
(2010) 07 AHC CK 0024
In the Allahabad High Court
Case No : C.M.W.P. No. 32484 of 2009

Mangu

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48(1), 9, 9A(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 210

Citation : (2010) 07 AHC CK 0024

Hon'ble Judges : B.K. Narayana, J

Bench : Single Bench

Advocate : Kshitij Shailendra, Sumit Daga, Sankatha Rai, Vinod Kumar Rai and Vijay Kumar Rai, for the Appellant; Nipun Singh, C.S.C., for the Respondent

Judgement

B.K. Narayana, J.—Heard Sri Vijay Kumar Rai learned Counsel for the Petitioner and Sri Nipun Singh learned Counsel for the Respondent Nos. 4 to 8.

2. By means of present writ petition under Section 226 of the Constitution of India the orders dated 30.3.2009 (Annexure-6 to the writ petition) and 21.5.2009 (Annexure-8 to the writ petition) passed by Settlement Officer Consolidation, Muzaffarnagar Respondent No. 2 and Deputy Director of Consolidation, Muzaffarnagar, Respondent No. 1 respectively are sought to be quashed.

3. The dispute in the present writ petition primarily relates to plot No. 694/1 of khata No. 211 measuring 2 bigha 17 biswa (herein- after referred to as the disputed plots). The factual position is that late Mukunda father of the Respondent Nos. 4 to 7 was recorded as chief tenant and the names of Chhajju father of the Petitioner and Jittu son of Pirwa Respondent No. 8 were recorded in Column IX in the basic year. Since Mukunda died leaving behind Ram Kumar, Deshraj and Charan Singh (minor) as his heirs and legal representatives, Respondent Nos. 4 to 7 (hereinafter referred to as the contesting Respondents),

after the extracts from the record were issued as provided u/s 9 of the Uttar Pradesh Consolidation of Holdings Act (hereinafter referred to as the Act), the contesting Respondents filed an objection u/s 9A(2) of the Act with a prayer that their names may be recorded as chief tenants/bhumidhars of the disputed plot in place of their deceased father Mukanda and the entries existing in Column IX in favour of Chhajju and Respondent No. 8 of the khasra be expunged as the same had been illegally made without issuing P.A. 10 notice either to them or to their father Mukanda as required by paragraphs A-80, A-81 and 423 (5) of U. P. Land Records Manual Act. The contesting Respondents in their objection filed before the A.C.O. also denied the possession of the Petitioner's father as well as that of Respondent No. 8 over the plot in dispute. The said objection was registered as Case No. 482. When the Petitioner came to know about the filing of objection by the contesting Respondents in respect of the plot in dispute the Petitioner also filed an application/objection u/s 9A(2) of the Act before the Respondent No. 3 alleging that he and before him his father late Chhajju and Respondent No. 8 had been in possession of the plot in dispute for the last more than 29 years and as such their names were liable to be recorded as bhumidhars of the plot in dispute in the revenue records and the name of deceased Mukanda was liable to be expunged. The said application/objection was registered as Case No. 483. The Petitioner in order to prove his title over the disputed plot by adverse possession filed extracts of khatauni of 1365F, 1366F to 1370F, 1371F to 1373F, 1374F to 1376F and 1377F to 1381F, 1378F to 1385F as documentary evidence and examined Jittu, Vishmbhar Phallu and himself as P.W.-1 to P.W. 4 respectively. On behalf of the contesting Respondents Smt. Bhamuli widow of Mukanda, the mother of the contesting Respondents examined herself as D.W. 1 and Sri Parantu and Atar Singh as D.Ws. 2 and 3 respectively. The contesting Respondents also filed extracts of khatauni of 1374F to 1376F as documentary evidence.

4. The Respondent No. 3 after considering the respective pleadings of the parties and the evidence on record decided both the cases by his order dated 5.10.1988 (Annexure-3 to the writ petition) and directed that the name of deceased Mukanda recorded as chief tenant of the disputed plot be expunged and the names of Petitioner and the Respondent No. 8 be recorded in his place as bhumidhar of the disputed plot.

5. Aggrieved from the order dated 5.10.1988, the contesting Respondents preferred an appeal before the Respondent No. 2 which was registered as Appeal No. 106/975 of 1988. It appears that in the said appeal in which the Petitioner as well as the Respondent No. 8 were arrayed as Respondents, a compromise was entered into between the contesting Respondents and the Respondent No. 8 on 17.7.1995 (Annexure-S.A.- 8 to the supplementary affidavit) wherein the Respondent No. 8 admitted that the contesting Respondents were in possession over the disputed plots and were its bhumidhar. In the said compromise the Respondent No. 8 also admitted that his name had been wrongly recorded in Column IX in the khasra and he was never in possession over the same.

6. Against the said compromise, the Petitioner filed an objection on 18.7.1994. The Respondent No. 2 by his order dated 30.3.2009 (Annexure- 10 to the writ petition) allowed the appeal of the contesting Respondents and set aside the order of the Respondent No. 3 with the finding that the entries existing in the revenue papers in Column IX in favour of the Petitioner were not prepared by following the procedure prescribed in Para A-80 A-81 and para 423 (5) of the U. P. Land Records Manual as the Petitioner had failed to prove by any evidence that P.A. 10 notice was served on the main tenants Respondent Nos. 4 to 7 or their father late Mukanda and thus the said entries were of no evidentiary value and did not confer any right to the Petitioner nor they were of any assistance leading to the extinguishment of the right of the tenure holder and as such the Respondent No. 3 had manifestly erred by placing reliance on the said entries while holding that the Petitioner and the Respondent No. 8 had perfected their title over the land in dispute by adverse possession. Revision being Revision No. 553 of 2009 preferred by the Petitioner u/s 48(1) of the Act against the order of the Respondent No. 2 before the Respondent No. 1 was also dismissed by him by order dated 21.5.2009 (Annexure-8 to the writ petition).

7. Learned Counsel for the Petitioner vehemently urged that the orders passed by the Respondent Nos. 2 and 1 are absolutely illegal and suffer from patent errors of law and the Respondent No. 3 erred in law in holding that the entries existing in favour of the Petitioner's father and Respondent No. 8 in Column IX had not been prepared in accordance with law.

8. He next submitted that even it is assumed that the entries existing in favour of the Petitioner's father in Column IX were prepared without following prescribed procedure, before rejecting the claim of the Petitioner over the plot in dispute on the basis of adverse possession it was incumbent upon the Respondent Nos. 2 and 1 to have examined the oral evidence which had been led by the Petitioner before the Respondent No. 3 to prove his claim of adverse possession over the plot in dispute and which had been taken into consideration and relied upon the Respondent No. 3 while upholding the Petitioner's claim. But neither the Respondent No. 2 nor the Respondent No. 1 took into consideration the oral evidence of the Petitioner while reversing the order of the Respondent No. 3. This omission on the part of Respondent Nos. 2 and 1 has rendered their orders totally untenable. In support of his contention the learned Counsel for the Petitioner has placed reliance upon Ram Naresh and Ors. v. Dy. Director of Consolidation and Ors. 1978 RD 118 ; Shiva Nandan v. Board of Revenue, U.P. 1980 RD 73 ; Bhaua v. Deputy Director of Consolidation, Banda 2007 (102) RD 240 and Birju v. Deputy Director of Consolidation, Gorakhpur and Ors. 2007 (102) RD 101.

9. Per contra learned Counsel for the Respondents vehemently urged that the impugned orders are based upon relevant considerations and supported by cogent reasons. The Respondent No. 3 had erroneously held that the Petitioner and the Respondent No. 8 had perfected their title over the disputed plot by

adverse possession by erroneously relying upon the entries existing in favour of the Petitioner and the Respondent No. 8 in the revenue records in Column IX without examining and adjudicating upon the objection of the contesting Respondents that the entries of Column IX were illegal as the same were made without issuing P.A. 10 notice either to the contesting respondents or to their father Mukunda. The Respondent No. 2 rightly set aside the order of the Respondent No. 3 and allowed the appeal of the contesting Respondents after taking into consideration of the entire evidence on record and after holding that the Petitioner had failed to show that any P.A. 10 notice issued either to the contesting Respondents or their father late Mukunda before the name of the father of the Petitioner and the Respondent No. 8 were ordered to be recorded in Column IX of the khasra by Nayab Tehsildar in 1368F. The said entries could not be said to confer any right on the Petitioner and the Respondent No. 8. The Respondent No. 1 rightly dismissed the revision of the Petitioner and affirmed the order of the Respondent No. 2. In support of his contention that entries of Column IX made without following the procedure prescribed and without issuing any notice of P.A. 10 to the main tenant could not confer any right or title on the Petitioner. Learned Counsel for the contesting Respondents had relied upon *Sadhu Saran and Anr. v. Assistant Director of Consolidation, Gorakhpur and Ors.* 2003 (94) RD 535 ; *Mohd. Raza Vs. Deputy Director of Consolidation and Another* ; *Gurumukh Singh v. Deputy Director of Consolidation Nainital and Ors.* 1997 RD 276 : 1997 (2) AWC 649.

10. I have examined the submissions made by the learned Counsel for the parties and perused the material brought on record and examined the case law cited on behalf of the parties. It is undisputed that the Petitioner's claim of being recorded as bhumidhar over the disputed plot is based upon adverse possession. For proving his claim, the Petitioner had adduced oral as well as documentary evidence. From the perusal of the extracts of khatauni which have been brought on record by the Petitioner by means of a supplementary affidavit it transpires that the names of the father of the Petitioner Chhajju and Respondent No. 8 were recorded in 1365F in Column IX pursuant to an order of Nayab Tehsildar. The said entry continued into revenue record. The evidentiary value of the said entries was challenged by the contesting Respondents on the ground that the said entries were prepared without following the procedure prescribed under the U. P. Land Record Manual and without issuing any P.A. 10 notice either to the contesting Respondents or their father deceased Mukunda and there was no material on record which may show that prior to the names of the Petitioner's father and the Respondent No. 8 being ordered to be recorded in Column IX, P.A. 10 notice was issued either to the contesting Respondents or to their father.

11. It has been the consistent view of this Court that entries prepared under Column IX, without following the procedure prescribed by law have no evidentiary value and such entries did not confer any right on a person claiming their benefit. This Court in *Mohd. Raza (supra)* held as hereunder:

In view of the discussions made above I am of the view that the entries in the revenue papers in favour of the Petitioner were not prepared by following the procedure prescribed under paras A-80, A-81 and para 423 (5) of the U. P. Land Records Manual and P.A. 10 notice were not served on the main tenant Respondent No. 2. Such entries were of no evidentiary value and would not confer any right to the Petitioner nor they can be of any assistance leading the extinguishment of the right of the tenure holder, the Respondent No. 2. As regards the oral evidence of Petitioner, the person claiming right u/s 210 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act and the statement of Respondent No. 2 the person who was the main tenant and whose rights were tried to be proved to have come to an end u/s 210 have been considered. It cannot be said that the Deputy Director of Consolidation has overlooked or failed to consider the material oral evidence on the record. I accordingly do not find any substance in the submission of the learned Counsel for the Petitioner and the objection of Respondent No. 2 u/s 9(2) of the Act was correctly allowed. There has been no ground made out for interference in the impugned order under Article 226 of the Constitution of India.

12. Again in paragraph 6 of its judgment in the case of Gurumukh Singh (supra) this Court held as hereunder:

It is clear from para 102C of the Land Records Manual that the entries will have no evidentiary value if they are not made in accordance with the provisions of Land Records Manual. There is presumption of correctness of the entries provided it is made in accordance with the relevant provision of Land Records Manual and secondly, in case where a person is claiming adverse possession against the recorded tenure holder and he denies that he had not received any P.A. 10 or he had no knowledge of the entries made in the revenue records, the burden of proof is further upon the person claiming adverse possession to prove that the tenure holder was duly given notice in prescribed form P.A. 10 Para A-81 itself provides that the notice will be given by the Lekhpal and he will obtain the signature of the Chairman, Land Management Committee as well as from the recorded tenure holder. It is also otherwise necessary to be provided by the person claiming adverse possession. The law of adverse possession contemplates that there is not only continuity of possession as against the true owner but also that such person had full knowledge that the person in possession was claiming a title and possession hostile to the true owner. If a person comes in possession of land of another person, he cannot establish his title by adverse possession unless it is further proved by him that the tenure holder had knowledge of such adverse possession.

13. This Court while examining an identical issue in the case of Sadhu Saran (supra) again held that entries of Column IX made without following the procedure prescribed under paragraphs Nos. A-80, A-81, A-82 and 102 and without issuing P.A. 10 notice to the chief tenant do not confer any title.

14. Thus in view of the above I am of the considered view that the Respondent

Nos. 2 and 1 did not commit any illegality in holding that the entries of Column IX made in favour of the Petitioner and the Respondent No. 8 were illegal as the same were made in contravention of and against the provisions of U. P. Land Record Manual and the first contention raised by the learned Counsel for the Petitioner has no force. Now as far as the second contention raised by the learned Counsel for the Petitioner that orders of the Respondent Nos. 2 and 1 are vitiated on account of non-consideration of the oral evidence on possession of the Petitioner on record is concerned, the said submission seems to have substance.

15. I have very carefully gone through the orders passed by the Respondent Nos. 2 and 3 but I find that although the Respondent Nos. 2 and 1 have given good reasons for holding khasra entries could not be relied upon as they were not made in accordance with the provisions of Land Record Manual and without issuing notice of P.A. form 10, neither the Settlement Officer Consolidation nor the Deputy Director Consolidation after recording the above finding examined the oral evidence adduced by the Petitioner. In *Shiva Nandan v. Board of Revenue, U.P. 1980 RD 73*, it has been held that the adverse possession can be proved by documentary evidence or by oral evidence. In *Ram Naresh v. Deputy Director Consolidation 1978 RD 118*, it has been held that oral evidence of possession cannot be ignored particularly while reversing a finding.

16. In *Bhaua v. Deputy Director of Consolidation, Banda and Ors. 2007 RD (102)* this Court again held that the revisional Court could not have ignored the oral evidence supporting possession for more than 30 years. In *Birju v. Deputy Director of Consolidation Gorkahpur and Ors. 2007 RD (102)* this Court again took a similar view. Thus law is settled that the adverse possession can be proved by both oral as well as documentary evidence and in case this is not done the order ignoring the oral evidence particularly when reversing a finding cannot be sustained. A perusal of the order of the Consolidation Officer shows that while holding the claim of the Petitioner over the land in dispute on the basis of adverse possession he had relied upon documentary as well as oral evidence. But the Respondent No. 2 totally failed to take into consideration the oral evidence of the Petitioner while reversing the finding recorded by the Consolidation Officer in his order holding that Petitioner had perfected his title over the land in dispute on the basis of adverse possession. The failure of the Respondent No. 1 to rectify the error committed by Respondent No. 2 has vitiated the order of Respondent No. 2 also.

17. For the aforesaid reasons, I am of the view that the impugned orders cannot be sustained. The writ petition is accordingly allowed. The orders dated 30.5.2009 and 21.5.2009 passed by the Settlement Officer Consolidation, Muzaffarnagar Respondent No. 2 and Deputy Director of Consolidation, Muzaffarnagar Respondent No. 1 (Annexures-6 and 8 to the writ petition) are hereby quashed.

18. The matter is remitted back to the Settlement Officer Consolidation

Respondent No. 2 with a direction to him to record finding as regards the possession of the Petitioner and the date from which it began and whether he has perfected his right for failure of eviction proceeding being initiated against him within the limitation period by taking into consideration the oral evidence of the Petitioner alone. The Settlement Officer, Consolidation shall make every possible endeavour to decide the case within a period of three months from the date of production of a certified copy of this order before him. It has also been brought to the notice of this Court that by means of Civil Misc. Application No. nil of 2010 filed on behalf of the Petitioner that after the arguments in that case he had been heard and judgment reserved, the contesting Respondents had obtained possession of the land in dispute on 11.6.2010 in pursuance of the direction of the District Magistrate. Since the orders in execution whereof the contesting Respondents had been delivered possession of the disputed plot have been set aside, the Respondent Nos. 1, 2 and 3 also directed to ensure that the possession of the plot in dispute is restored to the Petitioner within a period of one month from today.