
(1980) 07 AHC CK 0068
In the Allahabad High Court
Case No : S.A. No. 1499 of 1975

Molvi Abu Naeem Mohammad Ibrahim	APPELLANT
Vs	
Bashir Ahmad and Others	RESPONDENT

Date of Decision : 03-07-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 3(11), 3(2), 3(4C), 3(5), 49
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 24A

Citation : (1980) AWC 458 : (1981) RD 18

Hon'ble Judges : S.J. Hyder, J

Bench : Single Bench

Advocate : S.N. Verma and Dinesh Kakkar, for the Appellant; M.A. Qadeer, Islam and I.H. Khan, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Hyder, J.—Plaintiffs-Respondents filed the suit giving rise to this second appeal for a declaration that plots No. 508 and 509 corresponding to plots Nos. 330 and 331 measuring 2 bighas 14 biswas situate in village Akbarpur, Salahpur, is a public graveyard in which all Muslim residents of Khabanpur have a right to bury their dead without any interference from the Defendant-Appellant.

2. It appears that village Khabanpur is a part of villages Hatwa and Salahpur of Pargana Chail, District Allahabad. The case of the Plaintiff-Respondents was that the said land was being used for burying the dead bodies of the Muslims of Khabanpur from time immemorial and the land in dispute was thus a graveyard and has become Wakf property. The Defendant-Appellant was interfering with their right to bury their dead and, as such, the suit was being filed for the relief stated above.

3. The Defendant-Appellant contested the suit. He denied that the land in suit was a public graveyard and that the Muslims of village Khabanpur had any right

to bury their dead in the said graveyard. He stated that there were some graves of the members of his family and that the plot in dispute was his Sirdari land and he was in possession of the same.

4. The trial court made a local inspection of the site. As a result of the inspection, he found that the plot was divided into five portions, four of which were covered with graves of 31 such graves were visible. He noted that 14 trees stood on the land in dispute. In his opinion, only a portion of the plot was cultivable but even that was not being actually cultivated. The trial court dismissed the suit of the Plaintiff-Respondents. It held that the land in dispute was not a public graveyard of the residents of village Khabanpur. He also held that the land in suit was the Sirdari of the Defendant and that the graves in the land in dispute were of the members of the family of the Defendant-Appellant. He also held that the suit was barred by Section 49 of the U.P. Consolidation of Holdings Act, hereinafter referred to as "the Act". As a result of the said findings, the trial court felt no difficulty in refusing the relief claimed by the Plaintiffs-Respondents.

5. The Plaintiffs-Respondents felt themselves aggrieved by the decree of the trial court. They accordingly preferred an appeal against the said decree. The said appeal was allowed by the II Additional District Judge, Allahabad, by his judgment and decree dated August 22, 1975. In consequence, the Defendant-Appellant has invoked his right to appeal to this Court u/s 100 of the CPC by filing a second appeal.

6. The first court of appeal has disagreed with all the findings recorded by the trial court against the Plaintiff-Respondents. It has held that the land in dispute was a public graveyard in which the muslims of village Khabanpur buried their dead. It came to the conclusion that only a few graves in the said graveyard belonged to the members of the family of the Defendant-Appellant and that the suit of the Plaintiffs-Respondents was not hit by Section 49 of the Act.

7. Learned Counsel appearing for the Defendant-Appellant reiterated before this Court that the suit of the Plaintiffs-Respondents was barred by Section 49 of the Act. He urged that the findings of the first court of appeal on this aspect of the case suffered from manifest error of law and deserves to be set aside.

8. Learned Counsel invited my attention to Section 8-A of the Act and Rule 24-A of the Rules framed under the Act. He submitted that in the statement of principles prepared u/s 8-A of the Act, the Assistant Consolidation Officer has to show the details of the areas which are to be earmarked for extension of Abadi and such other public purpose as may be prescribed and also the details of the land earmarked for public purposes out of the land vested in Gaon Sabha. He next submitted that under Rule 24-A, the statement of principles should also contain standard plots including permanent features such as roads, groves, wells, cremation ground and graveyards. According to the learned Counsel, the statement of principles prepared u/s 8-A of the Act is the corner stone of the consolidation proceedings and any person aggrieved by any entry in the

statement of principle has been given a right u/s 9(2) of the Act to file an objection against the said entry. In short, the submission was that in the statement of principles prepared during the course of consolidation proceedings, the land in dispute was shown as the Sirdari land of the Defendant-Appellant and since the Plaintiffs-Respondents did not file any objection against the said entry, their right to file the present suit was barred by Section 49 of the Act. In support of his submission, learned Counsel placed reliance on two Full Bench decisions of this Court in Dalel v. Baru 1963 AWR 230 and 1970 ALJ 510.

9. Having given due consideration to the submissions made by the learned Counsel for the Appellant, I am unable to accept the same.

10. The preamble of the U.P. Consolidation of Holdings Act states;

Whereas it is expedient to provide for the Consolidation of Agricultural Holdings in Uttar Pradesh for the development of agriculture; it is hereby enacted as follows;

11. The expression "Consolidation" has been defined in Sub-section (2) of Section 3 to mean "re-arrangement of holdings in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact". Sub-section (4-C) of Section 3 defines "holding" to mean a parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holders". Sub-section (5) of Section 3 defines "land" to mean;

* * *

12. Sub-section (11) of Section 3 defines a "tenure-holder" to mean a Bhumidhar or Sirdar and includes an Asami, a Government lessee or Government grantee, or co-operative farming society satisfying such conditions as may be prescribed.

13. From a perusal of the salient provisions of the Act referred to above, it is evident that the consolidation proceedings are directed against the determination of the rights of the tenure-holders in the land included in their holding. An objection u/s 9 of the Act can be preferred only by a tenure-holder who is aggrieved by any entry in the statement of principles with regard to his rights in any land included in a holding. A notice u/s 9 is only required to be sent to tenure-holders and an objection under Sub-section (2) of Section 9 can also be filed by a person who claims to be interested as a tenure-holder. A person who claims that a certain plot of land is a graveyard is not claiming the rights of a tenure-holder and an objection at his instance against any entry in the statement of principles cannot be entertained by the Consolidation Officer. The bar of Section 49 could only apply with regard to matters which could be adjudicated and in respect of which objections could be filed before the tribunals constituted under the Act. The cases relied upon by the learned Counsel for the Appellant are wholly distinguishable and do not advance his argument.

14. It was next contended on behalf of the Appellant that the first court of appeal

was in error in holding that the land in dispute was a public graveyard. The first court of appeal has gone into the evidence and has held that the land in dispute contained 31 on 32 visible graves and-the evidence of the Defendant-Appellant shows that only 9 members of his family had died and only they could have been buried in the graveyard. It further held that any graves in excess of the 9 graves did not belong to the members of the family of the Defendant-Appellant. It believed the evidence produced by the Plaintiffs-Respondents that the Muslims of village Khabanpur had been buried in the land in dispute. The said findings are based on an assessment of evidence and cannot be called in question before the court in second appeal. In the case of Syed Mohd. Salie Labbai (Dead) by L.Rs. and Others Vs. Mohd. Hanifa (Dead) by L. Rs. and Others, , it has been held that even if a graveyard was a private or a family graveyard, but once the owners of a graveyard permits other persons to bury their dead therein, the graveyard sheds its character as a private graveyard and becomes a public graveyard. The fact that only 9 persons died in the family of the Defendant-Appellant and 31 or 32 graves were visible to the naked eye besides the other graves, signs of which had been obliterated, the conclusion that the land in dispute was a public graveyard is inescapable.

15. For the reasons stated above, I find no force in this second appeal which is dismissed with costs.