated, it cannot be said that the findings that are recorded by the consolidation Courts are not their independent findings or that they are tempered by the findings that were recorded in the proceedings, which ultimately abated. The first contention of counsel for the petitioner is therefore, repelled.

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13. Besides, it is settled law that the evidence in the suit, which has abated is not totally washed out on the proceedings being ordered to abate. It is evidence to be considered, even during subsequent proceedings, before the Consolidation Courts.

14. However, it would be relevant to record that the findings returned in the impugned orders are not found to have been recorded, on the basis of either the findings recorded in the proceedings which were ordered to abate, upon start of consolidation operations, nor on the basis of any orders that may have been passed therein.

15. On a pointed query by the Court, learned counsel for the petitioner has admitted that the evidence that has been considered in the orders impugned was evidence, which was available on record of the proceedings before the consolidation Courts.

16. The Courts below have, upon appreciation of the evidence available on record observed that the land in dispute, in 1356 Fasli was recorded in the name of the Khatirani. Admittedly, she was a widow and under a disability, she therefore, competent to lease out the land.

17. It appears that the land was leased out to Ramdhani, the father of the petitioners. On the basis of this lease, petitioners are claiming title to the land in question.

18. The courts below have held that since Ramdhani was a lessee of Khatirani, a widow under the disability, he could not acquire title to the land in question. This finding has been returned upon appreciation of the evidence on record and the same cannot be said to be vitiated, in any manner.

19. It appears that the petitioner also claims title on the basis of an order passed in proceedings, under Section 33/39 of the U.P. Land Revenue Act.

20. It is settled law that the proceedings, under Section 33/39 of the U.P. Land Revenue Act are summary proceedings and the findings returned therein, do not bind the courts in regular title proceedings.

21. Besides, it has also been observed in the revisional order that these proceedings under Section 33/39 of the U.P. Land Revenue Act had been drawn against Khatirani and the order therein came to be passed in favour of the predecessor-in-interest of the petitioners, after. Khatirani had died, without impleading her heirs.It was therefore an order against a dead person and hence void.

22. Under the circumstances, therefore, the petitioner cannot derive the benefit of the orders passed in proceedings, under Section 33/39 of the U.P. Land Revenue Act in their favour or in favour of their predecessor-in-interest.

23. The other contention raised by counsel for the petitioner is that they were found to be in possession, in a civil suit for injunction, filed by them. Even this

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contention does not help the petitioner in any manner at all whatsoever. The title to agricultural land is to be determined by the Revenue Courts or by the Consolidation Courts, exercising powers under the U.P. Consolidation of Holdings Act.

24. In the case at hand, the impugned orders have been passed by the Consolidation Courts. Civil Court cannot determine the title of any one as regards, land which is admitted agricultural land. For this reason alone, any findings that may have been returned in the civil suit, does not bind the consolidation Courts while deciding a dispute of title. Therefore, even this submission of counsel for the petitioner is, without merit. Even the three consolidation Courts, in the order impugned have held that orders passed by the Civil Court do not bind them in regular title proceedings with regard to agricultural land.

25. The only other contention, which survives for consideration is that title of the vendors of the contesting respondent nos.7 to 9 could not have been determined in an objection under Section 9-A(2) of the U.P. Consolidation of Holdings Act, by their vendees (contesting respondent nos. 7 to 9).

26. This submission of learned counsel for the petitioner is quite fantastic. The objectors claimed on the basis of a sale deed in their favour, executed by the respondent nos.4 to 6. Therefore, the question of the title of the vendors of the objectors was a question inherent in the dispute before the consolidation Courts. The submission of learned counsel for the petitioner has necessarily to be rejected.

27. The case of the petitioner has been repelled for cogent reasons, which, in view of the discussion in the preceding paragraphs of this judgment, call for no interference.

28. The Deputy Director of Consolidation has observed that Khatirani, a widow, died issue-less. The respondent nos.4 to 6, the vendors of the contesting respondent nos.7 to 9, are her nephews and therefore, her heirs.

29. Besides, perusal of the record reveals that it was these three person (respondent no.4 to 6), who are recorded in the basis year record. The sale deed in favour of the contesting respondent nos.7 to 9, was therefore, a sale deed executed by the recorded tenure holders. For this reason also, the contention of counsel for the petitioner is without any merit and this argument appears to be an argument of desperation, bereft of any substance.

30. Accordingly and in view of the above discussion, the writ petition is found to be devoid of merits and is hereby dismissed.

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