(2010) 11 AHC CK 0304

In the Allahabad High Court

Case No : Writ B. No. 903 of 1974

Kedar Singh and Another APPELLANT

Vs

D.D.C. and Others RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 17(2)
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(1), 48, 9A(2)

Citation : (2011) 112 RD 705

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vikram Nath, J.—This writ petition has been filed under Article 226 of the Constitution assailing the correctness of the judgment and order dated 2.1.1974 passed by the Deputy Director of Consolidation, Deoria whereby he allowed the revision filed by the respondents Nos. 2 to 4 and after setting aside the order of the Settlement Officer Consolidation dated 5.2.1973 maintained the order passed by the Consolidation Officer dated 9.10.1972, rejecting the objections of the petitioners.

2. The dispute relates to the land comprised in Khata No. 6 and Khata No. 82 of Village Badhia Hardo, Tappa Dond, Pargana Salempur Majhauli, District Deoria (hereinafter referred to as the land in dispute).

3. In the basic year records the names of Kashi, Bali Ram and Udai Bhan sons of Ram Bachan Singh (respondent Nos. 2 to 4) were recorded. The petitioners filed objections claiming co-tenancy rights in the land in dispute of the two khatas and subsequently by way of amendment they also claimed exclusive rights over certain plots of the said khatas. The objections were based upon a compromise decree dated 17.6.1969 in a revenue suit u/s 229-B / 176 of the U.P. Zamindari

Abolition and Land Reforms Act, 1951 (hereinafter referred to as the Z.A. Act), registered as Case No. 316 of 1969, Kedar Singh v. Kashi and Ors. According to the petitioners the said compromise decree dated 17.6.1969, having attained finality between the parties, was binding on the parties and under the said compromise the petitioners having been given co-tenancy rights and also exclusive rights over the plots claimed by them, the entries of the basic year should be corrected as per the compromise decree. These objections were registered as Case Nos. 2045 and 2046, Saudagar Singh v. Kashi and Ors. u/s 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the C.H. Act). The respondent Nos. 2 to 4 filed their written statement denying the claim of the petitioners. According to the respondents no compromise was ever executed by them in Case No. 316 of 1969.

4. Both parties led evidence in support of their respective arguments. The Consolidation Officer vide judgment and order dated 9.10.1972 inter alia recorded the following findings:

The petitioners had failed to establish the compromise; the alleged compromise deed did not record the statement that the respondents had admitted the petitioners to be their co-tenants; the record of the alleged compromise of the other villages had not been produced.

5. Accordingly the Consolidation Officer rejected the objections of the petitioners and maintained the basic year''s entries.

6. The petitioners preferred an appeal u/s 11(1) of the C.H. Act which was registered as Appeal No. 129, Saudagar Singh and Ors. v. Kashi Singh and others. Before the Settlement Officer Consolidation the petitioners filed papers relating to compromise entered between the parties in other two villages, passed in Case Nos. 317 and 56. Further the respondents summoned the original file of Case No. 316 of 1969 which was with regard to the village in dispute. The Settlement Officer Consolidation considering the entire material on record and also the conduct of the respondents, recorded the following findings:

It discarded the reasoning of the Consolidation Officer that as the petitioners had not got the original file summoned therefore the compromise could not be relied upon for the reason that the petitioners had filed certified copies of the compromise deed as also the order dated 17.6.1969 accepting the said compromise as such burden would have shifted on the respondents to call for the original file, denying their signatures on the compromise and proving that the signatures were not theirs on the compromise; it further recorded that there had been two other revenue suits being Revenue Suit Nos. 325 and 56 with regard to the property situate in two other villages in between the parties in which compromise had been arrived at and the parties were abiding by the compromise, it also relied upon an application filed by the respondents in Case No. 56 dated 3.4.1996, praying for time to amicably settle the dispute between the parties outside the court; further finding recorded was that the respondents had not proved any fraud or interpolation in the compromise or in their written statement nor they had led any evidence to that effect and as such their contentions that the compromise had been arrived at by fraud could not be inquired into; it further recorded a finding that the respondents although got the original file of Case No. 316 of 1969 summoned in the appeal but did not have the guts to either dispute their signatures on the compromise or its verification by their counsel; it further recorded a finding that the signatures of Kashi and others on the Vakalatnama in the appeal were similar to their signatures contained in the compromise deed; it further recorded that the argument of the respondents that their signatures had been obtained on blank papers in the village panchayat had been used in Case No. 316 of 1969 for the purpose of compromise could not be accepted as no evidence to that effect was led by them.

7. On the above findings the Settlement Officer Consolidation allowed the appeal and after setting aside the order of the Consolidation Officer allowed the objections and declared the petitioners co-tenants and also gave them the exclusive rights over certain plots as per the compromise deed dated 17.6.1969, passed in Case No. 316 of 1969.

8. The respondents filed a revision u/s 48 of the C.H. Act, which was registered as Revision No. 124, Kashi Nath and Ors. v. Kedar and others. The Deputy Director of Consolidation allowed the respondents to lead evidence by way of filing certain blank papers containing signatures of the parties and based upon the same came to the conclusion that the compromise was without notice to the respondents and as such could not be relied upon and accordingly allowed the revision vide judgment and order dated 2.1.1974 and after setting aside the order of the Settlement Officer Consolidation maintained the order of the Consolidation Officer. It is against this order that the present writ petition has been filed. Pleadings have been exchanged between the parties.

9. I have heard Sri A.S. Rai, learned Counsel on behalf of the petitioners and Sri B.P. Singh, learned Senior Advocate assisted by Sri Vivek Singh, learned Counsel appearing for the respondents and have also perused the material on record.

10. Sri A.S. Rai, learned Counsel for the petitioners has raised several points. However, in the opinion of the Court, this petition merits consideration on the following points urged by the learned Counsel for the petitioners; that there was no pleading of fraud by the respondents and as such in the absence of the same no inquiry could have been made and the respondents would be bound by the compromise decree; that the Deputy Director of Consolidation while reversing the finding of the Settlement Officer Consolidation did not take into consideration the various material on record which had been relied upon by the Settlement Officer Consolidation in arriving at the finding nor did it upset the findings recorded by the Settlement Officer Consolidation; that the Deputy Director of Consolidation in violation of the provisions of Order XLI, Rule 27 of the Code of CPC permitted the respondents to lead evidence and based solely upon such additional evidence, allowed the revision without giving any opportunity of

rebuttal to the petitioners. Sri Rai has relied upon a large number of authorities in support of his submission. The relevant ones have been referred to at the appropriate place in the subsequent part of this judgment.

11. On the other hand Sri B.P. Singh, learned Counsel appearing for the respondents has submitted that this Court cannot examine the questions of fact nor can it enter into any controversy touching the facts in its extraordinary jurisdiction under Article 226 of the Constitution as its'' scope for judicial review is very limited. It was next submitted by Sri Singh that even if there was no specific pleading of fraud, the findings of the Deputy Director of Consolidation based upon material on record do not warrant any interference and that once the Deputy Director of Consolidation has recorded a finding of fact with regard to the alleged fraud, this Court under Article 226 of the Constitution need not interfere with such a finding of fact. It was also submitted on behalf of the respondents that no finding has been recorded by the Settlement Officer Consolidation as to whether the land in suit was coming down from the common ancestor and as the respondents had never admitted the petitioners to be their co-tenants as such they could not have been given any share on the basis of a compromise. Lastly it was submitted that the Settlement Officer Consolidation wrongly shifted the burden on the respondents that the compromise decree necessarily required registration under the provisions of The Registration Act, 1908 and as the same had not been registered the petitioners cannot derive any advantage out of it.

12. Sri Singh has relied upon the following decision in support of his submissions:

(i) Banwari Nathoo Vs. State of Uttar Pradesh and Others,

(ii) Kalaika v. D.D.C. 1976 AWC 460.

(iii) Bank of India and Anr. v. Avinash D. Mandivikar and Ors. 2005 (6) AWC 5165.

(iv) Gulgar Singh and Ors. v. D.C. and Ors. 2009 107 RD 78.

13. The Deputy Director of Consolidation permitted leading of additional evidence in revision which admittedly was in the knowledge of the respondents before the appellate stage. Further while admitting such evidence it did not follow the guidelines and procedure even broadly as laid down in Order XLI, Rule 27 of the Code of Civil Procedure. There is no issue that the Deputy Director of Consolidation exercising revisional powers could admit additional evidence. Refer to (i) Bihari v. State and Ors. 1973 RD 342 (DB), (ii) Man Mohan Gopal and Ors. v. Gram Sabha, Agra and Ors. 1984 RD 208 (HC) and (iii) Sheo Pujan v. D.D., Gorakhpur and others 1993 RD 73 (HC). However, while admitting additional evidence the principles laid down in Order XLI Rule 27 of the Code of CPC have to be kept in mind by the revisional authority as laid down in Paragraph 8 of the report of the judgment in Sheo Pujan (supra) in the following terms:

...The power to admit additional evidence, however, at appellate or revisory stage, has to be exercised with care and caution. The rule indicated above does not authorise the admission of additional evidence for the purpose of removing lacunae and filing in gaps in evidence. Additional evidence can be admitted, if the appellate court finds it needful and necessary for enabling it to pronounce judgment. The principles contained in Order XLI, Rule 27 of the CPC Code, are general principle of universal application, aimed at securing justice which should be kept in mind while exercising the judicial discretion to admit additional evidence at appellate or revisional stage....

In the present case it is not borne out from the record that such principles have been taken note of by the Deputy Director of Consolidation.

14. The admission of the evidence at the revisional stage thus could not have been justified in the present case under the specific embargo contained in the Order XLI, Rule 27 of the Code of Civil Procedure, which is quoted herein under:

Order 41, Rule 27. Production of additional evidence in Appellate Court. - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate

6 Court, But if

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

According to the Order XLI, Rule 27 of the Code of CPC a party to an appeal is not entitled to produce additional evidence whether oral or documentary except where the Trial Court against whose decree the appeal has been filed refused to admit evidence which otherwise ought to have been admitted or the parties seeking to produce additional evidence established that such evidence was not within its'' knowledge or could not have been produced despite exercise of due diligence by it before the Trial Court and lastly the Appellate Court itself required certain evidence to be produced before it to advance the cause of justice.

15. In the present case none of the three ingredients envisaged in Order XLI, Rule 27 of the Code of CPC justifying leading of additional evidence was existing nor they have been recorded. In fact in the order of the Appellate Court it has been recorded that the respondents had set up a case that certain signatures of the parties had been obtained on blank papers for panchayat which had been

illegally used by the petitioners but even at that stage no evidence was led in that regard. As such it could be inferred that the respondents did have the knowledge of such blank papers containing the signatures at the appellate stage but did not produce the same at that stage. Thus they were precluded from leading any such evidence at the revisional stage. The respondents have not been able to justify the leading of such evidence at the revisional stage. As such the admission of the ''blank papers'' was not in accordance with law.

16. In the circumstances the impugned order of the Deputy Director of Consolidation, based solely on the ''blank papers'' filed at the revisional stage and in ignorance of the other material evidence on record, suffers from manifest error of law.

17. From a perusal of the order of the Deputy Director of Consolidation it is apparent that not a single piece of evidence relied upon by the Settlement Officer Consolidation has been considered in the impugned judgment. It simply refers to the blank papers filed at the stage of revision and based upon that it has held that the compromise was not genuine. This finding of the Deputy Director of Consolidation cannot be sustained in law in as much as mere filing of the blank papers was not enough. The respondents ought to have led oral evidence to prove the signatures on the blank papers. No evidence had been led in that regard. Further the petitioners ought to have been given an opportunity of rebuttal and also opportunity to lead evidence in defence. No such procedure was followed by the Deputy Director of Consolidation, thereby vitiating the impugned judgment.

18. Further the Deputy Director of Consolidation did not deal with the evidence considered by the Settlement Officer Consolidation in recording a finding otherwise. The Deputy Director of Consolidation was exercising revisional powers. While recording a finding different to one recorded by the appellate authority it could not have completely ignored and given a go by to the evidence relied upon by the appellate authority. The Deputy Director of Consolidation ought to have considered the same and only thereafter could have rejected such evidence on good reasons to be recorded. In this regard reference may be had to the following decisions:

(i) Udai Raj Singh and Ors. v. Hari Ram and others 2008 ACJ 1955 (SC).

(ii) Jagdish Singh v. Madhuri Devi 2008 ACJ 1969 .

(iii) Chinthamani Ammal v. Nandgopal Gounder and another [2007 ACJ 1306 .

(iv) H.P. Pyarejan v. Dasappa (Dead) by L Rs and Ors. 2006 ACJ (SC).

19. The Deputy Director of Consolidation has further referred to the dates of preparation of the plaint, its presentation, the date of filing of Vakalatnama, the date of execution of the compromise deed, the date of its'' filing and thereafter the date of its'' verification and the compromise year. In the opinion of the Court 8 nothing adverse or untoward to the petitioners could be shown from the dates

as mentioned in the order of the Deputy Director of Consolidation. All the dates are in sequence and no infirmity or any kind of interpolation could be pointed out nor could it be inferred from the said recital of the dates.

20. Dealing with the arguments advanced on behalf of the respondents with regard to scope of judicial review it may be noted that the law relating to scope of judicial review has been largely developed and it is now well known that the concept of error of law includes the giving of reasons that are bad in law, or inconsistent, unintelligible or substantially inadequate. Refer to S.N. Chandrashekhar and Anr. ` State of Karnataka and others 2006 ACJ 745 SC. As already held the Deputy Director of Consolidation had committed serious error of law in allowing the revision. The contention is therefore rejected.

21. The second argument of the respondent that Settlement Officer did not record any finding to the effect that the land in dispute was coming down from common ancestor also deserves rejection for the reason that the parties had entered into compromise in two other villages where no dispute had been raised and the parties are continuing with the respective shares as per the compromise.

22. With regard to the submission regarding shifting of burden and the finding on fraud it may be recorded that in view of the finding of the Settlement Officer Consolidation having been affirmed this submission has no force. The Settlement Officer Consolidation has dealt with in detail regarding the alleged fraud by the respondents even in the absence of any pleading and had held that there was no fraud and the compromise had been validly entered into between the parties before the revenue Court.

23. The argument relating to registration of the compromise decree has no force. The compromise was with regard to the land in suit. Section 17 of the Registration Act, 1908 refers to the documents which compulsorily require registration subject to the exceptions. The present case where compromise was with regard to land which was subject matter of the suit would be exempted u/s 17(2)(vi) of the said Act.

24. The authorities relied upon by the learned Counsel on behalf of the respondents have no application to the facts of the present case and are of no help to the respondents in view of the findings recorded above. The arguments advanced by the learned Counsel for the respondents, in view of above discussions, do not merit consideration and are accordingly rejected.

25. The order of the Settlement Officer Consolidation dated 5.2.1973 is a speaking order covering all aspects of the matter and based upon consideration of material on record. No perversity could be shown in the said order.

26. Accordingly the writ petition succeeds and is allowed. The impugned order dated 2.1.1974 passed by the Deputy Director of Consolidation is hereby quashed and that of the Settlement Officer Consolidation dated 5.2.1973 is maintained. Records be corrected accordingly.

27. In the facts of the case there shall be no orders as to costs.