

(1995) 07 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 3996 of 1975

Lakhan and Another

APPELLANT

Vs

Harish Chandra and Another

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Citation : (1995) 07 AHC CK 0063

Hon'ble Judges : G.S.N.Tripathi, J

Final Decision : Dismissed

Judgement

G.S.N. Tripathi, J.—This is a petition under Article 226 of the Constitution with a prayer for issue a writ in the nature of certiorari, quashing the order dated 27.2.75 passed by the Dy. Director of Consolidation, Basti (D.D.C.) Annexure 2 to the writ petition.

2. The facts of the case are in very narrow compass. The pedigree in this case is not disputed. Gauri had two sons : Badal and Binai. Binai's line is represented by the petitioners, who are sons of Ram Jas and grandsons of Binai. Badal died leaving his widow Smt. Mohra, who died leaving behind her daughter Sunra On the death of Sunra, Harish Chandra, respondent No. 1 became her heir.

3. The property in dispute is of tenancy nature, in 1324 Fasli settlement this property was recorded in the name of Gauri (Jiman 8) (occupancy tenancy) with 4 year period. It means Gauri might have occupied this land some times in 1320 Fasli. It seems that Gauri's tenure did not last long. In the Khatauni for 1348 Fash. Badal alone was recorded on papers as an occupancy years, meaning thereby, that this land was settled by zamindars with Badal alone in 1346 Fasli. Even otherwise the occupancy tenancy was not easily inheritable in these days. The Zamindars had absolute rights to eject the tenants and resettlers the land with any person of their choice. In this case choice fell on Badal alone.

4. The name of Badal was expunged after his death and his widow Smt. Mohra was recorded in the papers in the Khatauai 1362 Fasli, as is evident from the

judgment of the learned D.D.C, After the death of Smt. Mohna, dispute arose in mutation proceedings. Ram Jas, the father of the petitioners played fraud on two points. Firstly, he set up his real sisters Smt. Sirtaji as the daughter of Smt. Mohra and sister of Smt. Sunra. The second point was that he claimed that the property had come down from Gauri and he had one half interest in the disputed property. Both these pleas were not accepted by the consolidation Courts and this way, Smt. Sirtaji was silenced.

5. But the petitioners doggedly have been pursuing the case.

6. The magna carta of the contentions of the petitioners is that a compromise was entered into between the father of Harish Chandra (Harish Chandra was minor at that time) on his behalf and Ram Jas, the father of Lakhan and Sri Ram, petitioners. He obtained an admission from the father of Harish Chandra that in this property the interest of Ram Jas was one half. This compromise is dated 7.2.56 recorded in the mutation proceedings before the S.D.O. Admittedly, mutation proceedings are only for the purpose of correction of the names to enable the State to recover revenue. In these proceedings, the title of the parties is not decided nor the court has any jurisdiction to decide the proprietary interest of the parties.

7. Another relevant point is that Harish Chandra was minor on that date i.e. 7.2.56. No permission was obtained from the District Judge to file a compromise, which was likely to be prejudicial to the interest of the minor. The property which Harish Chandra claimed in this case did not come down to him from his father. Rather, he inherited the property from his maternal grandfather through his maternal grandmother and Smt. Mohra and Smt. Sunra. In respect of this property of the minors, any compromise prejudicial to the interest of the minors could not be filed by the father as it amounted to an alienation of the property of minor without the permission of the District Judge. Even otherwise, Hindu Succession Act and U.P. Zamindari Abolition Act do not entitle a father to alienate or transfer in any manner the minor's property. So Harish Chandra's father, if at all he entered into a compromise had no jurisdiction to do so. Learned D.G.C. has correctly dealt with this point that without the permission of the District Judge, Harish Chandra's father had no authority to file a compromise entitling, the petitioners to get any interest in the minor's property.

8. The points have not been correctly appraised by the courts of Consolidation Officer and Settlement Officer Consolidation. They thought that the compromise would operate as an estoppel against the minors. This is against the law. There is no estoppel against the law. The interest of the minors was likely to be prejudiced and that too without the authority permission of the District Judge and by the conduct of a person who was totally unauthorised in law. So this so-called compromise in the mutation proceedings was not legal and it did not operate nor could it operate as an estoppel against the minor Harish Chandra. The sole basis prejudicial to the interest of the petitioners, if at all is this compromise, which has been knocked down by the process of law. Thus the

petitioners have no locus standi in this case.

9. Learned counsel for the petitioners has urged that the compromise should have been challenged before the proper civil court on the point of fraud etc. Here the question of fraud does not arise. The minors took the early opportunity to challenge the compromise "before the proper court i.e. Consolidation Officer, who has, admittedly the authority to determine the rights of the parties in agricultural land. So this contention of the learned counsel is rejected.

10. This way, I find that the judgment of the learned D.G.C. is based on correct legal appraisal and it does not suffer from any illegality. There is no legal or jurisdictional error committed by the learned D.D.C. Therefore, this Court will not interfere under Article 225 of the Constitution in a correctly decided case.

LI. The petitioner has no force. It is accordingly dismissed. Cost easy.