
(2013) 12 AHC CK 0153
In the Allahabad High Court
Case No : W.P. No. 111 (Cons.) of 1977

Kewla	Vs	APPELLANT
Deputy Director of Consolidation		RESPONDENT

Date of Decision : 04-12-2013

Acts Referred:

Citation : (2014) 105 ALR 844

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard Sri R.N. Tilhari, learned Counsel for petitioners and Sri M. Tauseef, learned Counsel for contesting respondents. This writ petition arises out of consolidation proceedings pertaining to title dispute. The dispute was raised by the contesting respondents in the form of objections u/s 9A(2) of U.P. Consolidation of Holdings Act in respect of several plots claiming co-tenancy with the original petitioner Jagannath, who was recorded in the revenue record as exclusive tenure-holder. All the three Courts below, i.e., C.O., S.O.C. and D.D.C. accepted the claim of the contesting respondents of co-tenancy over part of the land regarding which objections had been filed. The objections were allowed in respect of plot Nos. 50, 60, 220 and 224 (old plots No. 42, 53, 188 and 193) and it was directed that names of contesting respondents being co-tenants alongwith the original petitioners should be recorded alongwith him in the revenue record. However the claim of co-tenancy of the contesting respondents, in respect of other plots was rejected and that matter became final.

2. According to the contesting respondents, Sukhai was the common ancestor of the parties. C.O. Patti where the matter had been registered as Case No. 744 decided the same on 3.6.1970. Against the said order, Appeal No. 360 was filed by the original petitioner Jagannath, which was dismissed on 10.9.1970 by S.O.C. Pratapgarh. Against the said order, original petitioner filed Revision No. 125-A/98, which was dismissed by D.D.C., Pratapgarh on 8.2.1971, hence this

writ petition which was initially filed at Allahabad but later on transferred to Lucknow where it was renumbered.

3. The plots in dispute are grove. All the three Courts below have held that entry in the third settlement of the name of Mata Bhik was in the representative capacity, hence contesting respondents being his family members also had right therein. A pedigree has been placed on record in which Jagannath is shown to be descendant of Basawan. The ancestors of Ram Jiyawan (grand-father of opposite parties No. 4 and 7), Sukkhoo, father and grand-father of opposite parties No. 9 to 11, Jamuna, opposite party No. 8 and Jagannath are stated to be real brothers. Nigar is grand-son of Ram Jiyawan. In the oral statement Nigar (or Neemar) son of Sukhdeen, son of Ram Jiyawan stated that Sukhiya (Sukhai) died 100 years before. He was the alleged common ancestor. (collateral) Jagannath stated that property was acquired by Mata Bhik, his grand father and after his death it was entered in his name as his father Bhawani Deen had predeceased his father. C.O. mentioned that the pedigree put forward by Neemar was of several generations and he could not properly substantiate the same in his oral statement, however according to the Commissioner's report there were old trees and new trees, both and in two plots (220 and 224) houses of objectors were there.

4. Original petitioner filed some permission alleged to have been granted by the Zamindar in favour of his grand father Mata Bhik. The S.O.C. mentioned that the alleged permission dated 29.8.1911 was not registered. The S.O.C. further held that the extract of khatauni and khasra for the year 1298 Fasli (1890-91 A.D.) showed possession over trees of Ram Gulam, Ram Jiyawan, Nanku and Mata Bhik, (Mata Bhik was son of Ram Ghulam) hence subsequent entry in third settlement around 1932 Fasli of Mata Bhik only appeared to be in representative capacity. The S.O.C. concluded that the permission (ijazatnama) dated 29.8.1911 either not reliable or it was in the representative capacity. The judgment of D.D.C. is no judgment in the eye of law as after recording the case of the parties and arguments of their learned Counsel, only in one sentence, it was mentioned that there was nothing wrong in the judgments of C.O. and S.O.C.

5. The C.O. had categorically held that the extensive pedigree of several generations given by Neemar in his oral statement was not proved. Relationship/pedigree is to be proved in accordance with section 50 Evidence Act, i.e., opinion expressed by conduct.

6. There cannot be any presumption that if an agricultural land is entered in the name of a person about 100 years before then in the 4th, 5th and 6th generation, descendants of real brothers of that person would be entitled to hold the land. Even if joint Hindu Family is presumed to exist or proved to exist at a remote point of time, there cannot be any presumption that property held by a person of the said family is also joint Hindu Family unless it is specifically proved. Moreover, the presumption of jointness gets weaker and weaker, generation after generation. Joint family of real brothers may more readily be presumed than

joint Hindu family of first cousins. In case of II, III, IV and so on cousin's presumption gets weaker and weaker. Merely because trees are old and new does not effect the presumption of jointness in the least. The only tangible thing found was that houses of objectors were there in some plots. If possession of one person over part of a property of another is taken to mean that he was co-sharer, the entire principle/doctrine of adverse possession will fall down. Accordingly, the objectors could claim right only over that portion on which they were having their houses. For the above principles reliance may be placed upon AIR 2003 3800 (SC) and U.R. Virupakshaiah Vs. Sarvamma and Another,

Paragraphs No. 17, 18 and 19 of the authority of D.S. Lakshmaiah and another v. L. Balasubramanyam and another, AIR 2003 SC 3800 : 2003(53) ALR 158 (SC) are quoted below:

"17. In view of the aforesaid discussion, the respondents having failed to discharge the initial burden of establishing that there was any nucleus in the form of any income whatsoever from Item No. 2 property and no other nucleus was claimed, the burden remained on the respondents to establish that item No. 1 property was joint family property. In this view, the fact that the first appellant has not led any evidence to establish his separate income is of no consequence insofar as the claim of the respondents is concerned. Under these circumstances, for failure to lead evidence, the respondents claim of Item No. 1 to be joint family property would fail as rightly held by the First Appellate Court.

18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.

19. Another contention urged for the respondents was that assuming Item No. 1 property to be self-acquired property of appellant No. 1, he blended the said property with the joint family property and, therefore, it has become the joint family property. Assuming the respondents can be permitted to raise such a plea without evidence in support thereof, the law on the aspect of blending is well settled that property separate or self-acquired of a member of joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of

generosity or kindness will not ordinarily be regarded as an admission of a legal obligation."

In AIR 2003 3800 (SC) it has been held that if father is alive and tenancy of a building is taken by one of the sons it cannot be deemed to be for the purpose of Joint Hindu Family. It is also held that if two younger brothers were in possession of the premises it could not mean that the premises of the tenancy was for the purpose of joint family.

In U.R. Virupakshaiah Vs. Sarvamma and Another, it has been held in para-11 as follows:

"It is well settled that the presumption in regard to existence of joint family gets weaker and weaker from descendant to descendant and such weak presumption can be rebutted by adduction of slight evidence of separate possession of the properties in which even the burden would shift to the plaintiff to prove that the family was a joint family."

7. Reference may also be made to the leading authority of this Court on the point reported in Jagdamba Singh v. D.D.C., 1985 RD 281 (HC-LB) in which it has been held that the burden to prove the plea that initially the property was acquired by the common ancestor as karta or in representative capacity lies upon the person asserting the same. It has also been held in para-16 of the said authority that it is practically impossible to produce direct evidence about the correctness of an entry about 100 year old and the entry itself affords the evidence regarding settlement with the person in whose name the entry is there.

8. Moreover, it was not proved that Mata Bhik was eldest of the cousins and nephews or none of his uncles was alive when his name was entered in the revenue record. Entry of several persons mitigates against the theory of Joint Hindu Family which is to be headed by one Karta. In a Joint Hindu Family, there cannot be several Kartas. Accordingly, writ petition is allowed. All the impugned orders are set aside substantially. Basic year entry shall continue except in respect of the lands over which contesting respondents have got their houses which shall stand settled with them.