
(2006) 09 AHC CK 0302
In the Allahabad High Court

Kalua	Vs	APPELLANT
Assistant Director of Consolidation and Others		RESPONDENT

Date of Decision : 07-09-2006

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A

Citation : (2006) 10 ADJ 194 : (2007) 2 AWC 1246

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Poonam Srivastava, J.—Heard learned Counsel for the parties.

2. The dispute involved in this writ petition relates to Khata No. 6 comprising of plot Nos. 1592, 1595, 1621, 2016, 2022, 2025 and 2026. The name of the petitioner stood recorded in the basic year entry in respect of the aforesaid khata. The respondent No. 3 filed his objection u/s 9A of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act) claiming 1/2 share on the ground that the disputed land was an ancestral property and stood recorded exclusively in the name of the petitioner. The respondent Nos. 4 and 5 filed their objection claiming to be co-tenure holders with the petitioner. The respondent No. 3 examined himself and one Ram Ratan. The respondent Nos. 4 and 5 examined one Buchaiyan and Ram Kripal in oral evidence. The petitioner gave his statement alongwith Ram Ashrey, Zakir Ali, Hamid Khan. He also examined Assistant Record Keeper and Smt. Raniya, widow of Chunkaiyan. Irrigation slips, khasra and khatauni of different years were also adduced by the petitioner as well as respondent Nos. 3 to 5. The objections were dismissed by the Consolidation Officer vide order dated 29.9.1979. A separate appeal was preferred which was heard together and the Settlement Officer Consolidation allowed the appeal in part and came to conclusion that 1/2 share be recorded in plot Nos. 1595, 1621. 2016. 2022 and 2025 and the name of the petitioner to the extent of 1/6th share, whereas each of them were given 1/3rd share in

respect of the plot Nos. 1592 and 2026. The petitioner filed revision challenging the order of the Settlement Officer Consolidation. The respondent No. 3 also filed revision challenging the order of the subordinate authority which was heard together and dismissed vide order dated 22.3.1985.

3. Learned Counsel for the petitioner has tried to place the statement of Zakir All as well as that of the petitioner which was also brought on record in the writ petition. It has been argued at length that the findings to the effect that the entire property held to be Joint from the time of Durjanawa is without any basis or evidence. The documentary evidence has specifically been ignored. The stand taken by the contesting respondents that the property was joint and ancestral and the name of the petitioner was recorded being the eldest in the family is without any foundation, specially when in the basic year khatauni the name of the petitioner alone was recorded. Learned Counsel for the petitioner has tried to lay emphasis on the fact that it was the burden of the contesting respondents to establish that the entries in the basic year khatauni was wrongly recorded in the name of the petitioner and since they had failed to do so the Consolidation Officer has rightly rejected their objections. The Settlement Officer Consolidation and Deputy Director of Consolidation have illegally accepted the claim of the contesting respondents. The claim of the petitioner was set up alternatively on the ground of possession.

4. Counsel for the contesting respondents has vehemently disputed the arguments on behalf of the petitioner and submitted that no adverse possession can be claimed against the co-sharers since the two courts have come to a conclusion that the property was Joint since the time of Durjanawa, the common ancestor.

5. I have heard the respective counsels for the parties and gone through the record. Counsel for the petitioner has emphasized on Annexure-15 which is an alleged agreement dated 15.9.1953, which was entered into between the respective contesting parties. The said agreement was on stamp paper of Rs. 2. This was never brought before the consolidation authorities and they had no occasion to examine its correctness or validity. The said agreement has been brought on record for the first time during the pendency of the writ petition which cannot be looked into at this stage and arrive at a different conclusion, that the respondents had relinquished their rights. The plea of adverse possession was neither taken nor pressed at any stage.

6. I am also not in agreement with the submission of the counsel for the petitioner regarding the oral evidence. I cannot look into the individual statement of the respective witnesses and come to a different conclusion arrived at by the consolidation authorities. The Deputy Director of Consolidation and Settlement Officer Consolidation have recorded a categorical finding of fact and the same cannot be interfered by this Court. In the circumstances, there is no merit in the writ petition and it is accordingly dismissed.