

(1996) 05 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 3252 of 1982

Pullu and Ors.

APPELLANT

Vs

Parloki (dead) & Ors.

RESPONDENT

Date of Decision : 17-05-1996

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1996) 05 AHC CK 0076

Hon'ble Judges : B.K.Sharma, J

Final Decision : Allowed

Judgement

B.K. Sharma, J.—In the present writ petition the petitioners have sought issue of a writ of certiorari quashing the judgment and order of the Deputy Director of Consolidation, dated 23121981 in Revision No. 1500 under Section 48, Consolidation of Holdings Act, village Rakhia, Tappa Nawai, Pargana Nagar Pashchim, Tehsil Haraiya, district Basti, Parloki v. Pullu and others.

2. I have heard learned counsel for the petitioners and counsel for opposite party No. 1/1 Udai Raj. The facts of this case fall in a narrow compass. The dispute relates to Khata No. 186 of the village, which originally belonged to Ori, common ancestor of the parties. Ori had two sons Nidhi and Baiju. The petitioners belong to the branch of Nidhi, while Parloki deceased opposite party No. 1 belonged to the branch of Baiju. "Tie total area of the Khata was originally 11 bigha 1 biswa 6 dhur. In 1929 Setu of the branch of Nidhi got his 1/8th share, area 1 bigha, 7 biswa, separated and sold it away. So there remained 9 bigha 14 biswa area in the khata with the remaining persons of the two branches. In the ordinary course the share of Parloki, representing the branch of Baiju. would have been 1.2 in the total area of 11 bigha 1 biswa 6 dhur. Partition Suit No. 34 of 1961, was filed before the J.O. Haraiya by Ram Bali under Section 176, U. P. Z. A. & L.R. Act, in respect of balance area of the Khata i.e. 9 bigha 14 biswa. In it Parloki filed his written statement and claimed that he had onehalf share in the said balance land of the khata and the said suit was decreed accordingly by J.O. Haraiya by his

judgment and order dated 27761 a copy of which was Annexure No. 1. In the operative part of the said judgment it was said that the share of defendant Parloki is declared to be 1.2 in the land in suit and preliminary decree was directed to be prepared accordingly. Admittedly no appeal was filed against the said judgment and decree dated 27761 by Parloki before the appropriate court, Smt. Dharma belonging to the branch of Baiju had died and Parloki was her heir also but her name continued to exist in the revenue record. Later on, when the consolidation proceedings started in the village the Consolidation Officer relying upon the judgment and order dated 27761 aforesaid allowed the objection of the petitioners and directed expunction of the name of Smt. Dharma, a copy of this order being Annexure No. 2. This order of the Consolidation Officer dated 31381 was challenged before the Settlement Officer Consolidation by Parloki by way of an appeal. This appeal was dismissed by the Assistant Settlement Officer Consolidation vide his judgment and order dated 7881, copy of which is Annexure No. 3. in the objection under Section 9 of the U.P. Consolidation of Holdings Act before the Consolidation Officer Parloki claimed that his share is onehalf in the total area of original khata. The Consolidation Officer held that in view of the judgment of the revenue court, Parloki could not claim more than onehalf share in the balance land in the khata after separation of the share of Setu. The Assistant Settlement Officer Consolidation dismissed the appeal of Parloki to kind the same view Aggrieved Parloki preferred revision No. 1500 before the Deputy Director of Consolidation. The Deputy Director of Consolidation reversed the orders of the Consolidation Officer and the Asstt. Settlement Officer Consolidation aforesaid and took the view that Setu and being of the branch of the revisionist he had onehalf share in the total area of the Khata before the partition of the share of Setu. He also took the view that Parloki has been given 1.2 share in suit No. 34 of 1061 including" the share of Dharma it is wrong and the same has been wrongly followed by the Consolidation Officer and the Settlement Officer Consolidation in their judgments. He, therefore, by the impugned order dated 231281 (Annexure No. 4) set aside the orders of the Consolidation Officer and the Settlement Officer Consolidation aforesaid and remanded the case to the Consolidation Officer for a fresh decision taking into consideration all the evidence.

3. The sole contention which has been raised by the learned counsel for the petitioners is that the Deputy Director of Consolidation had no jurisdiction to ignore the judgment of the revenue court which has become final between the parties. The said judgment certainly operates as *res judicata* between the parties, it has also been pointed out by the learned counsel for the petitioners that the principle of estoppel also arises. The judgment and decree of the revenue court, which operates as *res judicata*, certainly concludes the matter between the parties and the Deputy Director of Consolidation acted without jurisdiction and his order of remand is manifestly illegal.

4. Learned counsel for the opposite party No. 1/1 has contended that under Article 226 of the Constitution this Court ought not to interfere when substantial

justice has been done by the Deputy Director of Consolidation by accepting the contention of Parloki's branch that its share was onehalf in the total Khata as it stood before the partition of the share of Setu in the said proceedings before the revenue court. In support of his contention he has relied on two authorities. One is, Badlu v. Ram Narain and others, 1994 R.D. 256. In that case in view of the facts of the case the High Court had refused from interfering with the remand order. The second authority relied upon by him is, another authority of the same single judge in the case of Mumtza and another v. Deputy Director of Consolidation and others, 1994 R.C. 412. In this second authority the interference was refused in the writ jurisdiction observing that jurisdiction under Article 226 of the Constitution is essentially an equitable jurisdiction and that even if the order impugned may be legally bad or suffers from vice of jurisdiction still if the court is of the view that substantial justice has been done, the High Court will always be reluctant to exercise its extraordinary jurisdiction and further observing that the case in hand was one of such case.

5. The opposite party No. 1/1 also claimed that even after the partition suit the entire remaining land after separation of the share of Setu remained one and no separate Qurras were formed therein. This second plea is immaterial because declaration of the share became final, whether or not each one share was separated by separate Qurras of each. It may be that the share of Parloki's branch as per pedigree would have been onehalf, but after the decision of the revenue court there are two facts to be kept in mind, one is that Parloki's branch itself claimed a lesser share which involved this surrender of the remaining share as per pedigree and then there is the material circumstance that the rights have been settled finally as far back as 2771961. Therefore, it cannot be said that the Deputy Director of Consolidation had done substantial justice by upsetting the settled position of the year 1961 consequent upon the judgment of the revenue court. Consequently the remand order passed by the Deputy Director of Consolidation dated 23121981 is legally bad and suffers from vice of jurisdiction and it cannot be said that interference will be inequitable and that the circumstances justify declining to interfere with such a remand order as has been passed by the Deputy Director of Consolidation. The Deputy Director of Consolidation had to abide by the orders of the constituted regular courts whether they may be civil courts or revenue courts. To ignore such orders and to act arbitrarily in defying the same is something which cannot be countenanced by this Court.

6. In the result, the writ petition succeeds and is allowed. The impugned remand order dated 231281 passed by the Deputy Director of Consolidation (Annexure No. 4) is quashed and the order dated 7881 passed by the Settlement Officer Consolidation (Annexure No. 3) is restored.