

(2006) 02 AHC CK 0099

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11330 of 1982

Ram Asrey

APPELLANT

Vs

Deputy Director of Consolidation & Ors.

RESPONDENT

Date of Decision : 10-02-2006

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2006) 02 AHC CK 0099

Hon'ble Judges : Krishna Murari, J

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Sri R.C. Singh appearing for the petitioner.

2. Though the case has been taken up in revised list, no one has appeared on behalf of contesting respondent No. 2 nor there is any counteraffidavit on this behalf on record.

3. The dispute relates to the plot No. 67/13.19 situate in village Bhairapur, Tappa Khuriya, Tehsil Haraiya District Basti which was sirdari of the respondent Nos. 3 and 4 and was transferred by them in favour of petitioner after obtaining Bhumidari Sanad. Though the SubDivisional Officer in Case No. 569/698 passed an order for mutation of the name of the petitioner on the basis of saledeed but somehow the revenue records were not corrected and the plot in dispute continued to be recorded in the name of the respondent Nos. 3 and 4. During consolidation proceedings the petitioner filed objection under Section 9A(2) of the Act claiming rights on the basis of the saledeed. The respondent No. 2 also filed objection claiming rights over the plot in dispute on the basis of adverse possession. The Consolidation Officer vide order dated 26 31973 allowed the objection filed by the petitioner whereas the objection filed by the respondent No. 2 was dismissed. The appeal filed by the respondent No. 2 was also dismissed by the Settlement Officer, Consolidation on 2061974. Feeling aggrieved the respondent No. 2 filed revision. During pendency of the revision an alleged compromise was filed on the basis of which the claim of respondent No. 2

was allowed by the Deputy Director of Consolidation vide impugned order dated 311975. The petitioner having come to know about the said order moved an application dated 1091975 to recall the same on the ground that he never entered into any compromise and his alleged signature on the said compromise is forged.

4. It has been stated in the writ petition that the aforesaid application was moved before District Deputy Director of Consolidation who passed the order on 141976 that the application be sent to the Court of Deputy Director of Consolidation (II) Basti for necessary action. However, when nothing was done petitioner moved another application before the District Deputy Director of Consolidation who passed an order on 2251976 directing the Deputy Director of Consolidation to take appropriate action.

5. The proceedings started before the Deputy Director of Consolidation. The petitioner moved an application under Section 5 of Limitation Act duly supported by an affidavit explaining the delay. He also moved an application for comparison of his admitted signatures with alleged signatures on compromise and vakalatnama said to have been executed in favour of one Sri Someshwar Yadav, Advocate to appear on his behalf. Sri T.H. Siddiqui, handwriting expert submitted a report on 31101981 that specimen signature did not tally with the signature made on the alleged compromise and vakalatnama. The Deputy Director of Consolidation dismissed the application filed by the petitioner vide order dated 2561982 on two grounds, firstly, the petitioner failed to give any reasonable explanation for delay and secondly, he disbelieved the report of handwriting expert.

6. I have perused the impugned judgment of the Deputy Director of Consolidation.

7. In so far as first ground is concerned the Deputy Director of Consolidation has held that petitioners has failed to give any explanation for the period of 2281975 to 451976. The averments made by the petitioner that he moved an application before the District Deputy Director of Consolidation, Basti on 1091975 on which, orders were passed on 141976, when nothing was done he again approached the District Deputy Director of Consolidation who again passed an order on 2251976 have not been considered. The Deputy Director of Consolidation recorded a finding that questionanswer obtained from the officer of the District Deputy Director of Consolidation shows that an application was moved by the petitioner on 1091975 which was disposed of on 141976, but treating it to be a complaint and not a recall application the Deputy Director of Consolidation held that the said explanation is not reasonable and refused to condone the delay. In my opinion the Deputy Director of Consolidation has taken a very technical view. The petitioner had approached authorities with his grievances and the delay in such circumstances was liable to be condoned. The Deputy Director of Consolidation committed a gross illegality in dismissing the application as time barred.

8. In so far as the second ground is concerned, the Deputy Director of Consolidation disbelieved the expert's report on the ground that the expert made a request for some more specimen signatures. The finding of the Deputy Director of Consolidation that since more specimen signatures were required by the expert goes to show that petitioner who is a literate person made variations in the signatures on account of which same did not tally with the signatures on compromise and vakalatnama is based on imagination, surmises and conjectures. The other reasons recorded by the Deputy Director of Consolidation for disbelieving the expert's report that Advocate who verified the signatures of the petitioner on compromise appeared in the witness box and said that he knows petitioner and has verified his signatures is also not acceptable in view of expert report. The statement made by the Advocate cannot constitute a ground for rejecting the expert's opinion particularly when there was nothing on the record to prove the said report as wrong or biased. I have gone through the expert's report which has been filed as AnnexureE to the writ petition. The expert has clearly opined that two signatures do not tally with each other and has not been made by one person. I see no ground to disbelieve or doubt to the said report.

9. In view of the aforesaid discussions the impugned judgment of the Deputy Director of Consolidation dated 2561982 cannot be sustained and is hereby quashed.

10. The writ petition stands allowed.

11. The case is remanded back to the Deputy Director of Consolidation to decide the revision afresh on merits in accordance with law after notice and opportunity of hearing to all concerned parties within a period of one year from the date of production of certified copy of the order before him.

12. No order as to costs.