
(2014) 08 AHC CK 0216
In the Allahabad High Court
Case No : Consolidation No. 545 of 2014

Rajendra Devi

APPELLANT

Vs

Settlement Officer Consolidation-II

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 9A(2)

Citation : (2014) 125 RD 183

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : R.S. Pande, Advocate for the Appellant; Aslm Khan, Advocate for the Respondent

Judgement

@DELETEUPPERDATA

Ram Surat Ram (Maurya), J.—Heard Dr. R.S. Pande for the petitioner and Sri Mohd. Arif Khan, Senior Advocate assisted by Sri M.A. Khan for the contesting respondents. This writ petition has been filed challenging two orders passed in different proceeding. First order is of Settlement Officer Consolidation dated 8.8.2014, rejecting stay application of the petitioner filed in the appeal and other order is of Additional Director of Consolidation dated 5.8.2014, dismissing transfer application filed by the petitioner for transferring the appeal from the Court of Settlement Officer Consolidation, Barabanki to any other competent jurisdiction of Court, arising out of title proceedings under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. Dispute between the parties is in respect of plot 1383 (area 1.518 hectare), of village Bahrauli, pargana Kursi, tehsil Fatehpur, district Barabanki. Admittedly, the land in dispute was the holding of Mukti Nath. According to the petitioner after the death of Mukti Nath, it was inherited by his son Om Prakash and his widow Smt. Karma Devi and the petitioner purchased the land in dispute from them through registered sale-deed dated 12.5.2004. According to the respondents, Mukti Nam executed a sale-deed dated 11.4.1988 in favour of Smt.

Khalida Sultan (respondent-5). Thereafter Smt. Khalida Sultan executed another sale-deed dated 2.8.2003 in favour of Jamaitul Marif Al-Islamiya (respondent-4). In basic consolidation records names of Om Prakash and Smt. Karma Devi were recorded over the land in dispute which was recorded in khata No. 68. During potal, it was informed that name of Smt. Rajendra Devi (the petitioner) was directed to be mutated by the order dated 5.9.2006 over the land in dispute on the basis of sale-deed dated 12.5.2004. The petitioner filed an objection under section 9-A(2) of the Act for recording her name over the land in dispute. Jamaitul Marif Al-Islamiya (respondent-4) filed another objection under section 9-A(2) of the Act for recording its name over the land in dispute. Both the objections were consolidated by the Consolidation Officer and tried together. The Consolidation Officer by order dated 19.6.2013/27.6.2013 held that the sale-deed executed in favor of respondent-5 and the sale-deed executed by respondent-5 in favour of respondent-4 were prior in time while the sale-deed executed in favor of the petitioner was later in time as such the right of respondent-4 and 5 will prevail over the land in dispute. It has been further found that the petitioner has not appeared before the Consolidation Officer to prove her case. On these findings the Consolidation Officer by order dated 19.6.2013/27.6.2013 allowed the objection of respondent-4 and dismissed the objection of the petitioner.

3. The petitioner filed an application for recall of the order of Consolidation Officer dated 19.6.2013 which was rejected by the Consolidation Officer by order dated 2.11.2013. The petitioner thereafter filed an appeal against the orders dated 19.6.2013 and 2.11.2013 before the Settlement Officer Consolidation along with the application for interim order. However, Settlement Officer Consolidation has not passed any order on the application for interim order filed by the petitioner. The petitioner filed a writ petition before this Court i.e. Consolidation No. 432 of 2013 which was disposed of by order dated 10.7.2014 directing the Settlement Officer Consolidation to pass appropriate order on the stay application filed by the petitioner and till disposal of the stay application dispossession of the petitioner was stayed. After getting the order of this Court on 10.7.2014 the petitioner filed a transfer application before Consolidation Commissioner, UP for transferring the appeal from the Court of Settlement Officer Consolidation, Barabanki. The transfer application was heard by Additional Director of Consolidation who by the order dated 5.8.2014 held that there is nothing on record to show that Sri Farid Mohd. Kidwai, Hon''ble Minister of State, UP has any interest in property in dispute or relation with the parties and there is no substance in the allegations made against him. On these finding the transfer application has been rejected by order dated 5.8.2014.

4. Thereafter the stay application was heard by Settlement Officer Consolidation who by order dated 8.8.2014 found that the petitioner has no prima facie case accordingly, she was not entitled to any interim order. On this ground the stay application has also been rejected by Settlement Officer Consolidation. Hence this writ petition has been filed.

5. So far as the stay application is concerned, the Counsel for the petitioner submits that Mukti Nath was bhumidhar with non-transferable right of the land in dispute through out his life time as such the alleged sale-deed dated 11.4.1988 executed by Mukti Nath in favour of respondent-5 is a void sale-deed as he had no transferable right and no reliance can be placed on it. Neither respondent-4 nor respondent-5 applied for mutation of their names over the land in dispute. After the death of Mukti Nath, names of their heirs were mutated by the order dated 3.12.2003 and thereafter they acquired bhumidhari right and executed a sale-deed dated 12.5.2004 in favour of the petitioner and her name was also mutated by order of Tehsildar dated 5.9.2006. In such circumstances, the petitioner has strong prima facie case. The petitioner has been in possession over the land in dispute and sown the crops of paddy and sugarcane which were found by the Joint Committee in its report dated 4.7.2014. In such circumstances, the findings of fact recorded by Settlement Officer Consolidation that the petitioner has no prima facie case, is not correct and the application for interim order has been illegally rejected.

6. I have considered the arguments of the Counsels for the parties and examined the record. There are two phases of the arguments. The first phase of the argument is that sale-deed executed by Mukti Nath dated 11.4.1988 in favour of respondent-5 was in respect of sirdari land. If the argument of the Counsel for the petitioner is accepted, then the provisions of sections 166 and 167 of U.P. Act No. 1 of 1951 come into play and after sale-deed dated 11.4.1988 the land in dispute was vested in State of U.P. Subsequent sale-deed dated 12.5.2004 executed in favour of the petitioner is also null and void. The other phase of argument that execution of sale-deed 11.4.1988 by Mukti Nath in favour of respondent-5 is not denied. It is unimaginable that after purchase of the land in dispute through sale-deed, respondent-5 will not take possession over the land in dispute. In case Mukti Nath sold the land in dispute to respondent-5 and gave possession to her then nothing remains for his heirs to sell and give possession to the petitioner. Thus prima facie possession of the petitioner over the property in dispute is not established. So far as the report of Joint Committee dated 4.7.2014 is concerned, it has no where mentioned that crops have been sown by the petitioner. It has merely mentioned that crops of paddy and sugarcane were standing over the disputed land, thus on the basis of this report also possession of the petitioner has not been confirmed. In such circumstances, Settlement Officer Consolidation has not committed any illegality in holding that the petitioner has no prima facie case and no interference is required by this Court.

7. So far as the transfer application is concerned, the petitioner made a vague allegation that Sri Farid Mahmood Kidwai, Minister of State of UP, is interested in the matter. In the transfer application as well as in the affidavit filed in support of the transfer application nothing has been shown as to how Sri Farid Mahmood Kidwai is interested in the matter. Whether he has any relation to respondent-4 or 5 has not been mentioned. A vague allegation has been made that petitioner has seen Sri Farid Mahmood Kidwai visiting chamber of the Presiding Officer

without giving date and time of the alleged visit. It is unbelievable that a Minister of State Government will visit the chamber of a Settlement Officer Consolidation. The allegation is highly vague and has been disbelieved by Additional Director of Consolidation. No other ground has been mentioned for transferring the case. In such circumstances, the order of Additional Director of Consolidation dismissing the transfer application of the petitioner does not suffer from any illegality.

8. The Counsel for the petitioner submits that under section 11 of the Act, finality has been given to the order of Settlement Officer Consolidation as such, so long as the order of Settlement Officer Consolidation is not passed the records cannot be corrected. The argument in this respect is thoroughly misconceived. Rule 25 of UP Consolidation of Holdings Rules provides for incorporation of every order of every authorities in the consolidation records. So far as the objection relating to possession is concerned, this Court has already held that the sale-deed of respondent-5 prior in time and there is no reason that she would not take possession over the land in dispute while purchasing the land and no interference is required by this Court on this ground. The writ petition has no merit, it is dismissed.