
(2017) 01 AHC CK 0217
In the Allahabad High Court
Case No : Writ B No. 18668 of 2016

Ram Abhilakh

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

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

Citation : (2017) 121 ALR 665 : (2017) 2 CivCC 535 : (2017) 134 RD 733

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Panchu Ram Maurya, Jata Shankar, Shailendra Kumar Maurya and Shashank Maurya, Advocates, for the Petitioners; C.S.C. and Ashok Kumar Singh, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—; Heard Shri Panchu Ram Maurya, learned counsel for the petitioners and Shri Ashok Kumar Singh, learned counsel for the respondents 2 to 4, contesting respondents in the writ petition.

The instant writ petition arises out of proceedings under Section 9A(2) of the U.P. Consolidation of Holdings Act and is directed against the order dated 10.03.2016 passed by the Deputy Director of Consolidation.

2. It appears that two objections were filed under Section 9A(2) of the Act, one by Gangadeen and the second by Sita Ram, the father and predecessor-in-interest of respondents 3 and 5.

3. These objections were decided on the basis of compromises, wherein it was held that the property subject matter of the objections was the joint holding of Gangadeen and Sita Ram and that Sita Ram had $\frac{1}{4}$ share while the share of Gangadeen therein was $\frac{3}{4}$.

4. The aforesaid objections were decided by the Consolidation Officer, through

separate orders, one passed on 19.07.1974 and the other on 11.07.1974.

5. It is submitted that these orders were implemented on the revenue records in proceedings under Rule 109-A of the Rules framed under the U.P. Consolidation of Holdings Rules. Almost 30 years thereafter, on 06.03.2013, three appeals were filed, one against each of the orders passed in the objections and the third against the order passed in proceedings under Rule 109-A. These appeals were filed by Sita Ram.

6. The Settlement Officer Consolidation on 26.12.2013, rejected the appeals, as barred by time.

7. Against the appellate order, the contesting respondent preferred a revision, which has been allowed by the order dated 10.03.2016.

8. The Deputy Director of Consolidation has set aside the appellate order dated 26.12.2013 as also the orders dated 11.07.1974, 19.07.1974 and 25.06.1984. Hence this writ petition.

9. I have heard learned counsel for the parties and have perused the impugned order.

10. The Deputy Director of Consolidation while allowing the revision has made certain observations and recorded some findings, which are extremely relevant. He has recorded that the original record of the proceedings on the objections filed in the year 1974 is not available and the same appears to have been destroyed in a fire in 1978 in the record room, wherein a large number of records were gutted.

11. The second observation made is that two objections were allegedly filed. One was filed by Sita Ram, predecessor-in-interest of the respondents and the other by Gangadeen, the predecessor-in-interest of the petitioners.

12. In both these objections, co-tenancy was claimed. However the objector in each of the objections was already recorded in the basic year record. The implication being that the objection was clearly not maintainable. However, both these objections were decided on the basis of an alleged compromise, where under Gangadeen was granted ? share, while Sita Ram was granted ? share in the plots in each of the objections.

13. The Deputy Director of Consolidation has observed that such an order could not have been passed. Even otherwise it is admitted to learned counsel for the parties that the alleged compromise and the resultant order were never registered, which in the considered opinion of this Court, was mandatorily required.

14. It has also been observed that the alleged compromise orders were passed regarding the khata numbers mentioned in CH Form 11, which again is unexplained. During consolidation operations, orders are passed regarding the khata numbers as existing in the basic year record.

15. It has also been held that co-tenancy cannot be granted on the basis of an admission. This finding is in consonance with the settled law that a question of share is a question of law and there is no estoppel against the statute.
16. Finally a finding has been returned that the order passed in proceedings under Rule 109-A and the resulting revenue entries are different from the orders, which were sought to be implemented by means of these proceedings.
17. Accordingly and on account of the above, the revision has been allowed, the orders impugned therein, have been set aside.
18. Upon hearing learned counsel for the parties and upon a perusal of the impugned order, this Court finds that the crucial findings on the basis of which the revision was allowed have not been assailed in the writ petition.
19. This fact, in my considered opinion is enough to justify dismissal of the writ petition. The discrepancies pointed out by the Deputy Director of Consolidation were not trival ones, and till such time they were adequately explained by the petitioner in the writ petition, no interference is called for in the order impugned.
20. Failure on the part of the petitioners to assail their findings/observations, even cursorily, amounts to admitting them.
21. In view of the above discussion, the writ petition is found to be wholly devoid of merits.
22. It is accordingly dismissed.