
(2013) 11 AHC CK 0070
In the Allahabad High Court
Case No : Writ-B No. 54959 of 2013

Nathuli and Others

APPELLANT

Vs

Additional Collector and Others

RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2014) 122 RD 24

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

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Ram Surat Ram (Maurya), J.—Supplementary affidavit filed today is taken on record. Heard Sri Anupam Kulshrestha, Counsel for the petitioners and Sri Sudhir Kumar Agrawal, Counsel for the contesting respondents.

2. The writ petition has been filed against the order of the Consolidation Officer dated 20.1.2007 by which he has consolidated Case Nos. 117 and 118 filed by Biri Singh, respondent No. 6, u/s 12 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act") along with Case No. 10 u/s 9A(2) of the Act filed by the petitioners in respect of the land in dispute.

3. In the basic consolidation record the land in dispute was recorded in the names Daroli, son of Tunda. Chhotey, son of Sukh Ram, father of petitioner Nos. 1 and 2 and husband of petitioner No. 3 were reported to be in possession over it. On the basis of the claim raised by the father of the petitioners, a case u/s 9A(2) of the Act was registered i.e. Case No. 10. In the meantime, Smt. Champee Devi also filed an objection for recording her name claiming herself to be daughter of Daroli. In the meantime, Champee Devi executed a sale-deed dated 19.1.2004 in favour of Biri Singh, respondent No. 6. It is alleged that as at that time there was a Government Order, which directed the Sub Registrar to send the papers for mutation directly as such on the report of the Sub Registrar a case u/s 12 of the Act was registered in which Biri Singh could not appear and

it was dismissed in default on 25.7.2005. Biri Singh has filed a separate application u/s 12 of the Act, which was also dismissed by order dated 26.2.2009 on the ground that second application moved by Biri Singh was not maintainable. In the meantime the other applications were also filed, registered as Case Nos. 117 and 118. The Consolidation Officer by order dated 20.1.2007 directed to consolidate Case Nos. 117 and 118 along with Case No. 10 u/s 9A(2) of the Act. The petitioners challenged the order dated 20.1.2007 in Appeal No. 183/2012-13 which was dismissed by order dated 22.3.2013 of the Settlement Officer, Consolidation. The petitioners then filed a revision (registered as Revision No. 2/2012-13, which has also been dismissed by order dated 30.7.2013 of the Deputy Director of Consolidation. Hence this writ petition has been filed.

4. The Counsel for the petitioners submits that the applications filed by Biri Singh, respondent No. 6, after passing order dated 25.7.2005 were not maintainable. He submits that filing of successive applications is an abuse of process of the Court, accordingly, Case Nos. 117 and 118, which were registered subsequently, were not maintainable and were not liable to be consolidated along with the objection of the petitioners filed u/s 9A(2) of the Act. He further submits that the name of Smt. Champee Devi was never recorded over the land in dispute and it has not been proved that Champee Devi ever inherited the properties of Daroli as such sale-deed executed by her is a void document and it cannot be given effect to in the consolidation records so long as it is not found by the Consolidation Officer that Smt. Champee Devi inherited the property in dispute. He further submits that since the property in dispute has already been in possession of the father of the petitioners from long before the start of the consolidation operation as such Daroli has also lost his title over it. In such circumstances, the execution of the sale-deed as well as the proceeding on its basis is mere harassment of the petitioners and the order of the Consolidation Officer directing for consolidation of the aforesaid cases u/s 12 of the Act was illegal and liable to be set aside.

5. I have considered the arguments of the Counsel for the parties and examined the record.

6. It is admitted that in basic consolidation record the name of Daroli was recorded over the land in dispute as such in case Smt. Champee Devi by claiming herself to be daughter of Daroli executed a sale-deed of the land in dispute in favour of Biri Singh, Biri Singh is entitled to file an application u/s 12 of the Act but as the proceeding u/s 9A(2) of the Act is pending as such these applications based upon the subsequent sale-deed were not liable to be decided independently. In such circumstances, these were rightly consolidated with Case No. 10 u/s 9A(2) of the Act in order to avoid any contradictory orders on the applications filed by Biri Singh.

7. So far as the contention of the Counsel for the petitioners that Biri Singh used to file successive applications u/s 12 of the Act on the basis of same sale-deed and the applications filed after the order dated 25.7.2005 were not maintainable.

In this respect the Counsel for the contesting respondents submits that order dated 25.7.2005 was passed in proceeding which was started on the basis of report of the Sub Registrar in which Biri Singh had no notice. In such circumstances, Biri Singh had filed application u/s 12 of the Act which has wrongly been rejected by the Consolidation Officer by order dated 26.2.2009 as not maintainable. However, the applications i.e. Case Nos. 117 and 118 are pending. In such circumstances he submits that at least one of the applications of Biri Singh was liable to be heard on merit as such all the applications cannot be rejected. Since Case Nos. 117 and 118 are now consolidated as such these will be decided simultaneously and in case both the cases are based upon the same sale-deed the Consolidation Officer may reject the subsequent case and proceed to hear at least one of the cases on merit and all other subsequent application were liable to be rejected. With the aforesaid observation the writ petition is disposed of.