
(2013) 11 AHC CK 0149
In the Allahabad High Court
Case No : Writ B. No. 60887 of 2013

Nand Lal

APPELLANT

Vs

Chief Revenue Officer and Others

RESPONDENT

Date of Decision : 14-11-2013

Acts Referred:

Citation : (2013) 121 RD 676

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

Bench : Single Bench

Advocate : Suresh Chandra Verma and A.P. Singh, for the Appellant; R.N. Singh and V.K. Chandel, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Suresh Chandra Verma and Sri A.P. Singh, for the petitioner and Sri V.K. Chandel, for the respondents. The writ petition has been filed against the order of Chief Revenue Officer/Deputy Director of Consolidation (respondent-1) dated 16.9.2013, arising out of the proceeding under section- 12 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute relates to the land recorded in khata 350 of village Ranipur Rajmo, pargana Nizamabad, district Azamgarh, which was recorded in the names of Tilakdhari and Shyamdhari sons of Pardesi during consolidation. Tilakdhari died on 5.12.1994. Nand Lal son of Shyamdhari (the petitioner) filed an application dated 17.11.1995 (registered as Case Nos. 474) u/s 12 of the Act, for mutating his name, in place of Tilakdhari over the disputed khata, on the basis of Will dated 3.11.1994, allegedly executed by Tilakdhari in his favour. The Consolidation Officer by his order dated 22.2.1996 allowed the application of the petitioner and directed for mutating his name, in place of Tilakdhari.

3. Leelawati, Ramata Devi and Lalati Devi (now represented by respondents-2 to 5) filed an application dated 9.8.1996 for recall of the order dated 22.2.1996. In

this application, they stated that after death of Tilakdhari, they, being daughters of Tilakdhari, filed an application u/s 12 of the Act, for mutating their names, on 30.1.1995, over the disputed land, which was referred by Assistant Consolidation Officer, by order dated 28.7.1995 to the Consolidation Officer for decision on merits. Both the applications i.e. one filed by the petitioner and other filed by them ought to have been consolidated and decided together. However, without issue of any notice to them, the order dated 22.2.1996 has been passed. Tilakdhari left behind him, five married daughters, namely Ramata Devi, Leelawati, Lalati Devi, Adalati Devi and Sheelawati Devi. However Sheelawati Devi was not heard from 12 to 14 years as such remaining four daughters were the heirs of Tilakdhari. When Nand Lal began to create hindrance in their possession over the disputed land then they made inquiry and came to know about the order dated 22.2.1996 on 8.8.1996. The recall application was filed on 9.8.1996.

4. The petitioner contested the recall application and filed his objection. In the objection, he has stated that Leelawati, Ramata Devi and Lalati Devi were not parties in his application as such they had no right to file recall application. The allegations that they had filed any application for mutation of their names, has been denied. No cause has been shown for condonation of the delay. The application was heard by Consolidation Officer, who by order dated 27.10.1998 held that filing of the application u/s 12 of the Act by Leelawati, Ramata Devi and Lalati Devi was not proved. The order dated 22.2.1996 was not an ex parte order. However, the married daughters are the heirs of the male tenure holder, u/s 171 of U.P. Act No. 1 of 1951 as such they are aggrieved by the order dated 22.2.1996, which was passed without giving any opportunity of hearing to them. On these findings, the recall application was allowed by order dated 27.10.1998.

5. The petitioner filed a revision (registered as Revision No. 777/1029) from the aforesaid order. The revision was heard by Deputy Director of Consolidation, who by order dated 1.12.2012 held that the recall application was time barred and has been allowed without condoning the delay. Without condoning the delay, the Consolidation Officer had no jurisdiction to pass any order on the recall application. The respondents were claiming themselves as an interested persons for which they ought to have approach the competent Court for granting relief to them. On these findings the revision was allowed and order of Consolidation Officer dated 27.10.1998 has been set aside by order 1.12.2012.

6. Leelawati and Ramata Devi filed an application (registered as Review Application No. 1502) on 3.12.2012 for review of the order dated 1.12.2012. Ashok, Jai Prakash, Adalati Devi and Sheelawati (respondents-4 to 7) filed another application on 4.12.2012 for recall of the order dated 1.12.2012, in which they have stated that Tilakdhari left behind him five married daughters but in the mutation application, filed by the petitioner, none of them were impleaded nor any notice have been issued to them. Lalati Devi, who was opposite party in the revision, died during pendency of the revision but the order dated 1.12.2012

was passed without substituting her heirs, in the revision as such the order was passed against a dead person and was nullity. The petitioner filed his objections in both the applications.

7. The recall application and review application were consolidated together and heard by Deputy Director of Consolidation, who by his order dated 16.9.2013 held that admittedly Tilakdhari left behind him five married daughters, namely Ramata Devi, Leelawati, Lalati Devi, Adalati Devi and Sheelawati Devi. From the questioner filed by the respondents, it is proved that after death of Tilakdhari, his daughters filed an application u/s 12 of the Act, for mutating their names and that application was referred by Assistant Consolidation Officer for decision on merit on 28.7.1995. The petitioner had not impleaded the daughters of Tilakdhari as opposite parties, in his application, which was filed on the basis of an unregistered will, allegedly executed by Tilakdhari. Thus the daughters of Tilakdhari were not given any opportunity of hearing by the Consolidation Officer while passing the order dated 22.2.1996 as such order dated 22.2.1996 passed by Consolidation Officer was an ex parte order against them and has been rightly recalled by order dated 27.10.1998. Lalati Devi died on 3.4.2005 and her sons were not heard in the revision, while passing the order dated 1.12.2012. As such the order of Deputy Director of Consolidation dated 1.12.2012 was liable to be set aside. On these findings the restoration/recall application of respondents-4 to 7 was allowed. The order of Deputy Director, Consolidation dated 1.12.2012 was set aside and revision of the petitioner was dismissed and Consolidation Officer was directed to decide the mutation application of the petitioner afresh after giving opportunity of hearing to the parties. Hence this writ petition has been filed.

8. The Counsel for the petitioner submitted that Leelawati, Ramata Devi and Lalati Devi alone filed the application for recall of the order dated 22.2.1996, which was allowed by order dated 27.10.1998. The petitioner filed revision against the order dated 27.10.1998 as such in this revision Leelawati, Ramata Devi and Lalati Devi alone were impleaded as the opposite parties. The petitioner was not liable to implead the remaining two daughters, namely Adalati Devi and Sheelawati as they neither challenged the order of Consolidation Officer dated 22.2.1996 nor filed any application for mutation of their names claiming as an heirs of Tilakdhari. As such the application filed on their behalf, for recall of the order of Deputy Director of Consolidation dated 1.12.2012 was not maintainable. The heirs of Lalati Devi were already substituted by the order dated 11.1.2010. The Counsel appearing for the opposite parties, in the revision filed written arguments in the revision on 3.11.2012 and also argued the revision on behalf of the heirs of Lalati Devi as such their interest was fully represented and the recall application filed on their behalf was not maintainable. Leelawati, Ramata Devi and Lalati Devi in their application dated 9.8.1996 had stated that Sheelawati Devi was not heard for last 12-14 years, as such the recall application on her behalf was filed by some imposter. The petitioner specifically raised these grounds before respondent-1 but he has illegally not considered these grounds

nor recorded any findings. The same Counsel was appearing on behalf of all the respondents. When the revision was allowed on merit, he firstly filed a review application on behalf of two daughters but he realized the difficulty that there being no provision for review under the Act, then on next day, he filed recall application on behalf of respondents-4 to 7, which was highly suspicious. Respondent-1 ought to have decided the genuineness of the recall/restoration application before passing any order on merit. He submitted that the revision of the petitioner was allowed by order dated 1.12.2012, on the ground that restoration application was time barred and was allowed without condoning the delay for which Consolidation Officer had no jurisdiction to pass order on merit without condoning the delay. But in the impugned order, this fact has been illegally ignored by respondent-1. In any case, after allowing the restoration application, the revision ought to have been heard on merit but it was dismissed without hearing arguments on merits.

9. I have considered the arguments of the Counsel for the parties and examined the records. It is not denied that Tilakdhari left behind his five daughters. The petitioner was claiming for mutating of his name on the basis of the unregistered Will allegedly executed by Tilakdhari as such he was obliged to disclose the names and addresses of the daughters but the petitioner has not disclosed the names of the daughter of Tilakdhari nor any notice was issued to them by the Consolidation Officer. The Consolidation Officer found that while passing the order dated 22.2.1996, the daughters of Tilakdhari were not given opportunity of hearing as such by order dated 27.10.1998, he has rightly recalled order dated 22.2.1996. Respondent-1 further found that from the questioner filed by the respondents, it was proved that after death of Tilakdhari, his daughters also filed an application u/s 12 of the Act, for mutating their names and that application was referred by Assistant Consolidation Officer for decision on merit on 28.7.1995. If two mutation application were filed before the Consolidation Officer in respect of same properties of the same person then both the applications ought to have been decided together. Thus the daughters of Tilakdhari were not given any opportunity of hearing by the Consolidation Officer while passing the order dated 22.2.1996 as such order dated 22.2.1996 passed by Consolidation Officer was an ex parte order against them. The petitioner could not challenge the findings of respondent-1 in this respect. In the light of the aforesaid findings, the revision of the petitioner was rightly dismissed.

10. The earlier order dated 1.12.2012 was based on the reason that as the recall application was time barred, the Consolidation Officer had no jurisdiction to pass any order on merit before condoning the delay. In case, the order of Consolidation Officer was set aside on this ground then Deputy Director of Consolidation ought to have remanded the matter to Consolidation Officer for deciding the delay condonation application but the matter was not remanded, which amounts to dismissal of the recall application without considering the recall application or the delay condonation application on merit. Supreme Court in Davinder Pal Sehgal and Another Vs. Partap Steel Rolling Mills Pvt. Ltd. and

Others, held that in case, separate order relating to condonation of delay was not passed and the matter was decided on merit then, delay was deemed to have been condoned. In such circumstance, the order of Deputy Director of Consolidation dated 1.12.2012 was illegal and has been rightly set aside.

11. Supreme Court in Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, and Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., held that writ jurisdiction cannot be exercised for restoring illegal order. In State of U.P. Vs. District Judge, Unnao and Others, and Roshan Deen Vs. Preeti Lal, held the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law. In view of the aforesaid discussions as well as law laid down by the Supreme Court, no interference is required by this Court. The writ petition is dismissed.