

(1995) 08 AHC CK 0081

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 10742 of 1975

Man Mohan

APPELLANT

Vs

D.D.C., Allahabad and Others

RESPONDENT

Date of Decision : 04-08-1995

Acts Referred:

Citation : (1995) 08 AHC CK 0081

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

Final Decision : Disposed Of

Judgement

G. S. N. Tripathi, J.—This is a petition under Article 226 of the Constitution praying for a writ in the nature of certiorari quashing the orders Annexures 2 and 3 passed by respondents No. 1 and 2 respectively.

2. There is an pedigree given in the judgment of the learned Dy. Director of Consolidation at page ft, which is as under;

Kalika

Sheetal Gopali

Chhedi

Shanker

Ram Autar Natthu R. 4 Sukhdeo Behari Ramdeo Sheo Ratan

Manmohan

Petitioner Ram Kripal Rameshwar

Mst. Gujratia. Ram Vishal

Tribhuwan R. 3.

with a further addition that Tribhuwan is the daughter's son of Smt. Gujratia, Man Mohan is the petitioner. He represents the line of Chhedi. Natthu,

respondent No. 4 is representing the line of Kalika and Tribhuwan, respondent No. 3 is representing the line of Shankar. After a battle for more than 2 decades, this point stands settled that Tribhuwan is the daughter's son of Smt. Gujratia and represents and interest of Gujratia, which she inherited from her husoand Ram Kripal.

3. The land in dispute consists of three Khatas. Khata No. 12 includes plots No. 19,165,167,95,175,181 and 187. Khata No. 47 consists of plot Nos. 58 and 63 and Khata No. 70 consists of plot Nos. 59 and 64. In Khata No. 12, in the basic year, respondent No. 3 and 4 were recorded. Over Khata No. 70, the name of Tribhuwan alone was recorded in the basic year In Khata No. 47. The petitioner and respondents 3 and 4 were recorded in the basic year.

4. Man Mohan started with the claim that Tribhuwan was a foreign to this family and consequently he had no interest in the disputed property. The property being ancestral belongs to Natthu and Man Mohan alone to the extent of 1/2 share each. The learned Consolidation Officer upheld the claim of Man Mohan. But learned Settlement Officer Consolidation and learned Dy. Director of Consolidation found that Tribhuwan is the daughter's son of Smt. Gujratia. This finding has not been challenged before me now. To be fair to the learned counsel for the petitioner, he has conceded this point that Tribhuwan is the sole representative of the line of Shanker, being the daughter's son of Smt. Gujratia.

5. The learned Settlement Officer Consolidation and learned Dy. Director of Consolidation have accepted that majority of the plots came down from the day of Gopali, the common ancestor of the parties. However, their shape and continuity partially broke down some time in the year 1320 Fasli. Therefore, they came to a conclusion that the entries in the basic year were correct. The claims of the parties were upheld in accordance with the entries in the basic year.

6. The petitioner has felt aggrieved and has challenged these findings before this Court.

7. I have heard learned counsel for the parties at a stretch and gone through the record. I find that is much force in this petition and it deserves to be allowed substantially.

8. In Khata No. 12, plots No. 19, 165 and 167 have not been recorded in the name of Gopali, the common ancestor. Learned counsel for the petitioner does not press this petition with regard to these three plots. Hence the findings of the learned Dy, Director of Consolidation and the learned Settlement Officer Consolidation with regard to the basic year entries in respect of these plots, included in Khata No. 12 is upheld and it is held that these three plots exclusively belong to respondents 3 and 4, their share being 1/2 each.

9. But as regards the remaining plots, namely, 95, 175, 181 and 187 in Khata No. 12, I find that these plots were recorded the name of Gopali. Plot No. 95 is made of plot No. 75 of the year 1282 Fasli. Similarly, plots No. 175, 181 were

made of plot No. 217 of the year 1282 Fasli. Plots No. 187 is made of plot No. 144 of 1282 Fasli. There is no evidence, much less, any allegation to prove that Gopali's descendents were at any time, ejected by the Zamindar and a fresh settlement took place with anyone or only some of them. Therefore, it will be presumed that these plots, namely, plot Nos. 95, 175, 181 and 187, which were recorded in the name of Gopali, are the ancestral properties of the parties and their share shall be 1/3 each.

10. Plot Nos. 59 and 64 of Khata No. 70 and plots No. 58 and 63 of Khata No. 47 are made of plot Nos. 49 and 44 of the year 1282 Fasli. They are recorded in the names of Gopali. Therefore, it will be presumed that these plots also being ancestral, belong to the parties and the share of all the three persons, namely Man Mohan, Natthu and TVibhuwan shall be 1/3 each.

11. Both the learned lower courts have committed an error of law in not properly appreciating the legal position. Therefore, their findings on this point are upset.

12. The matter is remanded to the learned Settlement Officer Consolidation, who shall carve out the Chaks in accordance with the directions given in the body of this judgment, namely plots No. 19, 165, 167 in Khata No. 12 shall be given to Natthu and Tribhuwan alone, their share being 1/2 each. The remaining plots of Khata No. 12 and all the plots of Khata No. 47 and 70, being ancestral property, are adjudged to be the property of all the aforesaid three persons, their share being 1/3 each.

13. The petition is disposed of finally with the above observations. Cost easy.

14. A copy of this judgment shall be produced before the learned settlement Officer Consolidation within a period of three months from today, who shall carve out the chaks in accordance with the directions as above without delay.