
(2009) 01 AHC CK 0064

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22774 of 1987

Mewa Lal

APPELLANT

Vs

2nd Addl District Judge, Mirzapur and Others

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49

Citation : (2009) 01 AHC CK 0064

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—List revised. Respondent No. 3 one of the plaintiffs is represented by Sri K.C. Vishwakarma, learned counsel, however he is not present. Service upon other plaintiffs/respondent Nos. 4 and 5 is sufficient as per office report dated 18.12.08, however, no one has appeared on their behalf also. Heard learned counsel for the petitioner.

2. Respondent Nos. 3 to 5 Bhulan and others instituted O.S. No. 463 of 1982 against the petitioner. Relief claimed in the plaint of the suit was for permanent prohibitory injunction restraining the defendant from interfering in the right and possession of plaintiffs over their share in the agricultural land in dispute and from cutting the crop of paddy of their share. Written statement was filed and thereafter seven issues were framed on 19.4.1982. Issues Nos. 2 to 5 related to question of jurisdiction of the civil Court.

3. Plaintiffs claimed that they were cosharers with the defendant of the land in dispute. The trial Court/second Additional Munsif, Mirzapur decided the issues of jurisdiction in favour of the plaintiffs through orders dated 22.4.1985 and 25.9.1985. Against the later order Civil Revision No. 112 of 1985 was filed. Revisional Court/2nd A.D.J. Mirzapur discussed the correctness of both the orders of the trial Court and finding those orders to be perfectly legal dismissed the revision on 19.2.1987, hence this writ petition.

4. It was stated in the plaint, copy of which is Annexure1 to the writ petition that plaintiffs were cobhumidhar with father of the defendant; that Chakbandi (Consolidation) had taken place in the area in question and new plots had been allotted in lieu of the old plots; that plaintiffs were cosharer and in possession with the father of the defendant and after his death with the defendant continuously. It was further stated that plaintiffs in the land of their share were cultivating the crops. Defendant pleaded that suit was barred by Section 49 of U.P. Consolidation of Holdings Act (U.P.C.H. Act) as consolidation had taken place in the area in question and in the revenue record name of defendant's petitioner's father was recorded since before the consolidation proceedings and it continued to be recorded during and after the consolidation operation and plaintiffs never raised any objection. Section 49 of U.P.C.H. Act without its proviso is quoted below:

"49. Bar to Civil jurisdiction. Notwithstanding anything contained in any other law for the time being in force. The declaration and adjudication of rights of tenure holders in respect of land lying in an area, for which a notification has been issued under subsection (2) of Section 4 or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no civil or revenue Court shall entertain any suit or proceedings with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act".

5. In the impugned orders it is mentioned that name of the plaintiffs respondents was not recorded in the revenue records.

6. Both the Courts below mainly placed reliance upon the authority of the Supreme Court in Karbalai Begum v. Mohd. Sayeed, AIR 1981 SC 77 and held that even though in consolidation proceeding which had been concluded, plaintiffs respondents did not raise any objection and even though only the name of defendant petitioner and before him of his father was entered in the revenue record still the suit was maintainable and not barred by Section 49 of U.P.C.H. Act.

7. The view taken by both the Courts below is patently erroneous in law. The case before Supreme Court was of a lady who had been duped by her cousins who had assured her that her interest would be taken care of by them in the consolidation proceedings. In that backdrop it was held that conclusion of consolidation proceeding did not bar the suit for declaration of ownership/ cobhumidar ship in the agricultural land by the said lady. Para 1 of the said authority is quoted below:

"How dishonest cousins, looking after the lands of their brother's widow, situated far away from the place where the widow was living, taking undue advantage of the confidence reposed in them by that videoed sisterinlaw and having painted a

rosy picture of honestly managing the property and giving her due share, cast covetous eyes on their sisterinlaw's share and with a deplorable design, seek to deprive her of her legal share and deny her legal rights is not an uncommon feature of our village life. That this is so is aptly illustrated by the facts of this case where the sisterinlaw was driven by the force of circumstances to indulge in a long drawn litigation in order to vindicate her legal rights in wresting her share of the property from the hands of her cousins. This is the unfortunate story of the poor and helpless appellant, Karbalai Begum, who having failed to get justice from the High Court of Allahabad was forced to knock the doors of the highest Court in the country and has, therefore, filed the present appeal in this Court after obtaining special leave".

8. In the instant case no such position exists. None of the plaintiffs respondents is a woman. In the entire plaint there is no such allegation that father of the defendant petitioner duped the plaintiffs.

9. Accordingly, suit is clearly barred by Section 49 of the U.P.C.H. Act. Writ petition is therefore allowed. Impugned orders are set aside. Suit is dismissed as barred by Section 49 of U.P.C.H. Act.