
(1995) 01 AHC CK 0029
In the Allahabad High Court
Case No : Civil M.W.P. No. 10760 of 1980

Kishori Devi

APPELLANT

Vs

Rajeshwari Devi and Others

RESPONDENT

Date of Decision : 31-01-1995

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 48
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 170

Citation : (1995) 01 AHC CK 0029

Hon'ble Judges : Binod Kumar Roy, J

Judgement

Binod Kumar Roy, J.—The petitioner prays to quash the order dated 2031978 passed by the Consolidation Officer, Hamirpur (respondent No. 2) in Case No. 101, the appellate order dated 651978 passed by the Settlement Officer (Consolidation), Hamirpur (respondent No. 3) dismissing her appeal and rejecting the petition of compromise signed by her as well as . the contesting respondent No. 1, who happens to be her stepmother, and the revisional order dated 28101980 passed by the Joint Director of Consolidation, Etah, Camp Hamirpur (Respondent No. 4) dismissing her Revision No. 5546 (as contained in Annexures 1, 3 and 5 respectively).

2. The relevant facts are in narrow compass:

The lands in question, which comprises in several plot numbers of village Kurara, District Hamirpur, belonged to Remanands, who died on 1081976. The petitioner is his daughter through is first wife whereas the contesting respondent No. 1 is his second wife. Respondent No. 1 filed an application .under Section 12 of the U.P. Consolidation of Holdings Act for entering her name in place of Ramdas and claiming to be his sole legal representative. The petitioner claimed that Respondent No. 1 has illegally claimed herself to be the heir of deceased Ramdas in relation to lands of Khata Nos. 323 and 386 of village Purara, rather she is heir of only such lands which are Sirdari as mentioned in the deed of Will dated "2671976 executed by Ramdas. The claim, made by both parties, ?was

adjudicated by the Consolidation Officer by his order dated 20/3/1978 (as contained in Annexure 1) holding that the Will was unregistered and executed Farji to deprive respondent No. 1 and hence not correct. The petitioner challenged the said order by filing an appeal. During the pendency of the appeal the petitioner as well as respondent No. 1 both filed a petition praying to dispose of the appeal in terms of the compromise arrived at between them. The appellate authority, vide his order dated 6.5.1978 (as contained in Annexure 3), rejected the petition of compromise on the ground that if the compromise is accepted then it may result in acceptance of an illegal transfer. In regard to the Will the appellate authority observed to the following effect: (i) Page No. 2 of the Will neither contained the signature of the testator nor of the witnesses, (ii) Page No. 3 contained at one place only the signature of the testator, (iii) The Will is typed on one but its typist or the person who has prepared its draft has not been produced, (iv) Even its rough has not been produced, (v) If as it is in relation to Sirdari lands its execution does not appear to be correct. The appellate authority also observed that from the statements of the witnesses it is proved that Respondent No. 1 was widow of the deceased Ram Prakash and she was correctly held to be heir by the Consolidation Officer and his order does not require any interference. The petitioner went up in revision (Revision No. 5546) which was dismissed, vide order dated 20/10/1980 (as contained in Annexure 5).
The Submissions :

3. Mr. Viliod Swaroop, the learned counsel for the petitioner in support of the Rule submitted as follows :

(i) Since the dispute was compromised between the parties in appeal and nothing was shown as to how the compromise violated any law the appellate and revisional authorities have committed an apparent error of law in not accepting the compromise and disposing of the appeal in terms thereof and accordingly the impugned appellate and revisional orders are liable to be set aside.

(ii) The finding that the Will was not proved according to law and was invalid is based on erroneous reasons.

4. Mr. R.C. Srivastava, the learned counsel Appearing on behalf of Respondent No. 1, on the other hand, prayed to dismiss this writ Application with costs submitting that valid reasons have been given by the appellate and revisional authorities for not accepting the compromise ; that in view of Section 170 of the U.P. Z.A. and L.R. Act "Ramdas could not bequeath the Sirdari lands and the Will was correctly discarded. He further submitted that since the compromise was arrived at in mutation proceedings it required registration and as the compromise petition was not registered, no interference is required by this Court. In this context he also placed reliance on a decision of this Court in Musai and others v. Deorai and others, 1982 AWC 812. Wherein Hon'ble R.M. Sahai, J. (now the Hon'ble Judge of the Supreme Court) observed as follows :

?.....learned counsel for petitioners rightly relied on Chandra Bhan Datt

Ram Pandey v. Jagdish Datt Pandey, 1962 ALJ 404, in support of his submission that a compromise entered in mutation proceedings should be registered otherwise it is not admissible in evidence. The submission of learned counsel for opposite parties that in "view of Kale v. Deputy Director of Consolidation, AIR 1976 SC 807, this decision should be deemed to have been overruled is not correct. That was a case of compromise by family settlement in which no right or interest was created therefore it was held such compromise did not need registration.?

5. In my view this writ application must succeed. A dispute was raised by the petitioner assailing title in regard to the lands admittedly belonging to her father on the basis of a Will said to have been executed by her father in her favour as well as in favour of her step mother. Since the genuineness and validity of the Will was not accepted by the Consolidation Officer the petitioner went up in appeal which was compromised and a joint petition of compromise was filed. The appellate and revisional authorities failed to notice that in the petition of compromise no reference whatsoever was made of the Will. Both authorities had failed to consider that it is open for a party to adjust the claim of the other party. The petitioner and respondent No. 1 being close relation adjusted their dispute by filing a joint petition of compromise, the genuineness of which was not disputed by Respondent No. 1 or doubted by the authorities. Even before this Court there is no denial of the respondent No. 1 that she has not entered into the compromise with the petitioner as referred to in the petition, the compromise does not refer to any transfer. In this back drop I fail to appreciate as to how the appellate authority observed that if he accepts the compromise it may result into transfer of lands. The aforesaid legal aspect was also not considered by the revisional authority, who mechanically proceeded to reject" the compromise. In Chandra Bhan Datt Ram Pandey v. jagdish Datt Pandey 1962 ALJ 404, the Division Bench of this Court after reviewing several decisions including a Full Bench held as follows :

?14. The position, therefore, is that the compromise petition which was presented before the mutation court is for all intents and purposes a deed of partition and not a family settlement, that even if it is a family settlement it required registration, and that in so far as it is intended to determine all questions of title between the parties, it is inadmissible in evidence and is not binding on the parties.?

It was also observed in the aforementioned case that mutation proceedings are generally speaking fiscal proceedings, which may enable the State to realise the land revenue due in respect of the property from the person in possession. The question of title does not come for consideration before a mutation "court at all (vide paragraph 12 of the judgment). The position of the mutation proceedings under the Act is different from the common mutation proceedings and the compromise filed in "the appeal under the Act requires no registration. The decision relied upon by Mr. Srivastava is of no help as he could not show me any

statutory provision regarding registration. In this view of the matter I need not decide the question as to whether the Will is genuine and valid and leave this question open. However, I do not think proper to accept the prayer of the petitioner to quash the order of the Consolidation Officer which was also not pressed before me by Mr. Swaroop. Nor I intend to remand the appeal as the revisional authority has ample jurisdiction, to dispose of the revision on the basis of the compromise arrived at between the parties.

6. For the aforementioned reasons, this writ application is allowed in part, the impugned revisional order, is quashed and Revision No. 5546 is remitted back to Respondent No. 4 for passing appropriate orders in regard to the petition of compromise which was jointly filed by the petitioner and respondent No. 1 (a copy of which has been appended as Annexure2 to the writ petition) in accordance with law and for a follow up action.

7. Since the petitioner and Respondent No. 1 are daughter and mother, though step, I make no order as to cost.

8. Let a writ of certiorari issue accordingly.