
(1985) 03 AHC CK 0045
In the Allahabad High Court
Case No : Writ Petition No. 1183 of 1978

Lal Behari and Others

APPELLANT

Vs

Ram Adhar and Others

RESPONDENT

Date of Decision : 11-03-1985

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 205 Proviso

Citation : (1985) 03 AHC CK 0045

Hon'ble Judges : K.N.Misra, J

Final Decision : Dismissed

Judgement

K.N. Misra, J.—In the present writ petition the dispute relates to grove plot No. 88 of Khata No. 2 situate in village Premdhar Patti, Pargana and Tahsil Patti, district Pratapgarh. In the basic year Khatauni the names of opposite parties No. 1 to 6 and Esraj, father of opposite parties No. 3 to 5 were recorded as Bhumidhars over the said grove plot. An objection was filed by the petitioners with the allegation that they are the groveholders/Bhumidhars of the grove plot in dispute and that the names of opposite parties were wrongly recorded over the said grove. The petitioners had based their claim on the ground that the grove belonged to their ancestors Bhawani Bheek, Durga Prasad and Raghunath who had planted grove on the land in question bearing Khasra No. 175 in the first settlement. It was further asserted that neither the recorded persons nor their predecessors in interest had any concern with the grove in dispute. It was, thus, prayed that the names of opposite parties be expunged and their names be recorded as Bhumidhars on the said grove plot in dispute. Opposite parties No. 1 to 6 also filed an objection contesting the claim of the petitioners. They also contested the claim of opposite party No. 7 Onkar son of Kamta Prasad, who had got the dispute registered during Partal in respect of the grove land. The opposite party No. 7 had, however, not pressed his claim.

2. The Consolidation Officer after taking evidence of the parties allowed the objection filed by the petitioners vide order dated 24/12/1975 and ordered the

names of the petitioners to be recorded as grove holders/bhumidhars after expunging the name of the recorded tenure holders. Aggrieved by that order the opposite parties No. 1 to 6 filed appeal which was allowed by the Settlement Officer, Consolidation vide order dated 18.4.1977 (Annexure No. 7). The findings recorded by the Consolidation Officer were set aside and it was held that the opposite parties and their predecessors were groveholders of the grove in dispute. The claim set up by the petitioners was rejected. The petitioners thereupon preferred revision which was dismissed by the Deputy Director of Consolidation vide order dated 6.3.1978 (Annexure No. 9). These orders are challenged in this Writ Petition.

3. Learned counsel for the petitioners, Sri H.N. Tilhari, urged that in the first settlement names of the predecessors of the petitioners were recorded over the grove plot in dispute, and, as such, the petitioners should have been held to be groveholders Bhumidhars and their names should have been recorded after expunging the entries in the basic year Khatauni in the names of the opposite parties. Learned counsel urged that the same old grove of the first settlement is continuing, and, as such, the entries in the third settlement in the name of Pudan Pasi, who is grand father of the opposite parties, was wrongly recorded and the subsequent entries based on it deserve to be expunged. I am unable to agree with this contention.

4. The learned Deputy Director of Consolidation had issued a commission to submit report regarding the ages of the trees situated on the grove in dispute and according to the commissioner's report one Gular tree was of ten years and the remaining trees are of about sixty years of age. Although the opinion of the Commissioner regarding the ages of the trees situated on the grove in dispute cannot be treated to be conclusive in the matter, but at the same time it cannot be rejected outright being devoid of any worth. The opinion evidence of the Commissioner or of any other expert has to be considered and evaluated along with other evidence on record on the matter. Thus, a finding based on consideration of the Commissioner's report cannot be said to be vitiated in law in the absence of any cogent ground for rejecting the Commissioner's report. In the present case I do not find any good ground to reject the Commissioner's report and to take contrary view regarding the ages of the trees situated on the grove in dispute. I am, therefore, of the view that the trees situated on the grove in dispute are not of the time of the first Settlement. In the third settlement the name of Pudan who is grand father of the opposite parties, is recorded as grove holder (bagh riyaya). This entry continued in 1346 and also in 1359 Fasli wherein names of opposite parties were recorded and the entry in their names continued till date. There would be a presumption regarding correctness of the settlement entries and, therefore, the subsequent long standing entries continuing in accordance with the settlement entries cannot be rejected without any solid rebutting evidence and good grounds.

5. It is well settled that under Section 57 of the Land Revenue Act the entries in

the current records of the latest settlement are presumed to be correct unless rebutted by cogent evidence. However, in this connection the question which sometimes arises for consideration is, whether the entries made in the subsequent settlements, which are different with those of the earlier settlements, would stand rebutted by the earlier settlement entries or not. It goes without saying that at each settlement the entries are made in accordance with the prescribed procedure contained in Chapter IV of the U. P. Land Revenue Act. Therefore, the entries in the record of rights prepared in accordance with the provisions of Chapter IV would be presumed to be true unless the contrary is proved as provided under Section 57 of the Act. Thus, where the entries made at the earlier and subsequent settlements are conflicting, the entries made in subsequent settlement can be given preference with those of the previous settlement unless the contrary is proved by cogent and strong evidence. During the course of every subsequent settlement proceeding the then existing entries in the record of rights are checked and verified and the same are corrected, if found to be wrong, after following the prescribed procedure under Chapter IV of the Land Revenue Act. Thus, the entries at the latest settlement would be presumed to be correct and the earlier conflicting settlement entries would not be enough evidence to rebut the correctness of the subsequent settlement entries. The entries in the record of rights of the latest settlement would, therefore, be presumed to be correct unless rebutted by cogent evidence and the same cannot be discarded merely on the ground of conflicting entries in the earlier settlement records.

6. The records in the first settlement were prepared prior to the passing of the U.P. Land Revenue Act, 1901, and, as such, no presumption can be raised regarding their accuracy as envisaged under Section 57 of the Land Revenue Act. Although it would be correct to say that the settlement entries made prior to 1901 would not be presumed to be correct as there was no specific provision under the Act No. 19 of 1873 similar to that of Section 57 of the U. P. Land Revenue (Act) Act, 1901, but at the same time have no evidentiary value and would carry no weight. In my opinion, with regard to the record of rights prepared during first settlement, there would be a general presumption which a Court may make under Section 114 of the Evidence Act that judicial and official acts have been regularly performed while making the entries in the first settlement records. This general presumption regarding following the prescribed procedure while preparing record of rights during the first settlement would make the entries admissible in evidence without any formal proof, but the aforesaid general presumption to the recording of entries in the first settlement record would not so operate as to permit to also raise a presumption about the correctness of the entries as is envisaged under Section 57 of the Land Revenue Act, 1901 because it cannot be construed to apply to entries made in record of rights prepared prior to enforcement of said Act and there appears to be no similar provision in earlier enactments. Apart from it, in my opinion, the entries in the records of first settlement cannot be construed to carry an

unrebuttable presumption of accuracy with them merely because of the aforesaid general presumption under Section 114 of the Evidence Act regarding due performance of official acts and following of the prescribed procedure while preparing said records, nor those entries can prevail upon the entries in the record of rights prepared during subsequent settlements. It cannot be disputed that the entries in the record of rights based on prior settlement entries were duly scrutinized and carefully verified and corrected, if found to be wrong, at each subsequent settlement wherein records were prepared in accordance with the procedure prescribed under Chapter IV of the U.P. Land Revenue Act, 1901. Thus, a very strong evidence would be required to rebut the entries recorded in the subsequent settlement records and, so in my opinion, if the entries made at different settlements are conflicting the entries made in the subsequent settlement records would be preferred and the same would not be taken to have been conclusively rebutted merely by the conflicting entries in earlier settlement records.

7. In the present case the name of Pudan son of Sukku Pasi was recorded as groveholder (Bagh Riyaya). This entry continued subsequently in the name of his descendents. Neither the petitioners nor the landlord had raised any objection to the entries made in the name of the predecessor) of the opp. parties during the third settlement nor they challenged the entries in the name of the opposite parties at any time subsequent to third settlement. Although a finding has been recorded to the effect that the petitioners have not been able to establish the pedigree as set up by them, but even otherwise I find no merit in the claim of the petitioners who have based their claim merely on the entries of the first settlement in the name of Bhawani Bheek and others. As already observed, the existing trees do not appear to be of the time of the first settlement. So even if Bhawani Bheek and others are the predecessors of the petitioners, their claim cannot be upheld merely on the basis of the entries in the first settlement in the name of Bhawani Bheek and others.

8. Learned counsel had next contended that under Section 205 of the U. P. Tenancy Act, written permission was required to be obtained of the landlord for plantation of the grove. It was urged that since the opposite parties have not been able to establish that for the purpose of planting grove, written permission was granted by the landlord, and as, such, the entries in their names as grove holders/Bhumidhars were per se wrong and deserved to be expunged. I am unable to agree with this contention as well.

9. It is not disputed that the present grove existed on the first day of January 1940 when the U. P. Tenancy Act was enforced. Thus, no written permission was needed for planting grove in view of proviso to Section 205 of the U. P. Tenancy Act which provides that where the permission was granted in Agra before the 7th day of September, 1926 and in Oudh prior to the commencement of this Act, the permission need not have been in writing and may have been either expressed or implied. In the third settlement name of Pudan was recorded as grove holder

(bagh riyaya). No objection was raised by the landlord, and, as such, implied permission to plant grove would be assumed. The long standing entries as groveholders are coming down in the names of the opposite parties and their predecessors. I, therefore, do not find any merit in the aforesaid contention of the learned counsel for the petitioners.

10. In the result, this writ petition fails and is accordingly dismissed being devoid of merits. No order as to costs.

(Petition dismissed.)