
(2011) 10 AHC CK 0164
In the Allahabad High Court
Case No : Writ B No. 41264 of 1992

Laxmi and Others

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Uttar Pradesh Tenancy Act, 1939 — Section 180, 56, 59, 61
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229(B)

Citation : (2011) 10 AHC CK 0164

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Plot Nos. 770 and 772 (total area 1.33 acres) of Khata No. 99, situate in village Harpur, Pargana Kharid, District Ballia is the subject matter of the present writ petition.

2. The said Khata, in the basic year, was recorded in the names of Mahangu, Tulsi etc., the predecessors in interest of the contesting Respondents herein. An objection on the commencement of consolidation operation in the village was filed by Lakshmi son of Lalji and Ors. for expunging the names of Respondents herein and for recording of their names on the allegations inter alia that their ancestors namely Mandhir, Randhir and Raghuveer were declared as tenants by a competent court in the suit filed u/s 180 of U.P. Tenancy Act for their ejectment by the then Zamindar which was decided in favour of Mandhir etc.. It was further pleaded that Mahangu, the father of Respondent Nos. 3 to 6 along with other persons had filed another suit for declaration of their title in respect of the aforesaid land u/s 56/61 of Uttar Pradesh Tenancy Act wherein Mandhir etc. were Defendants. It was numbered as case No. 732 and the suit was dismissed by the judgement and decree dated 8.12.1953 and the said decree was confirmed in appeal by the Additional Commissioner, Banaras in appeal No. 189, by the

judgement dated 8th of August, 1955. The Petitioners are in occupation and possession of the disputed plots and their possession was found during Partial after commencement of the consolidation operation in the village. It was further pleaded that the ancestors of the contesting Respondents by playing fraud got their names entered over the disputed Khata and on coming to know, a suit u/s 229B of Uttar Pradesh Zamindari Abolition and Land Reforms Act for declaration of title was filed by the predecessors in interest of the Petitioners which was dismissed by the Sub Divisional Magistrate. The matter was carried in appeal but in the meantime due to commencement of consolidation operation in the village the proceedings were abated. There were criminal proceedings also u/s 145 Code of Criminal Procedure between the parties.

3. As against the above, the Respondents came out with the case that their ancestors were declared tenant of the land in dispute by the competent court in a suit which was filed before the year 1947.

4. The Consolidation Officer by his judgement dated 24th of September, 1986 accepted the case of the Petitioners and ordered that the names of contesting Respondents and their ancestors be expunged from the revenue record and the names of Petitioners be recorded. The matter was carried in appeal No. 243/4398 by Sheo Shanker and Ors. before the Settlement Officer of Consolidation who by the judgment dated 20th of April, 1991 allowed the appeal by setting aside the order dated 24th of September, 1987 passed by the Consolidation Officer. He restored the basic year entry. The said order has been confirmed in revision by the impugned order.

5. Heard Sri Sudhakar Pandey, learned Counsel for the Petitioners and the learned Counsel for the contesting Respondents.

6. The learned Counsel for the Petitioners submits that the two Courts below have wrongly proceeded in the matter and committed illegality by restoring the basic year entry. It was submitted that the title of Petitioners' ancestors was established by the competent court of law in the suit instituted u/s 180 of U.P. Tenancy Act which was instituted by the then Zamindar against them wherein Petitioners' ancestors were declared tenants with respect to the land in dispute. It was further submitted that, admittedly, the ancestors of the Respondents herein had instituted suit No. 732 in the revenue Court for declaration of their title against the then Zamindar and Mandhir Ahir, Lakshmi Ahir etc. as Defendant second set. The said suit after full trial was dismissed by the judgment and decree dated 8th of December, 1953 and the decree has been confirmed in appeal No. 188 by the Additional Commissioner, Banaras by judgment dated 8.8.1955. These judgements were delivered by competent courts of law and could not have been ignored by the consolidation courts subsequently. The names of Petitioners and their ancestors were admittedly recorded in the revenue record of the year 1345 Fasli (agricultural year). The maintenance of revenue record is the responsibility of the revenue authorities. Even if the revenue officials have failed to correct the record in the light of judgment of the

competent courts, it will not in any manner affect the right, title or interest of the Petitioners in the land in dispute.

7. The learned Counsel for the Respondents, on the other hand, submits that No. 732 instituted by their ancestors Mahangu and Ors. was dismissed but under issue Nos. 1 and 2, the finding in their favour was recorded. Elaborating the argument it was submitted that there is a mention of fact that in some other earlier proceeding their ancestors were declared as sub-tenant and therefore, they have acquired Sirdari rights after the commencement of Uttar Pradesh Zamindari Abolition and Land Reforms Act and have now become Bhumidhar.

8. Considered the respective submissions of the learned Counsel for the parties and perused the record.

9. The only question which falls for consideration in the present case is -What would be the effect of earlier litigation between the parties on the present proceedings under the Uttar Pradesh Consolidation of Holdings Act?

10. The two Courts below have proceeded to hold against the present Petitioners on the footing that the earlier judgements will not operate as res judicata and in criminal proceedings u/s 145 Code of Criminal Procedure the possession of Sheo Shanker one of the Respondents herein was found. In revenue record i.e. in 1345 Fasli which corresponds to the year 1937 A.D. the land in dispute is recorded in the names of Mandhir, Randhir and Raghuvir, the predecessors in interest of the Petitioners namely Lakshmi and Ors. as hereditary tenants.

11. It is admitted case of the parties that the then Zamindar had instituted a suit u/s 180 of the U.P. Tenancy Act for ejectment against the Petitioners' ancestors and in that suit it was held that the Petitioners' ancestors are tenants. On an application filed by them u/s 27 of the U.P. Act No. X of 1947, the ancestors of Petitioners were declared as tenant of the land in question. This had happened before year 1947 A.D..

12. Mahangu Teli along with Jamuna Teli, predecessors in interest of the Respondents herein had instituted suit at Ballia u/s 59/61 of the U.P. Tenancy Act against the then Zamindar Babu Bakeshwar Prasad Singh and Mandhir Ahir, Kripa Narain, Lakshmi Narain and Ors. (predecessors in interest of the Petitioners, described as set two). In the said suit as many as seven issues were framed. Issue Nos. 1 and 2 which are relevant for the present purpose, are reproduced below:

Issue No. 1. Whether the Plaintiffs are hereditary tenants of the land in suit and are in possession as such?

Issue No. 2. Whether the Defendants set two is hereditary tenants of the land in dispute and is in possession as such?

These two issues were decided together. The relevant portion of the judgement

reads as follows:

In my opinion defdt set 2 are hereditary tenants of the plots in suit. Actual possession of the plots in suit is No. doubt with the plffs. These issues therefore, are decided partly in favour of the plffs and partly in favour of defdts set 2.

The operative portion reads as follows:

In view of the findings recorded above, this suit, therefore fails and is hereby dismissed with cost and pleaders' fee of Rs. 10/- (Rupees Ten) only.

Sd/- 8.12.1953

13. From a plain reading of the quoted portion above as also the operative portion of the judgment it is crystal clear that it was found that the Defendant set two (ancestors of the Petitioners herein) were held to be hereditary tenants. The submission of the contesting Respondents that it is not so, is not correct. It was also argued by the learned Counsel for the Respondents that in the judgment a reference is made that in some other proceedings, the Plaintiffs (Respondents herein) were declared as sub-tenants of the Defendant set two for three years and the Defendant set two were held to be chief tenants of the land in suit. The said observation is No. doubt there in the body of the judgment while stating the case of the parties under issue Nos. 1 and 2. The ultimate finding under those issues is the one which has been reproduced above. It leaves No. room to doubt that the Petitioners' ancestors were held to be hereditary tenants. The judgment got the seal of approval by Appellate Court also. It, therefore, logically follows that the title of the Petitioners to the land in dispute stands established by a judicial pronouncement of competent court of law between the parties and the Respondents herein are definitely bound by it. No. Court including the consolidation court could brush aside the said judgment. It cannot be ignored. The judgement could not be discarded merely on the basis that subsequently the ancestors of the Respondents herein by manipulation got their names entered in the revenue record.

14. It is an acknowledged legal position that the recording of name in revenue record without there being any basis is of No. consequence and will not confer any right, title or interest on such person. It is responsibility of revenue officials to maintain the record. If they fail to maintain the record properly, it will not wipe off or take away the judicial pronouncements given by court of law after contest. There is No. dearth of judicial pronouncements wherein it has been laid down that if a revenue entry in respect of name of a person is not backed with any title or source, it is worthless. The Settlement Officer of Consolidation and the Deputy Director of Consolidation were impressed very much by the fact that the name of Mahangu and Jamuna (predecessors in interest of the Respondents) were recorded in the revenue record namely 1356 Fasli, 1359 Fasli, 1362 Fasli etc.. There is nothing on record to show how their names came to be recorded

and the basis, if any, of such recording of names. Obviously, these entries were wrong or were manipulated by the Respondents with the help of revenue officials. It may not be out of place to mention here that the Petitioners brought a suit for declaration of their right, title or interest u/s 229B of the U.P. Zamindari Abolition and Land Reforms Act impleading the Respondents herein as Defendants. The suit was dismissed by the trial Court but the appeal was allowed by the First Appellate Court. The Defendants carried the matter in second appeal before the Board of Revenue but the proceedings were abated on account of commencement of consolidation operation in the village. The point which I am trying to bring home is that the Petitioners or their ancestors took steps for correcting the revenue record as soon as they came to know that the revenue entries are incorrect. To put it differently, these revenue entries recording the names of contesting Respondents in absence of any source of title of the Respondents herein is meaningless. At least it could not have formed the basis of impugned judgements, in the face of judgements and orders of the revenue Courts including that of Additional Commissioner dated 8th of August, 1955. The said judgment was holding the field when these revenue entries contrary to the judgment were made. The learned Counsel for the Respondents could not refer any material nor there is any averment in the counter affidavit that the said judgment dated 8th of August, 1955 was in any manner diluted, reversed or modified subsequently. Once there is a judicial pronouncement determining the rights of the parties, all the antecedent pleas and judgements etc. shall be deemed to have been merged in the last judgment between the parties. The rights and liabilities of the parties shall be governed by the last judgment even if there is some earlier judgment otherwise.

15. There is another aspect of the case. No. benefit on the basis of 1356 Fasli or 1359 Fasli can be taken by the Respondents, as they could and ought to have taken such plea as a ground of attack in the suit filed by them, which was dismissed on 8.12.1953 and the decree of trial court was confirmed on 8.8.1955. The plea was available to them as 1356 Fasli and 1359 Fasli correspond to year 1949 AD and 1952. It is barred by principles of res judicata.

16. Much emphasis was laid by the courts below and also by the learned Counsel for the Respondents that the contesting Respondents were sub tenants. Their sub tenancy was only for a period of three years and not beyond it. There is No. material on record to show that their sub tenancy continued or subsisted after expiry of period of three years. Therefore, the Courts below were not justified in reversing the order of the Consolidation Officer.

17. The Settlement Officer of Consolidation and the Deputy Director of Consolidation both have proceeded on the wrong premises by ignoring the judgment dated 8th of August, 1955 between the parties and giving undue weight to the revenue entries which were made without any basis.

18. It was also submitted that there was criminal proceeding u/s 145 Code of Criminal Procedure with regard to the possession in respect of the land in

dispute. The said proceeding has hardly any relevancy to the proceedings relating to title. Proceedings u/s 145 Code of Criminal Procedure are summary in nature and it has nothing to do with regard to the title of any party.

19. In the counter affidavit, one of the pleas raised by the Respondents is that the suit u/s 59 of the Uttar Pradesh Tenancy Act was decided on the basis of the proceedings pending u/s 27 of the U.P. Act No. 10 of 1947. Copy of the judgment has not been enclosed. The allegations are vague. The date of judgment of suit u/s 59 of the Uttar Pradesh Tenancy Act is missing. However, a further reading of para 18 of the counter affidavit would show that the judgment of trial court dated 8th of December, 1953 affirmed by the Additional Commissioner in appeal on 8th of August, 1955 is subsequent to the decision given in suit u/s 59 of the U.P. Tenancy Act. Resultantly, the judgment of the Appellate Court dated 8th of August, 1955 is final judgment between the parties deciding their rights.

20. The Petitioners claimed that they are continuing in possession over the disputed land since the time of their ancestors, revenue entries notwithstanding. Such plea was put forward in their objections before the Consolidation Officer. All the three consolidation courts have noticed that at the time of consolidation Partial, the Petitioners claimed their possession. As against this, the Settlement Officer of Consolidation while reversing the order of Consolidation Officer proceeded to hold that the sub tenancy of the Respondents' ancestors was of three years, but it appears that No. steps for their ejection was taken after the expiry of three years, forgetting that steps for eviction after the expiry of lease period is required only when the lessee fails to vacate it and not otherwise. There is No. such evidence. The Settlement Officer of Consolidation himself was not definite as he states that it appears so that the Petitioners' ancestor could not get the possession. Reliance placed on the proceedings u/s 145 Code of Criminal Procedure is also misplaced one.

21. Viewed as above, the impugned orders dated 20.4.1991 passed by the Settlement Officer of Consolidation and dt. 14.9.1992 passed by the Deputy Director of Consolidation cannot be allowed to stand.

Writ Petition No. 3805 of 1987

22. Before saying omega to the case, it may be noted that the present writ petition was connected with the writ petition No. 3805 of 1987: Sheo Shanker v. Deputy Director of Consolidation. The writ petition No. 3805 of 1987 was preferred by Sheo Shanker, Ram Chandra, Shivaji all sons of Mahangu, Subhash and Kamla sons of Tulsi against Basudev, Indradev and others. Sheo Shanker, Ram Chandra etc. are the Respondents herein. In the said writ petition, an interim order staying the operation of the order dated 13.1.1987 was obtained. When the notices were served on the Respondents therein (who are Petitioners in the aforesaid writ petition No. 41264 of 1992) they were shocked. A detailed counter affidavit was filed stating that the aforesaid writ petition has been filed by fabricating the orders of the Settlement Officer of Consolidation and the

Deputy Director of Consolidation impugned therein. In nutshell, the case in the counter affidavit was that No. such orders have been passed by the authorities concerned. The matter was viewed seriously by this Court. This Court while vacating the stay order has passed a detailed order dated 28.1.1988 directing the Registrar, High Court to make inquiry about the fraud played and take suitable action to initiate criminal proceedings against the person responsible for committing fraud. A report from the Registrar was called for. The Registrar conducted inquiry, issued notices to Sri Vindhyachal Singh, Advocate, who had filed the aforesaid writ petition as also to the Petitioners therein and recorded statement. A affidavit in support of the aforesaid writ petition was given by Sri Ram Chandra son of Mahangu. The inquiry was conducted. The Inquiry Officer has found that Sheo Shanker Singh forged the orders dated 24th of September, 1986 alleged to have been passed by Settlement Officer of Consolidation and the order dated 13th of January, 1987 alleged to have been passed by the Deputy Director of Consolidation filed in the writ petition No. 3805 of 1987, in order to obtain a stay order, and was successful. He committed offence under Sections 465, 466, 468 and 471 I.P.C.. Notices were issued before recording finding to Sheo Shanker Singh who in spite of service of notice did not appear. Necessary averments in this regard have also been made in the present writ petition No. 41264 of 1992. In reply, they have come out with the case that it is the counsel Sri Vindhyachal who manufactured these orders. The reply given on the face of it is absurd. A counsel would file a writ petition or take legal proceedings on the basis of certified copies handed over to him by the client. It is too much to say that a counsel at Allahabad will go to Ballia and manufacture the orders and obtain certified copies of the manufactured orders. Now, Sheo Shanker Prasad son of Mahangu is No. more and his heirs have been substituted in the connected writ petition. All the sons of Mahangu who are parties in the aforesaid writ petition were beneficiaries of the stay order. When this writ petition was taken up for hearing along with the above mentioned connected writ petition, none turned up to press the writ petition and the writ petition has been dismissed in default on 22nd of September, 2011. The facts do show that Ram Chandra and Ors. sons of Mahangu, Subhash and Ors. sons of Tulsi have been found to be guilty at least prima facie for manufacturing court orders. They dared to file writ petition No. 3805 of 1987 on the basis of forged and fabricated court orders. This definitely reflects their conduct and supports the case of other side, that the revenue entries were manufactured entries. Such persons do not deserve any sympathy of court.

23. It is not out of place to mention here that in a recent decision of Apex Court in the case of Rameshwari Devi and Others Vs. Nirmala Devi and Others, in C and D of para 52 in particular has held as follows:

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate

cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.

Viewed as above, it is desirable that exemplary cost may be imposed upon Ram Chandra and Ors. who could dare to file writ petition No. 3805 of 1987.

24. In the result, the writ petition No. 41264 of 1992 succeeds and is allowed and the impugned orders dated 20.4.1991 and 14.9.1992 are hereby quashed and the order of the Consolidation Officer dated 24.9.1986 is restored back with cost of Rs. 25,000/- (Rupees Twenty Five Thousand) payable by the contesting Respondent Nos. 3 to 6 jointly and severally within a period of one month failing which, the said amount shall be recoverable as arrears of land revenue with collection charges by the District Magistrate, Ballia.