
(2014) 09 AHC CK 0337
In the Allahabad High Court
Case No : Writ-B No. 3076 of 1978

Panchu

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision : 06-09-2014

Acts Referred:

Citation : (2014) 125 RD 360

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : F. Rai and Kailash Nath, Advocate for the Appellant

Judgement

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Anjani Kumar Mishra, J.—Heard Sri Lal Chandra Yadav holding brief of Sri Kailash Nath, who has filed appearance on behalf of petitioner and learned Standing Counsel for the State-respondent. None has appeared on behalf of the contesting respondents 4 and 5 in the writ petition. The writ petition arises out of an objection filed by one Parwati under section 9A(2). This objection was decided by the Assistant Consolidation Officer by his order dated 17.9.1972, which has been passed on the basis of a compromise.

2. Although it has been sought to be conveyed that there were five separate objections and five separate orders were passed, only one order of the Assistant Consolidation Officer dated 17.9.1972 has been filed on record. By this order, the petitioner was granted 1/8 share in the disputed property. Aggrieved by this order, the petitioner appears to have filed appeal. His contention in the appeal was that the share of the petitioner was more than 1/8 and that the shares had been wrongly determined by the Assistant Consolidation Officer. The appeals as also the consequential revisions have been dismissed. Hence this writ petition.

3. Learned Counsel for the petitioner has primarily raised two issues. His first ground for assailing the impugned orders is that there was total non compliance of the provisions of Rule 25-A of the U.P. Consolidation of Holdings Rules. His

second contention is that the Assistant Consolidation Officer does not have the right to determine the share of parties during consolidation proceedings and, therefore, his order was wholly without jurisdiction and the appellate and revisional authorities have committed manifest illegality in not setting aside such order.

4. I have considered the submissions made by learned Counsel for the petitioner and have perused the record.

5. Insofar as the first contention of the learned Counsel for the petitioner that there was total non compliance of the provisions of Rule 25-A, it would be appropriate to refer to the order passed by the Deputy Director of Consolidation, wherein a categorical finding has been recorded that the thumb impression of the petitioner Panchu is available on the compromise. The compromise has also been signed by two members of the Consolidation Committee. It has also been recorded that the thumb impressions of Balihari and Ramdhari, the contesting respondents, are also available on the compromise. From the above, it is abundantly clear that the contention of the learned Counsel for the petitioner that there was no compliance of Rule 25-A is without any basis and such contention is repelled.

6. As regards the second submission that the Assistant Consolidation Officer does not have the power to determine the share of parties, it would suffice to record that the Assistant Consolidation Officer has the power to pass orders on the basis of the conciliation proceedings. Section 9-A(1), which is relevant for the purpose, is extracted below:--

"9-A. Disposal of cases relating to claims to land and partition of joint holdings.--

(1) The Assistant Consolidation Officer shall--

(i) where objections in respect of claims to land or partition of joint holdings are filed, after hearing the parties concerned, and

(ii) where no objections are filed after making such enquiry as he may deem necessary,

Settle the disputes, correct the mistakes and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of such conciliation."

7. The procedure to be followed by the Assistant Consolidation Officer while exercising the power to pass orders on the basis of conciliation has been provided in Rule 25-A of the Rules framed under the Act by virtue of section 45(3) of the Act is reproduced below:--

"25. Sections 9(1) and 54(2)(d).--(a) The Assistant Consolidation Officer shall pass orders in his own hand in appropriate columns of the list of mistakes and disputes in land records for the correction of all the clerical mistakes entered in Part I of the list in C.H. Form 4, after consulting the previous land records of the

village, where, necessary. These orders shall then be noted by the lekhpal against the relevant khatas of the annual register and shall be attested by the Consolidator. The Assistant Consolidation Officer shall also satisfy himself by checking that all his orders have been correctly recorded in the annual register."

8. In view of what has been recorded above while dealing with the first submission of learned Counsel for the petitioner, it is evident that the order of the Assistant Consolidation Officer was passed on the basis of a compromise, which is in writing and has been signed by the parties as also two members of the Consolidation Committee.

9. Therefore, in view of such finding having been recorded by the Deputy Director of Consolidation upon a perusal of the original record, this Court has no hesitation in holding that there was compliance of the provisions of Rule 25-A and a valid compromise were entered into between the parties. In such circumstances, it was well within the jurisdiction of the Assistant Consolidation Officer to have determined the shares of the parties by such compromise.

10. It would be relevant to note that the Courts below have also recorded that in the C.H. Form 5 issued after partial, the share of the petitioner was shown to be 1/8. This is the precise share, which has been granted to him by the compromise.

11. It is admitted by the learned Counsel for the petitioner that the petitioner has never preferred any objection disputing his share as shown in C.H. Form 5 and, therefore, in the absence of such an objection it was not open for him to have claimed a different share, at the appellate stage, for the first time. In view of the above discussion, I find no merit in the writ petition, which is accordingly dismissed.