
(2015) 03 AHC CK 0095
In the Allahabad High Court
Case No : Writ-B No. 10484 of 2015

Kaloo Ram and Others

APPELLANT

Vs

Joint Director of Consolidation and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12

Citation : (2015) 127 RD 308

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

Bench : Single Bench

Advocate : Prakash Chandra Yadav and N.C. Rajvanshi, for the Appellant; A.K. Srivastava and S.K. Tyagi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.

1. Heard Sri N.C. Rajvanshi, Senior Advocate, assisted by Sri Prakash Chandra Yadav, for the petitioners and Sri S.K. Tyagi, for respondents-4 to 7. The writ petition has been filed against the orders of Consolidation Officer dated 15.1.2001, Settlement Officer Consolidation dated 25.8.2003 and Deputy Director of Consolidation dated 24.11.2014 as corrected on 29.12.2014, passed in title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. In basic consolidation year, khata 146, 148, 160, 165, 315, 316, 317, 532, 533, 576, 577 and 586 of village Kharkhaunda, pargana Sarava, district Meerut were recorded in the names of various persons of the pedigree given in paragraph-4 of the writ petition. The parties entered into compromise before Assistant Consolidation Officer and partitioned their share in aforesaid khata by order dated 24.12.1974, according to the pedigree. At present dispute is confined to khata 146 (plot 3161) and 148 (plot 2811). In basic consolidation year khata 146 was recorded in the name of Tekchand son of Narain and 148

was recorded in the names of Tekchand son of Narain and Smt. Gomti widow of Chhuttan Singh. Smt. Gomti and Tekchand challenged the order of Assistant Consolidation Officer dated 24.12.1974, in Appeal No. 167, so far as, it was in respect of plots 2811 and 3161, on the ground that these two plots were their self acquired property and other members of the family had no share in it. However, under misrepresentation, these two plots were also included in compromise and order of Assistant Consolidation Officer dated 14.12.1974, giving share to other members of the family in these two plots, has passed on misrepresentation. Ram Kishor of the branch of Puswa also filed an appeal from the order of Assistant Consolidation Officer dated 24.12.1974. Both the appeals were consolidated and decided by common order dated 29.7.1981 and the order of Assistant Consolidation Officer dated 14.12.1974 was set aside and the matter was remanded to Consolidation Officer to decide the case on merit after hearing the parties. It may be mentioned that in the meantime two sale-deeds dated 27.12.1975 and 29.12.1975 were also executed by Ram Nath and Khachedu (of the branch of Puswa) in favour of Smt. Kusum Jain. She also filed application under section 12 of the Act, for mutation of her name, which was allowed by Consolidation Officer by order dated 24.9.1977. Settlement Officer Consolidation, by order dated 10.9.1979 dismissed the appeal against the aforesaid order. Revision No. 860 filed against the aforesaid order was allowed by Deputy Director of Consolidation by order dated 14.12.1982, and the matter was remanded to Consolidation Officer to decide afresh along with title matter.

3. After remand, the cases were consolidated and tried by Consolidation Officer. Apart from documentary evidence, oral statement of the witnesses Shyam Singh, Ram Nath, Udai Raj, Mool Raj, Ved Prakash and Satya Prakash were recorded. Consolidation Officer, by order dated 27.1.1992, held that land of khata 146 was exclusive property of Tekchand and khata 148 was joint property of Tekchand and Smt. Gomti alone. In remaining khata's share of all the three branches were given according to the pedigree.

4. Kalu Ram and others filed an appeal (registered as Appeal No. 115) and Smt. Kusum Jain (transferee pendente lite) filed an appeal (registered as Appeal No. 112) from the aforesaid order. Both the appeals were consolidated and heard together. Settlement Officer Consolidation, by order dated 11.6.1997 held that Consolidation Officer has not considered the case of Smt. Kusum Jain. On this findings the appeals were allowed and the matter was remanded to Consolidation Officer for fresh decision. After remand, Consolidation Officer again by his order dated 15.1.2001, held that plots 2811 and 3161 were self-acquired property of Tekchand and Smt. Gomti and other members of the family had no share in it. Remaining khata's were divided in members of family according to the pedigree. It has been further held that land in dispute were sirdari holding as such sale-deeds in favour of Smt. Kusum Jain were void. On these findings, mutation application of Smt. Kusum Jain was dismissed. It was held that land of khata 146 was exclusive property of Tekchand and khata 148 was joint property of Tekchand and Smt. Gomti. In remaining khata share of all the three branches

were given share according to the pedigree.

5. Kalu Ram and others filed an appeal (registered as Appeal No. 83) and Ved Prakash and others filed an appeal (registered as Appeal No. 92) from the aforesaid order. Both the appeals were consolidated and heard together. Settlement Officer Consolidation, by order dated 25.8.2003 dismissed both the appeals. Ved Prakash and others filed a revision (registered as Revision No. 38), Kalu Ram and others filed a revision (registered as Revision No. 468) against the aforesaid order. Both the revisions were consolidated and heard by Joint Director of Consolidation, who by order dated 19.11.2010, dismissed both the revisions. However the order dated 19.11.2010 was set aside by this Court in Writ-B No. 2170 of 2011, filed by Kalu Ram and others and the matter was remanded to Revisional Court for deciding the revisions by reasoned and speaking order. After remand, Joint Director of Consolidation, again dismissed both the revisions by order dated 14.11.2014. This order was later on corrected by order dated 29.12.2014, by which after death of deceased persons, names of their heirs were also directed to be substituted/mutated. Hence this writ petition has been filed.

6. The Counsel for the petitioners submitted that plot 3139 was joint ancestral property of the parties. This plot was sold by Tekchand and Smt. Gomti to third parties through sale-deed dated 24.3.1962. As such they agreed to give share to other members of the family in plots 2811 and 3161. They voluntarily entered into compromise before Assistant Consolidation Officer on 14.12.1974 and order was passed on the basis of compromise. There was neither misrepresentation nor fraud. The appeal filed was not maintainable against the consent order. In any case, the petitioners were liable to be compensated of their share in plot 3139, which was joint family property, from the land of Tekchand and Smt. Gomti. The order of Assistant Consolidation Officer dated 24.12.1974 was acted upon. According to the share as given by the order of Assistant Consolidation Officer dated 24.12.1974, Tekchand, Smt. Gomti, Sheoraj, Udairaj, Ram Nath, Khacheru, Satya Prakash, Mahavir and Rajvir executed sale deeds dated 27.12.1975 and 29.12.1975 in favour of Smt. Kusum Jain and Smt. Sneh Agrawal. Sheoraj Singh and Devi Singh executed sale-deed dated 20.4.1982 in favour of Kalu Ram, Surendra sons of Balraj and Mangesh, Umesh sons of Udairaj and their names were also mutated by order of Assistant Consolidation Officer dated 19.8.1982. This order was not challenged by any party and has become final. Thus the compromise was accepted and acted upon by Tekchand and Smt. Gomti, it was not liable to be set aside. From oral statement of Udairaj and Satya Prakash it was proved that entire land was ancestral property and jointly owned by Hulas Rai, Puswa and Nand Ram, three brothers. Finding of fact recorded by consolidation authorities that plots 2811, 3139 and 3161 were self-acquired property of Tekchand and Smt. Gomti was illegal. Orders of consolidation authorities are illegal and liable to be set aside.

7. I have considered the arguments of the Counsel for the parties and examined the record. So far as the order of Assistant Consolidation Officer dated

24.12.1974, is concerned, it was set aside by Settlement Officer Consolidation by order dated 29.7.1981. This order was upheld in revision by order dated 14.12.1982 and also by High Court as noticed by Consolidation Officer in his order dated 27.1.1992. After remand, the case was tried by Consolidation Officer on merit after framing issues and fresh order was passed on 27.1.1992. The petitioners cannot be permitted to challenge the order of Settlement Officer Consolidation dated 29.7.1981 again and rely upon the order of Assistant Consolidation Officer dated 24.12.1974 or compromise filed before him.

8. All the three consolidation authorities have concurrently held that plots 2811, 3139 and 3161 were self-acquired property of Tekchand and Smt. Gomti. These plots were exclusively recorded in the names of Tekchand and Smt. Gomti in the revenue records. The petitioners could not adduce any evidence to show that at any time, these plots were recorded in the name of common ancestor or it was jointly acquired by three branches of the family. In the absence of any evidence, in this respect, this Court cannot interfere with the findings of facts recorded concurrently by all the three consolidation authorities.

9. So far as the arguments based upon pendente lite sale-deeds are concerned, sale-deed dated 27.12.1975 and 29.12.1975 in favour of Smt. Kusum Jain and Smt. Sneha Agrawal have been held to be void, being sale-deeds of sirdari holding by the order of Consolidation Officer dated 27.1.1992. The transferees are not challenging the order of Consolidation Officer dated 27.1.1992. The petitioners cannot take any benefit of these sale-deed. Tekchand and Smt. Gomti was not parties in sale-deed dated 20.4.1982. In any case, pendente lite transfers do not affect the jurisdiction of the Court to decide the case on merit. In view of aforesaid discussions, orders of respondents-1 to 3 do not suffer from any illegality. The writ petition has no merit and is dismissed.