
(1984) 07 AHC CK 0026
In the Allahabad High Court
Case No : Writ Petition No. 581 of 1979

Paras Nath & Others

APPELLANT

Vs

D.D.C.& Others

RESPONDENT

Date of Decision : 31-07-1984

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48(a)

Citation : (1984) 07 AHC CK 0026

Hon'ble Judges : U.C.Srivastava, J

Final Decision : Allowed

Judgement

U.C. Srivastava, J.—The petitioners after succeeding before the Consolidation Officer and the Settlement Officer, consolidation lost the case before the Deputy Director of Consolidation. The dispute between the parties is regarding partition of some land which was entered in the names of Jagannath and Baij Nath, sons of Buddhu Jagannath and Baij Nath are from the branch of Hanti while petitioners are from the branch of Sarnam, both sons of Moti, who had also one son Sahai who had a son Dariao who died issueless. The case of the petitioners was that the land in dispute was ancestral grove and their names have been entered correctly. Other persons who were members of the family claimed cogroverholder's rights, and this claim was admitted by the recorded tenureholder because they were from the branch of Hanti. In support of their case the petitioners filed khasra of 134 of and khetauni 1345F to show that the entry was in the name of Buddhu son of Hanti. Khetauni 1328F was also filed to show the entry of the name of Bindeshwari son of Bekaroo who, according to the petitioners, was their grandfather. Khetauni 1314F was filed to show that the entry in respect of the grove was in the names of Dariao and Bekaroo. Besides the above documents, oral evidence was tendered by both the parties.

2. The Consolidation Officer, after appraisal of evidence, found that it was ancestral grove. The order passed by the Consolidation Officer was maintained by the Settlement Officer, Consolidation, but the Deputy Director of Consolidation

reversed the order passed by the Settlement Officer, Consolidation,

3. Sri Arif Khan stated that the Vakalatnama of the then counsel (now Hon'ble Mr. Justice Saghir Ahmed) and Sri Arif Khan on the printed form was on the record, but appearance was put in by the counsel (now Hon'ble Mr. Justice Saghir Ahmed) and there is no acceptance by him. He further stated that information of elevation has been sent to the petitioners, but there is no response, as such he would not like to appear. The Vakalatnama (printed form) of Sri Arif Khan is on the record and even if acceptance is not there he cannot be completely disassociated with the case.

4. The order passed by the Deputy Director of Consolidation shows that he did not take into consideration relevant evidence on record which was filed by the petitioners. The Deputy Director of Consolidation rejected the claim of the petitioners on the ground that their names were not entered on the record and they did not prove as to which stage and when the trees were planted and pedigree too was not proved by them as oral evidence did not prove the pedigree. The Deputy Director of Consolidation found that there were 18 old trees and 23 trees were subsequently planted. If the parties were cogroveholders, there was no partition of grove and because names of some groveholders were entered, that will not defeat the claim of unrecorded cogroveholders. So far as pedigree is concerned, the Deputy Director of Consolidation was to take into consideration the oral and documentary evidence on record and thereafter he could have arrived at the conclusion whether the pedigree was proved or not although other two consolidation authorities have recorded such a finding. If the land was coming down from common ancestor and it was old grove, the Deputy Director of Consolidation was to find out whether any partition had taken place. No partition took place and possession of one cogroveholder will be deemed to be possession of other cogroveholder. In view of the fact that the Deputy Director of Consolidation did not take, into consideration the relevant evidence on record, as well as the relevant facts, the order passed by him cannot be sustained.

5. The writ petition is allowed and the order dated 20.11.78 passed by the Deputy Director of Consolidation is quashed and he is directed to restore the revision application to its original number and hear and decide the same in accordance with law in the light of the observations made above. There will be no order as to costs.

(Petition allowed)