
(2007) 09 AHC CK 0117

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8904 of 1975

Lal Mohammad

APPELLANT

Vs

Deputy Director of Consolidation & Ors.

RESPONDENT

Date of Decision : 04-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 145
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2007) 09 AHC CK 0117

Hon'ble Judges : Poonam Srivastava, J

Final Decision : Dismissed

Judgement

Mrs. Poonam Srivastava, J.—Heard Sri Radhey Shyam, learned Counsel for the petitioner and Sri N.D. Kesari Advocate for the contesting respondents.

2. The orders dated 621974, 1861974 and 1821975 passed by respondent Nos. 1, 2 and 3 respectively are impugned in the instant writ petition. The respondent Nos. 1 and 3 concluded that an area 1 bigha, 14 biswa belong to the contesting respondents. The S.O.C. while confirming the order of the C.O. in appeal came to the conclusion that the entire area of the disputed plot No. 117 belongs to the respondents. The petitioner is aggrieved by all the three orders.

3. The facts giving rise to the dispute is that when the consolidation operation came into effect, plot Nos. 117/1 and 117/2 were recorded in the name of the petitioner and his brother Munna as Bhumidhars in the basic year entries. The whereabouts of the petitioner's brother was not known since a very long time, therefore, the claim of the petitioner was that he was exclusive owner of the entire holding. The petitioner filed his objection for expunging the name of his brother Munna. The respondent Nos. 4 to 6 filed their objections in respect of 1 bigha 14 biswa of plot No. 117/2. The claim of the contesting respondents was that they have perfected their claim as Sirdars on the basis of adverse possession. The petitioner objected to the claim of the contesting respondents on

the basis of Bhumidhari Sanad dated 15 91950 in respect of plot No. 117. A certified copy of Khasra No. 1356 Fasli was brought on record wherein the petitioner was recorded over plot No. 117/2 and also Khatauni pertaining to the said year was brought on record. The name of the contesting respondents were nowhere recorded. Besides in support the revenue entries of Khasra No. 1357 Fasli, Khasra No. 1358 Fasli and Khasra No. 1375 Fasli and 12 Sala Khatauni from 1372 to 1374 were brought on record. The entry in the name of respondent No. 5, Shiv, Talai and Nimar was objected being forged and fictitious entries. Reliance was also placed by the petitioner on certified copy of Khatauni for the period 1372 to 1374 Fasli. The Consolidation Officer vide order dated 621974 allowed the objection of the contesting respondents holding that the area 1 bigha 14 biswa of the disputed plot belong to them and 14 biswa 2 dhoor was of the petitioner. Two appeals were filed before the S.O.C. The appeal of the contesting respondents was allowed and claim of the petitioner was rejected, meaning thereby, the entire area of the disputed plot was held to belong to the contesting respondents. While coming to this conclusion, the S.O.C. remanded the case to the Consolidation Officer for a fresh decision vide order dated 1861974. This order was challenged by the petitioner in revision, which was dismissed by means of the impugned order dated 1821975. The revisional Court however maintained the order of the Consolidation Officer to the limited extent that the area of 1.14 of the disputed plot was given to the contesting respondents. The revisional Court remanded the case for a fresh decision, so for the findings in respect of the extended area given by the S.O.C. to the contesting respondents was concerned.

4. It is submitted by the learned Counsel for the petitioner that the petitioner filed as many as 10 documents alongwith list and an application for permission for adducing the additional evidence. The application was allowed on payment of Rs. 10/ as cost on 3091974. The contesting respondents were however allowed the right of rebuttal. It has been stated in paragraph 22 of the writ petition that the contesting respondents received Rs. 10/ towards cost and have made their endorsement in the order sheet. The emphasis is that one of the document which was filed alongwith list, was the certified copy of the compromise in proceeding under Section 145, Cr.P.C. dated 1391974. It is vehemently argued that the learned D.D.C. despite admitting the document at the revisional stage, failed to record any finding whatsoever on the said document. Admittedly, compromise was entered into in the proceeding under Section 145, Cr.P.C., to the effect that the parties to the said proceedings accepted the claim of the petitioner that they are in lawful possession. The submission of the learned Counsel is that the orders passed by the respondent are illegal and manifestly erroneous, thus liable to be quashed. Reliance is placed by the learned Counsel on the case of Paras Nath & Ors. v. Wajiul Hasan & Ors., 1971 U.R.C. 615. It is argued that the D.D.C. has failed to discuss the oral evidence as well the documents brought on record at the revisional stage.

5. Learned Counsel for the respondents has disputed the each and every

arguments advanced by the Counsel on behalf of the petitioner. He submitted that all the three judgments are concurrent judgment concluded by finding of fact. There is no reason why the judgment should be interfered in extraordinary jurisdiction under Article 226 of the Constitution of India. The orders of the consolidation authorities are based on evidence and cannot be set aside.

6. I have heard the respective Counsel for the parties at length and examined the impugned orders, I am of the view that no doubt the revisional Court admitted as many as 10 documents at the revisional stage, which the petitioner relied upon, I do not agree with the submission that the compromise entered into in the proceedings under Section 145, Cr.P.C. was sufficient to conclude and adjudicate the rights of the parties. Section 145, Cr.P.C. does not decide the claim or right of the parties. The question of possession for a limited period is required to be decided under Section 145, Cr.P.C. but no claim of the respective parties or right of possession can be adjudicated in such proceedings.

7. In the circumstances, assuming that the Deputy Director of Consolidation did not give due weightage to the compromise entered into under Section 145, Cr.P.C., it does not entitle the petitioner to claim exclusive ownership on the basis of the said compromise. Learned Counsel for the contesting respondents has also pointed out that the compromise and receipts filed before the Deputy Director of Consolidation was never connected with the land in dispute to establish that the receipts and compromise had any correlation whatsoever. The respondent Nos. 4 to 6 claimed Sirdari right, not only on the basis of adverse possession. Their claim was also based on a specific assertion that their ancestors are coming down in possession continuously since before the Abolition of Zamindari. They had become Sirdar even before the advent of U.P. Act No. 1 of 1951 and they were recorded as occupant in the year 1356 Fasli. The contesting respondents were in cultivatory possession in 1359 Fasli and it was in these circumstances that their objections under Section 59 of the U.P. Tenancy Act between the parties was decided in their favour. They were held to be tenants of the land in dispute. The appeal filed by the petitioner stood dismissed and, therefore, the claim of the petitioner visavis respondents was became final. The judgments in respect of adjudication of the right and claim of the contesting parties have been brought on record by means of the counteraffidavit and it is strenuously argued that the entries of the various Khasra and Khatauni were made in complete disregard of the finding arrived at in favour of the contesting respondents by the competent Courts. It is claimed that in view of the various judgments annexed with the counteraffidavit, no right or interest over the land in dispute can be given to the petitioner. Certified copies of the judgment dated 3131955 passed by Assistant Collector, under Section 59 of the U.P. Tenancy Act and judgment dated 381956 passed by the Commissioner were also brought on record by the contesting respondents during the proceedings before the consolidation authorities and, therefore, the findings arrived at by the Consolidation Authorities against the petitioner cannot be said to be illegal or perverse. Proceedings were also initiated before the Custodian Officer in respect of the share of Munna,

brother of the petitioner who is said to have gone to Pakistan. The respondent Nos. 4 to 6 were found in possession of the disputed land even by custodian. So far the question of granting Bhumidhari Sanad, that was done behind the back of the contesting respondents and in ignorance of the various orders and judgments by a competent Court. Consolidation Authorities have rightly held that the documents brought on record at the revisional stage are not worthy of reliance.

8. In the circumstances, I am in agreement with the submission of the Counsel for the respondents. The question of fact cannot be reopened at this stage. No good ground for interference is made out in the writ petition. The writ petition is accordingly dismissed.