
(2016) 07 AHC CK 0108
In the Allahabad High Court
Case No : Writ-B No. 58776 of 2014

Kishan Pal Singh

APPELLANT

Vs

Dy. Director of Consolidation G.B. Nagar

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : (2016) 118 ALR 696 : (2016) 132 RD 530

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

Bench : Single Bench

Advocate : J.J. Munir, Advocate, for the Appellant; C.S.C, Ajeet Kumar Singh, L.P. Singh, Pradeep Kumar Rai, Vivek Kumar Singh and Bhagwati Prasad Singh, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri J.J. Munir for the petitioners and Sri Bhagwati Prasad Singh, Senior Advocate, assisted by Sri Vivek Kumar Singh for the contesting respondents.

2. The writ petition has been filed against the order of Deputy Director of Consolidation dated 09.10.2014 rejecting recall application of the petitioners for recalling order dated 04.08.2004, by which Revision Nos. 347/88 and 348/89 were decided, on compromise.

3. The dispute relates to the land of basic consolidation year khata 52, 69, 95-Aa and 95-Ba of village Raipur Banger, tahsil Dadri, district Gautam Budh Nagar, which were jointly recorded in the names of predecessor of the petitioners and the respondents. Assistant Consolidation Officer referred the dispute in respect of shares of recorded tenure holders. Predecessor of the respondents contested the matter and stated that Jhagru and Rati Ram did not belong to their family and they were not the sons of Kewal and had no share in the disputed land. The matter was remanded by Deputy Director of Consolidation, by order dated 06.04.1988,

for fresh decision on merit after giving opportunity of hearing to the parties. After remand, the Consolidation Officer, by order dated 11.03.1998 decided shares of the parties, holding share of Jhagru as 1/3 in all the khatas. The branches of Shibba and Ram Sukh filed an appeal (registered as Appeal No. 58). One Ram Bhool, transferee of the land in dispute from Ram Karan also filed an appeal (registered as Appeal No. 357/62). Both the appeals were consolidated and heard by Settlement Officer Consolidation, Gautam Budh Nagar, who by his order dated 29.03.2003 allowed the appeals and held that share of Jhagru as 3/16 and share of Rati Ram as 1/6, in the land in dispute.

4. Ram Kishan, son of Rati Ram and Jhagru (now represented by the petitioners) filed two revisions (registered as Revision Nos. 347 and 348) from the aforesaid order. According to the petitioners, 28.07.2004 was the date fixed in the revisions for arguments. The hearing was adjourned on 28.07.2004 and 25.08.2004 was fixed. In the meantime a fabricated compromise was filed and on its basis, the revisions were decided on 04.08.2004. In this compromise, a fixed area has been given to the branches of Rati Ram and Jhagru.

5. Kishan Pal Singh (petitioner-1) filed an application dated 10.08.2004 for setting aside the compromise and order dated 04.08.2004 and decide the revisions on merits. The recall application was heard by Deputy Director of Consolidation, who by his order dated 18.10.2007, held that the compromise was signed by Kishan Pal and Phooli (the petitioners). The recall application was filed on behalf of Kishan Pal but it has not been signed by him. As the order has been passed on the basis of compromise as such recall application was not maintainable. On these findings, recall application was rejected.

6. The petitioners filed a writ petition (registered as Writ B No. 6440 of 2008). This Court, after hearing the parties, by order dated 28.10.2013, found that the compromise was allegedly signed by Kishan Pal and Phooli. Ram Kishan and Jhagru were revisionists in the revisions. Signature of Ram Kishan was identified by another counsel while signatures of Kishan Pal and Phooli were identified by the counsel for Veer Pal and others and not by their counsel. The compromise was filed on 02.08.2004 and order on its basis was passed on 04.08.2004, without verifying its genuineness by Deputy Director of Consolidation. The petitioners challenged filing/signing of compromise by them as such recall application was maintainable and it was illegally rejected. On these findings the writ petition was allowed, order of Deputy Director of Consolidation dated 18.10.2007 was set aside and matter was remanded to Deputy Director of Consolidation to decide recall application afresh.

7. After remand, recall application was heard by Deputy Director of Consolidation, who by order dated 09.10.2014, found that Kishan Pal had been appearing in revisions during life time of his father and signed order sheet of Revisionist No. 347/88 on previous dates on 02.07.2003, 10.12.2003, 16.06.2004 and 04.08.2004, which shows that Kishan Pal was doing pairavee in revisions from life time of his father, Jhagru. On 28.07.2004, hearing was

adjourned for 04.08.2004 and date 25.08.2004 was changed on 28.07.2008 itself. The compromise (Paper No. 11-Aa/1) was filed on 28.07.2004, which was not signed by all the parties but it was signed by Kishan Pal. Stamp Paper of Panchayatnama (Paper No. 11-Aa/2) was purchased on 22.07.2004, which was written in village, in presence of Panches and was signed by Kishan Pal and Phooli. Original Compromise (Paper No. 11-Aa/3) was executed on 02.08.2004 and signed by all the parties, whose signatures were identified by their advocates. It was filed on 04.08.2004, in presence of all the parties and Presiding Officer directed it to keep on record, which amounts to its verification by Presiding Officer. Relying upon judgment of this Court in Sukh Lal v. DDC and other, 1986 RD 99, in which it has been held that word "superior authority" used under Section 44-A means Consolidation Officer and not Settlement Officer Consolidation or Deputy Director of Consolidation, he held that Deputy Director of Consolidation was not required to follow Rule 25-A. The petitioners deliberately concealed the facts about previous compromise and Panchayatnama dated 22.07.2004, in recall application. The compromise was genuine and order dated 04.08.2004 passed on its basis was not liable to be recalled. On these findings, he again rejected recall application. Hence this writ petition has been filed.

8. The counsel for petitioners submitted that before the revisional court, 25.08.2004 was the date fixed for hearing. However, in the meantime a fabricated compromise was filed on 02.08.2004. The compromise was not signed by Kishan Pal and Phooli. Their signatures were fabricated on it. The Court has not verified the compromise. The petitioners have specifically raised these points before the Court below but Court below has illegality rejected the recall application, without recording any findings in respect controversy that compromise was not signed by the petitioners. Observation that dated 25.08.2004 was changed on 28.07.2004 itself is without basis and conjectures. In Panchayat, no award could be passed. A fabricated compromise cannot be made basis for deciding revisions. Kishan Pal was doing parivara in revisions from life time his father was not denied. Findings in this respect are irrelevant. Recall application has been rejected on irrelevant consideration. Order of respondent-1 is illegal and be set aside.

9. In reply to the aforesaid arguments, the counsel for the respondents submitted that Deputy Director of Consolidation by orders dated 18.10.2007 and 09.10.2014, found that compromise was signed by all the parties and their signatures were identified by their counsel before Presiding Officer and order passed on the basis of compromise was valid. This findings of fact cannot be set aside by this Court in exercise of writ jurisdiction. Prior to the compromise, Panchayat was arranged in village on the basis of written agreement between the parties. In pursuance of Panchayatnama, the compromise was filed by the parties before Deputy Director of Consolidation. Its genuineness could not be doubted. Deputy Director of Consolidation, again in orders dated 18.10.2007 and 09.10.2014 held that the compromise was signed by the parties. Order of Deputy

Director of Consolidation does not suffer from any illegality and writ petition is liable to be dismissed.

10. I have considered the arguments of the counsel for the parties and examined the record. Photostat copy of the compromise is filed as Annexure-CA-4 to Counter Affidavit of Sonu Kumar. A perusal of this compromise shows that after identification of signature by the Advocate, Kishan Pal and Phooli were noted. The petitioners are denying of signing of compromise. Their signatures were not identified by their counsel, rather it was identified by the counsel for Veer Pal and others. The petitioner filed recall application on 10.08.2004, as soon as he came to know about fabricated compromise dated 04.08.2004.

11. Order 23, Rule 3 C.P.C. requires the Court to verify signatures of the parties on compromise and record its satisfaction that the compromise was filed by the parties and is lawful. In margin of this compromise, Deputy Director of Consolidation made endorsement "KOF" (keep on file) on 04.08.2004. Which means revisions were not listed before him on that day. Apart from this endorsement, there is no verification of signatures of the parties on the compromise. Findings of Deputy Director of Consolidation that compromise was signed in presence of Presiding Officer by the parties, whose signatures were identified their counsel is without any basis. Findings that date 04.08.2004 was changed on 28.07.2004 itself is also without any basis. Recall application has been rejected without application of mind to the points raised by the petitioners.

12. Panchayatnama bears signature as "Kisan Pal Singh" while compromise bears signature as "Kishan Pal". This was a material difference which shows signatures of petitioners were fabricated on the compromise. This material difference has been illegally ignored by Deputy Director of Consolidation. Although counsel for the respondents argued that substantial justice has been done between the parties but he failed to show how substantial justice has been done. The respondents denied that the petitioners did not belong to their family. Although the petitioners claimed that they belonged to the family and their branch had ? share in ancestral property. In compromise, the petitioners are given some fixed area of land. Argument that substantial justice has been done could not be substantiated. It is well settled that fraud and justice cannot dwell together. Successive remand to statutory authority is not serving any purpose and dispute is lingering between the parties. Since, the revisionists are denying filing of compromise as such the order based on compromise passed in revisions are liable to be set aside.

13. In view of the aforesaid discussion, the writ petition succeeds and is allowed. The orders of Deputy Director of Consolidation dated 04.08.2004 and 09.10.2014 passed in both the revisions are set aside. Since the compromise is not found genuine as such it is appropriate that the Deputy Director of Consolidation may decide the revision on its merit. In case the contesting respondents are so advised, they can also challenge the order of Settlement Officer Consolidation in their separate revision. As the dispute between the parties is in respect of the

share in disput land, which is a question of law. In case the revision is filed then it may be decided in accordance with law along with present revisions.

14. Since the matter is lingering from long time as such the Deputy Director of Consolidation may decide the revisions on merit after hearing the parties expeditiously without granting any unnecessary adjournment to either of the parties, preferably within a period of two months from the date of producing a certified copy of this order before him. Both the parties are appearing before this Court, they may appear before Deputy Director of Consolidation on 2.8.2016. Thereafter the Deputy Director of Consolidation may summon the record and with the convenience of the parties he shall fix a date for hearing of the revisions on merit and decide the revisions within the aforesaid period.