
(2013) 10 AHC CK 0207
In the Allahabad High Court
Case No : Writ B. No. 55741 of 2013

Mohan and Others

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2014) 102 ALR 132 : (2013) 121 RD 641

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : K. Ajit, for the Appellant;

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri K. Ajit, Counsel for the petitioners and Standing Counsel for the respondents. The writ petition has been filed against the order of Deputy Director of Consolidation (respondent-1) dated 3.8.2013, rejecting the application of the petitioners dated 2.5.2013, for summoning Gram Panchayat Adhikari, for proving the certified copy of Pariwar Register filed by respondent-4 and application dated 6.6.2013 for admitting additional evidence of the certified copies of Pariwar Register filed by the petitioners, in title proceedings, under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute relates to the land of basic consolidation year khata 259, 674 and 1048, of village Dadiyal Ehatmali, tahsil Tanda, district Rampur, which were recorded in the name of Gyani son of Tika Ram (now represented by the petitioners). Bhagwan Das (respondent-4) filed an objection (registered as Case 48/2009-10) u/s 9-A of the Act, on 1.5.1997 claiming co-tenancy of 1/2 share in the land in dispute. It has been stated by respondent-4 that the land in dispute was his ancestral property from the time of common ancestor Tika Ram son Moti, who had two sons Kaluwa and Gyani. Kaluwa, father of respondent-4 died about 40 years ago during life time of his father Tika Ram, leaving behind him as his only heir. After death of Tika Ram, the name of Gyani alone was recorded, in the revenue record, as at that time he was minor. Gyani also died and was inherited

by his five sons Bhola Ram, Mohan, Kashi Ram, Chandra Pal and Dharam Pal. The petitioners contested the objection of respondent-4 and stated that respondent-4 did not belong to his family. The real name of Bhagwan Das (respondent-4) was Bhagwati son of Natthu who was son of Kashi. In collusion with his brother Hira and Shyam Lal sons of Natthu, Bhagwati did not claim heirship of his father Natthu. Now he has filed this objection on false allegations, changing his name as Bhagwan Das son of Kaluwa. Tika Ram had only one son Gyani. Tika Ram died 40 years ago, since then name of Gyani alone was recorded over the land in dispute and respondent-4 never raised any objection in this respect although he had attained the age of majority long before. The objection was tried and decided by Consolidation Officer, Rampur, who by his order dated 20.12.2001 held that Kaluwa father of Bhagwan Das (respondent-4) was son of Tika Ram. Kaluwa was predeceased to his father Tika Ram as such after death of Tika Ram, Bhagwan Das inherited 1/2 share in the property in dispute. However in respect of some plots objection of Bhagwan Das was dismissed. The petitioners filed appeals (registered as Appeal Nos. 167/413 and 168/414) from the aforesaid order which were dismissed by Settlement Officer Consolidation by order dated 1.9.2002.

3. The petitioners filed two revision (registered as Revision Nos. 85/130 and 168/414) from the aforesaid order. Bhagwan Das (respondent-4) filed a revision (registered as Revision No. 452/414) from the order of Consolidation Officer. All the revisions were consolidated and heard by Deputy Director of Consolidation, Rampur, who by the order dated 24.5.2008, allowed the revisions and set aside the orders of Consolidation Officer dated 20.12.2001 and 22.12.2001 and Settlement Officer Consolidation dated 1.9.2002 and remanded the matter to Consolidation Officer, for deciding the objection afresh after giving opportunity of fresh evidence to the parties.

4. Although Deputy Director of Consolidation, while remanding the case to Consolidation Officer, fixed a date for appearance of the parties before Consolidation Officer, but after remand the petitioners absented. They neither appeared before the Consolidation Officer nor adduced any evidence. Respondent-4 moved an application for summoning Gram Panchayat Officer for proving the certified copy of Pariwar Register filed by him. The Consolidation Officer summoned the Gram Panchayat Officer along with original Pariwar Register, for recording his statement but Gram Panchayat Officer did not turn up. Hearing of the objection was being delayed as such, respondent-4 filed a writ petition (registered as Writ-B No. 46844 of 2009), which was disposed of by order dated 2.9.2009, directing the Consolidation Officer to decide the objection expeditiously. The Consolidation Officer, thereafter, heard the arguments of the parties and by his judgment dated 18.2.2010 held that from the copy of Pariwar Register, Photo Identity Card issued by Election Commission of India and Voter List of the village as well as oral evidence of Bhagwan Das, it was proved that Bhagwan Das was son of Kaluwa. The witnesses examined by the petitioners have deliberately concealed the essential facts and did not state any thing about

Tika Ram. From the evidence adduced by the petitioners it was not proved that the name of Bhagwan Das was Bhagwati or his father's name was Natthu. Since the properties in dispute were ancestral properties from the time of Tika Ram as such Bhagwan Das has 1/2 share in it. It is immaterial that after death of Tika Ram, name of Gyani alone was recorded over it. On these findings, objection of respondent-4 has been allowed by order dated 18.2.2010.

5. The petitioners filed an appeal (registered as Appeal No. 67) from the aforesaid order. The appeal was heard by Settlement Officer Consolidation, Rampur, who by order dated 9.11.2012 dismissed the appeal. The petitioners filed a revision (registered as Revision No. 158 of 2012-13) from the aforesaid orders. In this revision the petitioners filed an application dated 2.5.2013, for summoning Gram Panchayat Adhikari and getting the certified copy of Pariwar Register filed by respondent-4 proved. Subsequently they filed another application dated 6.6.2013 for admitting additional evidence of the certified copies of Pariwar Register of Bhagwan Das, Bhola Singh, Chandra Pal Singh, Kashi Ram, Dharam Pal Singh, Mohan Singh and Rati Ram. These applications were heard by Deputy Director of Consolidation, who by order dated 3.8.2013 held that in the remand order dated 24.5.2008, Deputy Director of Consolidation remanded the case, giving opportunity to the parties to adduce their evidence and fixed 16.6.2008 for appearance of the both the parties before the Consolidation Officer but the petitioners deliberately absented and did not adduce any evidence before the Consolidation Officer. When High Court directed for expeditious disposal of the objection, then fresh notices were issued to the petitioners, which were personally served upon the petitioners but they again did not take any care for adducing evidence. The petitioners filed appeal from the order of Consolidation Officer dated 18.2.2010, but in the appeal also they did not care for adducing any additional evidence. In case fresh evidence is admitted then fresh trial will be started. On these findings he rejected both the applications of the petitioners. Hence this writ petition has been filed.

6. The Counsel for the petitioners submitted that Deputy Director of Consolidation has rejected the applications of the petitioners on irrelevant considerations that in case the applications are allowed the matter will be required to be remanded for fresh trial. He submitted that the consolidation authorities are deciding the right of the parties for ever as such in order to do complete justice between the parties, the additional evidence adduced by the petitioners were liable to be admitted in evidence. The observations of respondent-1 that in case the application are allowed the matter will be required to be remanded for fresh trial, is incorrect. The revision could have been decided finally on merit after giving opportunity to the other side to file his evidence in rebuttal. Respondent-4 adduced a forged and fabricated documents of the alleged certified copy of Pariwar Register. According to own case of respondent-4, Kaluwa died 40 years back but in the alleged Pariwar Register, the name of Kaluwa and Bhagwan Das and others were mentioned in the family of Gyani Singh. Although Pariwar Register is maintained under U.P. Panchayat Raj

{Maintenance of Family Registers) Rules, 1970. In order to examine the authenticity of the certified copy of the Pariwar Register filed by respondent-4, statement of Gram Panchayat Officer was necessary. Respondent-1 has mechanically rejected the applications of the petitioners and has illegally failed to exercise his jurisdiction vested under the law. Order dated 3.8.2013 is illegal and is liable to be set aside.

7. I have considered the arguments of the Counsel for the petitioners and examined the record. The applications of the petitioners were the applications for adducing additional evidence before the Revisional Court. There is no provision under the Act or the Rules for adducing additional evidence. But as Deputy Director of Consolidation, while deciding the revision is competent to decide issue relating to the facts also as such additional evidence can be admitted by him on the principles as contained in C.P.C. Although provisions of Code of Civil Procedure, 1908 have not been applied to the proceedings under the Act, but its principles will be guiding factors for deciding controversy. Order XLI Rule 27 C.P.C. provides that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, but if (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted or (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be adduced by him at the time when the decree appealed against was passed (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause, additional evidence can be admitted.

8. Supreme Court in N. Kamalam (Dead) and Another Vs. Ayyasamy and Another, . has held that incidentally, the provisions of Order XLI Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the Court of appeal. It does not authorize any lacunae or gaps in evidence to be filled up. The jurisdiction as conferred on to the Appellate Court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way. The power under Clause (b) of sub-rule (1) of Rule 27 cannot be exercised for adding to the evidence already on record except upon one of the grounds specified in the provision.

9. In the present case, Deputy Director of Consolidation by order dated 24.5.2008 remanded the case, giving opportunity to the parties for adducing their evidence and fixed 16.6.2008 for appearance of the both the parties before the Consolidation Officer but the petitioners deliberately absented and did not adduce any evidence before the Consolidation Officer. No reason has been shown for not adducing the alleged evidence either before the Consolidation Officer or before Settlement Officer Consolidation. Thus, none of the conditions prescribed under Order XLI Rule 27 C.P.C. has been fulfilled. The arguments that certified copy of the Pariwar Register filed by respondent-4 is a fabricated document can

always be raised by the petitioner. It was duty of respondent-4 to prove the authenticity of the evidence adduced by him and not for the petitioner to prove the fact in negative. Even in the certified copy of Pariwar Register of Bhagwan Das filed by the petitioners, father's name of Bhagwan Das is mentioned as Kallu and not Natthu, as the case taken by the petitioners. Certified copies of Pariwar Registers relating to the family of the petitioners are not relevant for deciding the controversy involved in the revision. Thus the petitioners are purposely delaying the hearing of the case. The impugned order does not suffer from any illegality. The writ petition has no merit and is dismissed.