
(1987) 03 AHC CK 0066
In the Allahabad High Court
Case No : Writ Petition No. 2592 of 1983

Jata Shanker Pandey

APPELLANT

Vs

DDC, Pratapgarh

RESPONDENT

Date of Decision : 04-03-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 1, Order 3 Rule 3

Citation : (1987) 03 AHC CK 0066

Hon'ble Judges : K.R Misra, J

Final Decision : Disposed Of

Judgement

K.N. Misra, J.—This writ petition is directed against the impugned judgment and order dated 20.2.1981 and 25.1.1933 Annexures 5 and 10 respectively, passed by the Deputy Director of Consolidation, Pratapgarh.

2. Briefly stated, the facts are that a reference dated 13.2.1981 was submitted by the Settlement Officer, Consolidation for giving effect to an order dated 10.10.1980 passed by the Consolidation Officer which required certain amendments to be made in the chaks of the parties. This reference report was accepted by the Deputy Director of Consolidation, vide order dated 20th August, 1981 and the Chaks of the parties were altered in pursuance of that order. In this order dated 20th February, 1981, the Deputy Director of Consolidation had made certain alterations in the reference report by making certain modifications in the Chak of Chakholder no. 108 Mahranidin and it has been observed that no objection has been raised with regard to other chakholders to the proposed alterations and situation in respect of their chaks. Against this order an application was moved by the petitioner Jata Shanker for recalling of that order wherein it was asserted that he was not served with any notice and he came to know about it when he came to village on 18.2.1981. He prayed that the said order dated 20th February, 1981 be recalled and the reference be decided on merits after giving opportunity of hearing to the parties.

3. This application was opposed by the opposite party. It was asserted that on

behalf of Jata Shanker the counsel Sri Shyam Narain Misra, Advocate had put in appearance and after hearing all other parties, aforesaid order dated 20th February, 1981 was passed. It was thus urged that the said order was not ex parte because the petitioner was served & his counsel had put in appearance on his behalf at the time of hearing made in the reference proceeding by the Deputy Director of Consolidation. The said application moved by the petitioner Jata Shikar was rejected, vide order dated 25.1.1983 with the observation that a Vakalatnama was filed on behalf of Ranchhor and others, which is said to have been executed by Jata Shankar, Dwarika, Ranchhor, Rameshwar and Ravindra Nath in favour of Pt. Shyam Narain Misra, Advocate. Learned Deputy Director of Consolidation has observed that in the order dated 20th February, 1981 it is mentioned that the contentions raised on behalf of Mahranidin and others were not opposed on behalf of Ranchhor and others. He has further observed that on behalf of Jata Shankar and Ranchhor Sri Shyam Narain Misra, Advocate, had put in appearance. Thus with these observations he has rejected the restoration application saying that the order dated 20th February, 1981 is not an ex parte order. This writ petition is directed against these two orders.

4. Learned counsel for the petitioner has urged that a perusal of the Vakalatnama will indicate that it was not executed by Jata Shanker. Learned Counsel pointed out that in the Vakalatnama it is mentioned that Ravindra Nath son of Jata Shankar has executed that Vakalatnama as Pairokar on behalf of Jata Shankar. Learned counsel urged that since Jata Shankar had not at all authorised his son Ravindra Nath to act on his behalf or to engage a counsel for I doing Pairvi in the case, and, as such, the presence of Sri Shyam Narain Misra, Advocate, cannot be treated to be appearance in the case on behalf of the petitioner Jata Shankar. In reply learned counsel for the opposite party urged that notice of the reference was served on Jata Shankar and he had, therefore, knowledge about the proceedings pending in the court of Deputy Director of Consolidation. Learned counsel further contended that Ravindra Nath, son of Jata Shankar had put in appearance in the case as Pairokar on behalf of his father and had also executed a Vakalatnama in favour of Shyam Narain Misra. Thus the said counsel Sri S.N. Misra was duly authorised to put in appearance in the case on behalf of Jata Shankar, & as such, the impugned order dated 20th February, 1981 cannot be said to be ex parte order. Learned counsel further contended that an objection was also filed by Ravindra Nath, son of Sri Jata Shankar opposing the reference. Thus it cannot be said that Ravindra Nath had colluded with the opposite party. The counsel Sri Shyam Narain Misra was present when the case was heard and decided by the Deputy Director of Consolidation by the order dated 20th February, 1981. The said order was passed on merits and thus in view of the facts stated above, the said order cannot be said to be ex parte and the application for restoration has been rightly rejected. I am unable to agree with these contentions of the learned counsel for the opposite parties.

5. It is not disputed that no general or Special Attorney of power(sic) was executed by Jata Shankar in favour of his son Ravindra Nath to do Pairvi in the

case on his behalf. Thus in these circumstances Ravindra Nath could not execute a Vakalatnama in favour of Sri Shyam Narain Misra for putting in appearance & conducting case on behalf of his father Jata Shankar. Learned counsel has urged that notice was served on Jata Shankar and so he was aware of proceedings. That may be so but in spite of service Jata Shankar had not put in appearance nor any authorised agent had put in appearance on his behalf, and, as such, the order dated 20th February, 1981 would be nothing else but an ex parte order passed against Jata Shankar. If after service of notice a party fails to put in appearance in the case, and an order is passed even on merits in the case, the same would be treated to be an ex parte order & could be set aside by the court on being satisfied about the sufficiency of cause shown for nonappearance by the parties who had in spite of service had not put in appearance to contest the case. In the present case, therefore, even if it be treated that Jata Shankar was personally served with the notice issued to him from the court of the Deputy Director of Consolidation, the order dated 20th February, 1981, would be treated to be an ex parte order as no duly authorised agent or counsel had put in appearance in the case on his behalf when the impugned order dated 20th February, 1981 was passed by the Deputy Director of Consolidation. The said order, therefore, could be set aside being an ex parte order although it was passed, as observed by the Deputy Director of Consolidation, on merits.

6. Learned Deputy Director of Consolidation has observed that the counsel of the petitioner Sri Shyam Narain Misra was present and he had raised no objection to the reference report. This is an erroneous observation because Sri Shyam Narain Misra, as earlier observed above, could not be treated to have been duly engaged by petitioner Jata Shankar himself. He was engaged by his son Ravindra Nath who was not authorised to act on behalf of his father nor he was authorised to engage a counsel on his behalf. Neither the son nor any other near relation of a party can represent him in any judicial proceedings unless duly authorised by him to do so. He, in the absence of any general or special power of attorney, cannot act as an authorised agent on behalf of the party nor he can engage any counsel on his behalf to represent him & conduct the case. Thus, the appearance by Sri Shyam Narain Misra, Advocate, on the date of hearing in the reference proceedings cannot be treated to be on behalf of the petitioner. The impugned order dated 20.2.1981, therefore, could be recalled on showing sufficient cause being an ex parte order and, in view of the above facts, the case deserves to be considered and disposed of on merits after giving due opportunity of hearing. It is said that Ravindra Nath had filed objections to the reference, but the same were not considered apparently because the Dy. Director of Consolidation found it to have been not filed by petitioner Jata Shankar himself. If the Dy. Director of Consolidation treated presence of Ravindra Nath to be as Paikar on behalf of his father Jata Shankar then he should have also considered the objections filed against the reference report by Ravindra Nath. But he has not taken into consideration that objection because the same apparently was not filed by a duly authorised agent on behalf of the petitioner. Thus in view of the above I find that

the impugned order dated 20th February, 1981 deserves to be set aside and the learned Deputy Director of Consolidation erred in rejecting the application for restoration by order dated 25th January, 1983.

7. In view of the above, both the aforesaid orders dated 20th February, 1981 and 25th January, 1983 passed by the Deputy Director of Consolidation, Pratapgarh, are hereby quashed and the Deputy Director of Consolidation is directed to restore the reference case No. 547/1175/161, under Section 43 (3) of the Act (Nand Kishore v. Ram Sewak and others), and to decide it afresh on merits after giving due notice to the parties and affording them opportunity to file objections to the reference report, which they may like to file. The case be decided expeditiously after giving due opportunity of hearing to the parties. No order as to costs.