
(2010) 10 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2143 of 1973

Rai Saheb Panna Lal

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 1 ADJ 329

Hon'ble Judges : Vikram Nath, J

Bench : Single Bench

Judgement

Vikram Nath, J.—This petition under Article 226 of the Constitution of India has been filed against the judgment and orders dated 28.12.1971 passed by the Consolidation Officer, Aliganj, District Etah, 21.7.1972 passed by the Assistant Settlement Officer Consolidation, Mainpuri Camp at Etah and 18.12.1972 passed by the Deputy Director of Consolidation Gorakhpur Camp at Etah.

2. Originally the dispute was related to several khatas i.e. Khata Nos. 17, 22, 20, 57, 91, 68, 45, 60, 23 and 89 of Village Chandpur Zindahar, Pargana Etah, District Etah. In the present petition the dispute is confined to only Khata Nos. 17 and 57. In Khata No. 17 Smt. Ganga Devi was exclusively recorded in the basic year and in Khata No. 57 Sohrab, Neksey and Rai Saheb Panna Lal (Petitioner) were jointly recorded. In other khatas the Petitioner, Smt. Ganga Devi and the private Respondents have been recorded jointly in different combinations. Before the Consolidation Officer objections were filed by the Petitioner claiming that he should be recorded in place of Smt. Ganga Devi on the ground of inheritance being son of the sister of Sripal, husband of Smt. Ganga Devi. It would be relevant to record here that according to the Petitioner, Tika Ram had two sons Sripal & Mewa Ram and one daughter Smt. Ram Piyari. Smt. Ganga Devi is the wife of Sripal. Further Mewa Ram died issue less, who is said to have executed a Will in favour of the Petitioner. The only dispute with regard to the pedigree raised by the Respondents is that Smt. Ram Piyari was

not the daughter of Tika Ram but was the daughter of Tika Ram's wife's sister.

3. Before the Consolidation Officer evidence was led by the parties. The Consolidation Officer framed as many as 14 issues. The Issue No. 1 was as to who is the legal heir of Smt. Ganga Devi and the Issue No. 2 was whether Rai Saheb Panna Lal (Petitioner) was the daughter's son of Tika Ram. The finding recorded by the Consolidation Officer on these issues was that the Petitioner was the daughter's son of Tika Ram or in other words the son of the sister of Sripal and Mewa Ram and would therefore inherit the estate of Ganga Devi. However, with regard to the shares in Khata No. 17, he gave 1/6 share to the Petitioner and the remaining 5/6 share was given to other claimants on the basis of their adverse possession. With regard to Khata No. 57 the Consolidation Officer determined the share of the Petitioner on one side and Sohrab on the other side as 1/2 each. It may be noted that Neksey brother of Sohrab had died issueless and his share would go to Sohrab.

4. Against the order of the Consolidation Officer four appeals were filed, some by the Petitioner and others by Sohrab and others. The Settlement Officer Consolidation affirmed the finding of the Consolidation Officer to the extent that the Petitioner was the sister's son of Sripal and Mewa Ram and would therefore inherit to the estate of Smt. Ganga Devi. He further altered the shares given by the Consolidation Officer to the parties. In Khata No. 17 the Settlement Officer Consolidation held that the entire khata would go to the Petitioner and with regard to Khata No. 57 he held that the Petitioner would be entitled to 166/610 share and the remaining 434/610 share would go to Sohrab and others.

5. Against the order of the Settlement Officer Consolidation two revisions were filed, one by Sohrab and others and the other by the Petitioner. The Deputy Director of Consolidation by order dated 18.12.1972 held that the Petitioner was not the son of the sister of Sripal and Mewa Ram and as such would not be entitled to any share in Khata No. 17 whereas with regard to Khata No. 57 the shares determined by the Settlement Officer Consolidation were maintained.

6. It is against the aforesaid judgment and orders of the Consolidation Courts that the present writ petition has been filed by Rai Saheb Panna Lal.

7. I have heard Sri Anadi Krishna Narayan, learned Counsel for the Petitioner and Sri Rajeev Sharma, learned Counsel representing the private Respondents.

8. The main issue which arises in this petition is as to whether the Petitioner is or is not the son of the sister of Sripal and Mewa Ram. The Consolidation Officer and the Settlement Officer Consolidation had recorded their findings in favour of the Petitioner, based upon the consideration of three vital evidences one which was the copy of the order passed in the Mutation Case No. 11 of 1944, Rai Saheb Panna Lal v. Mewa Ram Case No. 11 of 1944, in which the Petitioner had applied for mutation on the basis of a Will executed by Mewa Ram in his favour, although against the same an appeal was pending in the Court of the Additional Commissioner. The second evidence was an affidavit of Sohrab filed in the year

1955. The third evidence was the statement of Durga Prasad given in the present proceedings in which there were serious contradictions leading to the conclusion that Smt. Ram Pyari was not daughter of Chet Ram but was the daughter of Tika Ram. The Deputy Director of Consolidation in his judgment has recorded that the alleged Will in favour of the Petitioner was not on record and therefore the findings of the Courts below were based upon no evidence. Secondly he referred to certain claim made by the Petitioner being "Dhewta" of Tika Ram initially and thereafter changing it to being "Bhanja" of Sripal and Mewa Ram.

9. From the order of the Deputy Director of Consolidation it is apparent that he has neither referred to the order passed in the mutation proceedings, which was based upon the Will in favour of the Petitioner nor he has referred to the affidavit given by Sohrab.

10. Sri Rajeev Sharma, learned Counsel for the Respondents has submitted that it is admitted case that the Will was never filed before any of the Consolidation Courts and therefore the reliance placed upon the said Will by the Consolidation Officer and the Settlement Officer Consolidation was misplaced. In that regard he has referred to Paragraph No. 6 of the writ petition, which refers to the relevant documents being filed with the writ petition and also being part of the record of the Courts below. This Paragraph No. 6 of the writ petition has been specifically denied in Paragraph No. 6 of the counter-affidavit. According to the averments contained in Paragraph No. 6 of the counter-affidavit of Durga Prasad, only the documents referred to as Paper Nos. A, B and E were filed before the Consolidation Courts but not the other two documents referred to as C and D. Sri Sharma has further referred to Paragraph No. 9 of the counter-affidavit which refers to a review application being filed by the Petitioner before the Deputy Director of Consolidation, alongwith which the documents referred to as C and D being the copy of the Will of Mewa Ram and the copy of the plaint of the civil Court were filed. The said application for review was rejected by the Deputy Director of Consolidation vide order dated 12.3.1973. In reply to the said averments of the counter-affidavit, it has only been mentioned in Paragraph No. 7 of the rejoinder affidavit that there was reference of the Will in evidence before the Consolidation Courts and therefore they were justified in relying upon the same.

11. On the other hand Sri Anadi Krishna Narayan, learned Counsel for the Petitioner has sought to argue that there was clinching material on record in the form of the order passed in the mutation proceedings and the admission of Sohrab in his affidavit which has been considered by the Consolidation Officer and the Settlement Officer Consolidation and also the statement of Durga Prasad who had appeared in the witness box, which clearly established that the Petitioner was the son of the sister of Sripal and Mewa Ram

12. Having considered the submissions on this issue, i now proceed to deal with the same.

13. The Petitioner has filed a copy of the statement of Durga Prasad, which was recorded in the present proceedings, which has been relied upon by the Settlement Officer Consolidation and after considering the same the Settlement Officer Consolidation has disbelieved the denial given by Durga Prasad that Smt. Ram Piyari was not the daughter of Tika Ram but was the daughter of Chet Ram on the ground that in the cross examination Durga Prasad himself had admitted that Chet Ram had no issues. Thus the case set up by the Respondents was not liable to be believed. The next piece of evidence filed by the Petitioner is the statement of Sohrab wherein also nothing concrete was established. The next evidence is the copy of the plaint of the revenue suit filed by Smt. Ganga Devi against Sohrab, Durga Prasad and others for partition in which also she had admitted that the Petitioner who was arrayed as the Defendant No. 7, was son of her husband's sister. The next piece of evidence filed is the affidavit of Sohrab dated 29.5.1955 in which he had admitted that the Petitioner was the heir of Mewa Ram and that his name has been recorded in the revenue records. Next evidence is the copy of the Will of Mewa Ram dated 15.9.1928, which mentions that the Petitioner was the sister's son. This is a registered Will, registered on 17.9.1928. Next piece of evidence is the plaint of the civil suit filed by Sohrab and others against the Petitioner.

14. It is noteworthy that from the recital in the judgments of the Consolidation Courts, it is apparent that in the large number of khatas, which were in dispute before the Consolidation Officer, Smt. Ganga Devi was recorded in five khatas and the Petitioner was recorded jointly with Durga Prasad, Sohrab and Smt. Ganga Devi in different combinations in his own capacity at least in four khatas. In Khata No. 60 the Petitioner is shown to be recorded alongwith Sohrab, Durga Prasad and Ganga Devi. In Khata No. 75 the Petitioner is recorded with Sohrab and Neksey. In Khata No, 45 the Petitioner is recorded with Sohrab and in Khata No, 23 he is jointly recorded with Durga Prasad, Sohrab and others. From the pedigree it is apparent that Durga Prasad, Jugal Kishore, Nawab, Sohrab and Neksey they all came down from common ancestor Ganga and only the successors from the line of Ganga could have been recorded in the said khatas. The fact that the Petitioner is recorded alongwith the Respondents not only in one khata but in so many khatas of his own rights, clearly indicates that he comes down from the same family. It further indicates that he is the grandson being daughter's son of Tika Ram and Mewa Ram on account of close proximity in relationship had executed a Will in his favour and therefore he came to be jointly recorded. Secondly the Consolidation Officer and the Settlement Officer Consolidation both have taken into consideration not only the order passed in the mutation case and the affidavit of Sohrab but also the statement of Durga Prasad to record a finding that the Petitioner was the son of the sister of Sripal and Mewa Ram. On the other hand the Deputy Director of Consolidation although has rightly mentioned that the Will has not been placed on record but nevertheless he ought to have considered the other material on record, which had been considered by the Consolidation Officer and the Settlement Officer Consolidation.

This apparently has not been done, thereby vitiating the judgment. The Will is of the year 1928. These proceedings were taken up in 1970s. Further the Will was a registered Will and based upon the same the mutation order had been passed although it was under challenge in appeal but nevertheless it ought to have been taken into consideration. The Deputy Director of Consolidation has further not even referred to the affidavit of Sohrab or the statement of Durga Prasad. Thus the finding recorded by the Deputy Director of Consolidation cannot be sustained under law. On the other hand the finding recorded by the Consolidation Officer and the Settlement Officer Consolidation based upon the consideration of material on record, even in the absence of the Will and also coupled with the fact that Rai Saheb Panna Pal (Petitioner) was recorded jointly with the Respondents in four other khatas, was enough material to sustain their findings.

15. Now coming to the question about the shares in Khata No. 17 the Petitioner alone would be entitled to inherit in place of Smt. Ganga Devi as determined by the Settlement Officer Consolidation. With regard to Khata No. 57, as the finding by the appellate and revisional authorities is based upon material evidence and respective possession of the parties, i am not inclined to interfere with the same.

16. In view of above, the writ petition succeeds and is allowed to the extent that the order of the Deputy Director of Consolidation in so far as it relates to the finding that the Petitioner is not the son of the sister of Sripal and Mewa Ram deserves to be quashed and with regard to the shares in Khata No. 57 deserves to be maintained.

17. The writ petition is partly allowed as above. The revenue records be corrected accordingly.