
(2012) 01 AHC CK 0020
In the Allahabad High Court
Case No : C.M.W.P. No. 15539 of 2010

Rajendra and Others

APPELLANT

Vs

Bhikkhan and Others

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9

Citation : (2012) 4 AWC 3823

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Tabassum Hashmi, for the Appellant; Navin Kumar, Ram Surat Saroj, Pramod Srivastava, Mohd. Khursheed Alam, Anuj Kumar (S.C. - Gaon Sabha) and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heard learned counsel for the petitioners Mrs. Tabassum Hashmi and Sri Mohd. Khursheed Alam for the respondent No. 1 and the learned counsel for the Gaon Sabha for the respondent No. 3. Learned standing counsel has been heard for the respondent No. 2. Counter-affidavit has been filed on behalf of the respondent No. 1. The contention raised by the petitioners is that the Deputy Director of Consolidation has on erroneous assumptions of fact and law reversed the order passed by the Consolidation Officer as affirmed in appeal in relation to the recording of the name of late Ganga Saran father of the petitioner Nos. 1 to 4 and the husband of petitioner No. 5.

2. The background in which the controversy emerges appears to be that in relation to the shares of the holding, a compromise took place between the parties before the Consolidation Authorities and the said compromise came to be verified and accepted by the Assistant Consolidation Officer on 21st October, 2006. The said compromise described as has been enclosed at page 33 of the paper book of the writ petition. The Assistant Consolidation Officer however while

passing the order recorded that the name of the respondent No. 1 Bhikkhan be expunged as against plot Nos. 871 and 874 and the name of Ganga Saran the predecessor-in-interest of the petitioner be recorded.

3. The respondent No, 1 filed an appeal against the said order contending that the said compromise was not with Ganga Saran for expunging the name of the respondent No. 1 and it was only in relation to the bifurcation of shares. The Settlement Officer Consolidation proceeded to uphold the order of the Assistant Consolidation Officer on the ground that in the event the respondent No. 1 Bhikkhan had any objection to the recording of names he ought to have filed an objection u/s 9 of the 1953 Act. Since he did not choose to file any objection, therefore, in the absence of any timely action taken, the bar of Section 11A would operate and hence the appeal was dismissed.

4. The respondent No. 1 preferred a revision reasserting his grievance and alleging that there had been no compromise as alleged and that the Assistant Consolidation Officer has incorrectly recorded the order dated 21.10.1986. The revision has been allowed accepting the said stand of the respondent No. 1 and the order of the Assistant Consolidation Officer has been set aside to that extent with a further direction that the name of the respondent No. 1 will continue to be recorded as a co-tenure-holder.

5. Learned counsel for the petitioners contends that an agreement had been entered into between Ganga Saran and the respondent No. 1 and a copy of the same has been filed as Annexure-1 to the writ petition to allege that this was ample evidence of the transfer of the property which took the shape of a compromise before the Assistant Consolidation Officer. In view of the aforesaid background it is urged that the Deputy Director of Consolidation has committed an error by reversing the order passed by the Assistant Consolidation Officer as affirmed in appeal.

6. Replying to the said submissions learned counsel for the respondent No. 1 submits that in fact the memorandum of compromise itself does not indicate any such agreement nor does it remotely indicate any agreement having been entered earlier and, therefore, the Assistant Consolidation Officer without there being any such compromise proceeded to record an order in relation to the disputed holding which was perverse.

7. He further submits that in the event the petitioners predecessors-in-interest Ganga Saran was claiming any interest over the property on the basis of some possession, then It is he who should have filed an objection u/s 9A(2) and not the answering respondent No. 1. He further submits that the Settlement Officer Consolidation while dismissing the appeal filed by the answering respondent committed a manifest error by laying the burden on the answering respondent of filing an objection which is against the recognised tenets of law.

8. I have perused the documents on record and having heard learned counsel for the parties, the compromise which was made the basis of the order dated

21.10.1986 nowhere indicates any agreement alleged between Ganga Saran and the respondent No. 1. There was no evidence before the Assistant Consolidation Officer to that effect nor was there any document which could be termed as a Compromise for the purpose of expunging the name of the respondent No. 1 in relation to the holding in question. In view of this, the order of the Assistant Consolidation Officer dated 21.10.1986 to the said, extent is perverse. The Settlement Officer Consolidation completely overlooked this aspect and wrongly shifted the burden on the respondent No. 1 to file an objection. The Deputy Director of Consolidation having assessed the correct facts has in my opinion rightly arrived at the conclusion that there was an error in the order of the Assistant Consolidation Officer as well as in the order of the Settlement Officer Consolidation. Accordingly, I find no reason to interfere with the impugned order which is based on evidence on record and as such there is no merit in the petition which is accordingly dismissed.