

(1976) 10 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3066 of 1972

Onkar Nath Dubey

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 11-10-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 6

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 4(2), 49, 5(2), 9A

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 341

Citation : (1977) AWC 78 : (1977) RD 40

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Advocate : Sankatha Rai, for the Appellant; Gyan Chandra, S.K. Vidyarthi and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.N. Singh, J.—Onkar Nath Dubey, the Petitioner, filed objection u/s 9A of the U.P. Consolidation of Holdings Act claiming one half share in Khata No. 65 of Village Kachchwa Bojh pargana Bhadohi district Varanasi, which was recorded in the basic year as Bhumidhari of Alakh Deo. His objection was contested by Alakhdeo, opposite party No. 2 on the ground that Adinath, as guardian of Onkar Nath Dubey Petitioner, had executed a said deed on 19-12-1953 transferring the said khata to him for consideration. Since then he has continued in possession and his name was also mutated in the revenue papers. The Consolidation Officer rejected the Petitioner's claim by his order dated 7-5-1970. The Settlement Officer (Consolidation) affirmed the order of the Consolidation Officer in appeal. The Deputy Director of Consolidation dismissed the Petitioner's revision and upheld the order of the Settlement Officer (Consolidation). Aggrieved the Petitioner filed this petition under Article 226 of the Constitution challenging the aforesaid three orders of the consolidation authorities dismissing his claim for one half share in the Khata in dispute.

2. Learned Counsel for the Petitioner urged that Adinath was a blind person since birth. He was the uncle of the Petitioner. He had no legal authority or right to transfer the Petitioner's share in the land included in the Khata in question by the sale deed dated 19-12-1953. Since the Petitioner's mother was alive and she was legal and natural guardian of the Petitioner, Adinath had no locus standi to transfer the Petitioner's land to Alakhdeo. The sale deed was void and it did not confer any valid title to Alakhdeo. On behalf of Respondent Alakhdeo, it was urged that Adinath was de facto guardian of the Petitioner, he executed the sale deed for consideration and since the sale deed has not been cancelled by a competent court the same is binding. In the alternative, it was further urged that the sale deed was not a void document, instead it was a voidable document and as such the consolidation authorities have no jurisdiction to cancel or ignore the said sale deed, they are bound to give effect to that sale deed. Further since 1953 Respondent Alakhdeo has continuously been in possession of the land in dispute, he matured his title to the land. It was further urged that the Petitioner's claim for setting aside the sale deed or for regaining possession or title to the land in dispute was barred by time and as such the consolidation authorities rightly rejected the Petitioner's claim.

3. There is no dispute that the sale deed in question was executed by Adinath the uncle of the Petitioner even though his mother, the natural guardian, was alive. In the circumstances, it was always open to the minor on attaining majority to challenge the validity of the sale deed. All the three consolidation authorities have however rejected the Petitioner's claim on the ground that since the Petitioner's right to bring an action for the cancellation of sale deed was barred by time he could not challenge the validity of the sale deed. On the findings recorded by the consolidation authorities it is clear that the Petitioner completed the age of 18 years on 8th January, 1959, he could therefore, file a suit for cancellation of the sale deed and for possession of the land in dispute within the prescribed period of limitation. u/s 209 of the U.P. Zamindari Abolition and Land Reforms Act, the Petitioner could file suit for ejectment of Respondent Alakhdeo, the transferee under the sale deed executed by Adinath. Under Appendix III to the Rules framed under the Zamindari Abolition and Land Reforms Act, the period for filing a suit u/s 209 was three years till 26th March, 1959. By a notification dated March 27, 1959, Appendix III to the Rules was amended and the limitation of three years was extended to six years. Consequently a suit for dispossession of a person retaining land unlawfully could be filed within six years after 27th March, 1959. As noted earlier, the Petitioner attained majority on 8th January 1959, He could file suit for possession u/s 209 within a period of three years of the date he attained majority but this period of limitation was extended to six years as a result of which the Petitioner could file the suit within six years of his attaining majority, namely, by 8th January 1965 as the limitation for filing a suit u/s 209 could expire on 8th January, 1965, but before that date a notification u/s 4(2) of the U.P. Consolidation of Holdings Act was issued on July 1, 1964 and the land in dispute became the subject matter of

consolidation proceedings. The Petitioner thereafter could not file any suit u/s 209 as a suit could not be maintained u/s 5(2) of the Consolidation of Holdings Act.

4. The contention of the learned Counsel for the Respondent that the Petitioner's claim was barred by time is misconceived. As already noted the Petitioner attained majority on 8th January 1959. He could file a suit within three years of his attaining majority as prior to that period being a minor he was disabled person to bring any suit or proceeding for the cancellation of the sale deed. Section 6 of the Limitation Act lays down that where a person entitled to institute a suit is at the time from which the prescribed period of limitation is reckoned a minor or insane or idiot, he may institute a suit within the same period after the disability has ceased. This section protects the right of a person who is legally disabled to bring action in a court of law, namely a minor or insane or an idiot. The period of limitation in such a case for the purpose of filing a suit shall commence from the date of discontinuance of the disability. Section 6 of the Limitation Act read with Section 341 of the U.P. Zamindari Abolition and Land Reforms Act is applicable to the proceedings under the latter Act. In *Badal v. Deputy Director of Consolidation* 1970 AWR 456 a Full Bench of this Court held that Section 49 of the U.P. Consolidation of Holdings Act bars a suit u/s 209 of the U.P. Zamindari Abolition and Land Reforms Act and a person who had limitation to file a suit u/s 209 of the 1951 Act on the date of notification u/s 4 of the U.P. Consolidation of Holdings Act has full right to get relief under the consolidation proceedings notwithstanding his failure to file a suit u/s 209 of the 1951 Act. In *Shitla Prasad v. Bans Bahore* 1974 AWR 48, another Full Bench held that Section 6 of the Limitation Act is applicable to a suit u/s 209 even in the absence of any express provision in Section 341 making Section 6 applicable. These authorities leave no room for any doubt that the Petitioner was entitled to the benefit of Section 6 of the Limitation Act. As already noted he attained majority on 8th January 1959, and the period of limitation for filing the suit u/s 209 would commence from that date. Since before the expiry of the period of limitation of three years the period was enhanced to six years the Petitioner could legally file a suit u/s 209 within six years from the date of his attaining majority. Admittedly the Petitioner filed objection u/s 9A of the U.P. Consolidation of Holdings Act within a period of six years from the date of his attaining majority. The Petitioner's claim was therefore not barred by limitation. The consolidation authorities committed patent error of law in rejecting his claim on the ground of limitation.

5. On the admitted facts Adinath was not legal guardian of the Petitioner. Admittedly, his mother was alive and she was natural guardian. She did not act on behalf of the Petitioner as minor nor she transferred the land in dispute, instead Adinath who was uncle executed the sale deed. The Consolidation authorities have upheld the validity of the sale deed on the ground that Adinath was a de facto guardian. The law does not recognise any de facto guardian. In case of a minor the father is the natural guardian, in his absence the mother is

natural guardian, any uncle or cousin could not be a natural guardian of a minor. In the presence of a natural guardian any distant relation including an uncle had no legal status to act on behalf of the minor to alienate his property. Adinath was not appointed Petitioner's guardian under order of any competent court. He purported to act on behalf of the Petitioner without there being any authority in him. The law does not recognise any de facto guardian. In the presence of mother who was natural guardian Adinath had no authority to alienate the Petitioner's property. The Consolidation authorities committed an error in upholding the validity of the sale deed.

6. The Respondent's contention that the authorities constituted under the Consolidation of Holdings Act have no jurisdiction to ignore or cancel the sale deed executed by Adinath as it was not a void document is again without any merit. In *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, , the Supreme Court held that if a document is wholly invalid it could be disregarded by the consolidation authorities. In that case the Supreme Court expressed agreement with a Division Bench of this Court in *Jagarnath Shukla v. Sita Ram Pandey* 1969 AWR 435 where the sale deed executed by his uncle transferring the land was declared void and it was further held that such a claim could be adjudicated by the consolidation courts. The principle laid down in *Jagarnath Shukla*'s has been clearly approved by the Supreme Court in *Gorakhnath*'s case. Since Adinath had no right or title to transfer the Petitioner's share in the property in dispute the sale deed is void. Therefore, the consolidation courts had jurisdiction to cancel and ignore that sale deed.

7. I, therefore, allow the petition with costs and quash the order of the Deputy Director and direct him to hear and decide the Petitioner's revision in accordance with law. Parties shall bear their own costs.