

(2014) 12 AHC CK 0078
In the Allahabad High Court
Case No : Writ-B No. 31565 of 2008

Mathu Pathak and Others

APPELLANT

Vs

Dy. Director of Consolidation, Mathura and Others

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A(2)

Citation : (2015) 126 RD 528

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : A.K. Shukla and Sanjay Kumar Dubey, Advocates for the Appellant;
S.K. Mishra, Advocates for the Respondent

Judgement

Anjani Kumar Mishra, J.—Heard Sri A.K. Shukla, learned Counsel for the petitioners and Sri S.K. Mishra, learned Counsel for the contesting respondents. This petition arises out of objections under section 9A(2) of the U.P. Consolidation of Holdings Act and is directed against the order dated 5.2.2008 passed by the respondent No. 1, the Deputy Director of Consolidation, Mathura.

2. The dispute pertains to Khata No. 149 of Village Mahawan Bangar, Tehsil Sadabad, District Mathura. In the Basic Year Record, Naurangi Lal, Raghubir Saran, Munni Lal, Chunni and Shayam Babu, sons of Lachcho Ji and Shiv Devi were recorded over this land.

3. Three objections were filed. The first objection was filed by respondents 4 to 7, namely, Raghuvir, Munni Lal, Chhuni Lal and Shyam Babu @ Chunni, sons of Lachcho Ji. This objection was filed on the ground that the land in dispute belonged to Madhav Prasad, who was succeeded by his heir Triloki Nath. A sale deed was executed by his mother, Munni Devi, as guardian of her minor son Triloki Nath, in favour of the objectors on 14.10.1952 and, therefore, the name of Shiv Devi was liable to be expunged.

4. A second objection was filed by Shiv Devi on the allegation that the land in

dispute belonged to Madhav Prasad and on his death, the objector Shiv Devi and her sister Munni Devi succeeded to the property in question as daughters. It was further alleged that Triloki Nath was not the heir of Madhav Prasad and had no right to execute the sale deed in favour of Raghuvir etc.

5. The third objection was filed by Triloki Nath on the ground that Madhav Prasad died on 6.12.1950 and he being the grand son (daughter's son) was his only heir and that his mother had no right to execute the sale deed in favour of Raghuvir etc.

6. The Consolidation Officer by his order dated 12.2.1971 held that Madhav Prasad died on 1.7.1954, after the abolition of Zamindari and was therefore succeeded by his daughters and not by Triloki Nath, who is the daughter's son and that the sale deed executed by his mother, is void.

7. Aggrieved by the order of the Consolidation Officer, two appeals were filed. One appeal was filed by respondents 4 to 7, Raghuvir and others and the second appeal was filed by Triloki Nath.

8. The Settlement Officer, Consolidation by his order dated 7.12.1982 held that Madhav Prasad died on 6.12.1950, prior to the abolition of Zamindari and, therefore, under the provisions of the Tenancy Act, Triloki Nath inherited the property in question, being the daughter's son. It was further held that Munni Devi was not his guardian and hence the sale deed, executed by her, was void. The Settlement Officer, Consolidation further recorded that insofar as the remaining 27 plots of the Khata in dispute were concerned having an area of 14.19 acres, the names of Raghuvir, Munni Lal, Shyam Babu @ Chhunnu Lal, sons of Lachcho Ji be recorded and that each would have 1/4 share in this land. The order passed by the Consolidation Officer was accordingly set aside.

9. Against the appellate order, revisions were filed by Triloki Nath as also respondents 4 to 7, Raghuvir etc. The Deputy Director of Consolidation by the impugned order dated 5.2.2008 dismissed the revision filed by Triloki Nath (represented by the petitioner on his death). The revision filed by Raghuvir and others, namely, respondents 4 to 7, was allowed and the order passed by the Settlement Officer, Consolidation as also the Consolidation Officer with regard to 8.16 acres of the Khata in dispute, was set aside and the matter was remanded back for a fresh decision on merits after hearing the concerned parties. Hence this writ petition.

10. From the facts noted above, it is clear that the writ petition is directed against an order of remand. The Counsel for the petitioners has submitted lengthy arguments but the crux of his submission is that the Khata in dispute consisted of two portions, one having an area of 8.16 acres while the other and larger portion consist of 27 plots having an area of 14.19 acres and that the order of remand is only with regard to the smaller portion having an area of 8.16 acres. He submits that the Deputy Director of Consolidation has committed manifest illegality in not remanding the matter, as regards the larger portion of

the Khata in dispute, which consists of 27 plots having an area of more than 14 acres.

11. Therefore, the only point for consideration before this Court is as to whether the dispute regarding the larger portion of the Khata in question having an area of 14.19 acres, was also required to be remanded or not.

12. Learned Counsel for the respondents on the other hand has vehemently opposed the contention of learned Counsel for the petitioners. He has stated that the larger area of the Khata in dispute, which consisted of 27 plots having an area of 14.19 acres, was not in dispute. No objection regarding the same had been filed and, therefore, there was no question of remanding the matter for consideration of the claim regarding title to this larger area of the Khata in question.

13. Upon hearing learned Counsel for the parties and upon a perusal of the records, especially the copies of the three objections, that have been filed, reveals that the objections were filed only with regard to the smaller portion of the Khata No. 149 having an area of 8.16 acres. None of the three objections pertained to the larger part having an area of 14 acres. Moreover, it is the petitioner, who claims that this portion was also in dispute and this dispute was also required to be remanded back. In this connection, it would be relevant to note that the Deputy Director of Consolidation has recorded a categorical finding that no evidence has been led by the petitioners or their predecessor in interest Triloki Nath as regards this land.

14. Therefore, on both counts, first that no objection was filed regarding the larger portion of Khata No. 149 and also in view of the fact that no evidence was adduced on behalf of petitioners regarding this portion, it is clear that this portion was never in dispute and, therefore, there was no occasion for the Deputy Director of Consolidation to have remanded any dispute regarding this portion for a fresh consideration.

15. Therefore and for the reasons given above, the submissions of learned Counsel for the petitioners are totally misconceived and are bound to be rejected.

16. The petitioners have filed this writ petition raising a dispute, which was never raised in the objection filed by the petitioners' predecessor in interest and proceedings in pursuance of the order of remand have been prevented from attaining finality on account of the interim order granted in such a misconceived writ petition, which is nothing but sheer abuse of the process of the Court. Accordingly I dismiss this writ petition with costs of Rs. 10,000/-.