
(2016) 05 AHC CK 0363
In the Allahabad High Court
Case No : Writ Petition No. 605 of 2014 (Conso.)

Ram Chandra	Vs	APPELLANT
Deputy Director of Consolidation Lucknow		RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

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

Citation : (2017) 134 RD 25

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : Mohd. Aslam Khan and Manjive Shukla, Advocates, for the Petitioner; C.S.C, P.K. Khare, Shiv Poojan Maurya and Vinay Kumar Tripathi, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Anil Kumar, J. - Heard Shri Mohd. Arif Khan, learned Senior Advocate assisted by Shri Mohd. Aslam Khan, learned Standing Counsel for the opposite party no.1, Shri P. K. Khare, learned counsel for the opposite party no.2, Shri Manjive Shukla, learned counsel for the opposite party nos.3 and 4 and perused the record.

2. Facts in brief of the present case are that in village Hanmantpur, Pargana Mohana, Tehsil Bakshi Ka Talab, District-Lucknow, there are three Khatas, namely, 7, 59 and 92.

3. So far as Khata no.7 is concerned, the same is recorded in the name of petitioner, Laxmi Chandra (now deceased), Vishwanath, Sobhnath, Ram Vriksh, Ram Preet and Kamlesh sons of Shyam Saran and there is no dispute in respect to the same between the parties.

4. Further on publication of the notices under Section 9 of the U. P. Consolidation of Holdings Act (hereinafter referred to call as Act), in respect to Khata nos.59 and 92, two separate objections were filed by the petitioner/Ram Chandra on the

ground that the said khatas have wrongly been recorded in the name of Vishwanath and Laxmi Chandra as in the family settlement, they have given the land at Lakhimpur. The said khatas exclusively belong to the petitioner, their names may be deleted from the revenue record from the said khatas and the name of the petitioner be recorded.

5. It is also submitted on behalf the petitioner that in the proceedings under Section 9-A of U. P. Consolidation of Holdings Act, 1963, a compromise has been entered between the petitioner, Vishwanath and Laxmi Chandra in respect of Khata nos.59 and 92 respectively before the Assistant Consolidation Officer duly verified by the two members of the Consolidation Committee in accordance with the Rule 25-A of U.P. C. H. Rules, 1953 that the land in respect to Khata nos.59 and 92 may be recorded in the name of the petitioner in the revenue record.

6. On 14.12.1994, Laxmi Chandra died. Thereafter, his sons, namely, Krishna Mohan and Ajay Singh filed an appeal in respect to Khata no.92 along with an application under Section 5 of the Limitation Act after the lapse of 16 years from the date of passing of the order of Assistant Consolidation Officer on the basis of the compromise entered between the petitioner and Laxmi Prasad on the ground that compromise is a forged document, rather fraudulent act on the part of the petitioner. So the order dated 07.12.1984 passed by A.C.O. on the basis of the compromise is a nullity, liable to be set aside.

7. By order dated 02.01.2009, Settlement Officer Consolidation condoned the delay and allowed the appeal filed by sons of late Laxmi Prasad, set aside the order dated 07.12.1984 passed by Assistant Consolidation Officer, remanded the matter to Consolidation Officer to decide afresh on merit.

8. Aggrieved by the order dated 02.01.2009, petitioner filed a revision before Deputy Director of Consolidation, Lucknow on the ground that the same is ex-parte order and was passed without providing any opportunity to the petitioner. By order dated 11.03.2010, Deputy Director of Consolidation, Lucknow allowed the revision and set aside the order dated 02.01.2009 passed by Settlement Officer Consolidation and remanded the matter to the said authority to decide afresh.

9. Thereafter, Settlement Officer Consolidation, after hearing the parties on merit, passed an order dated 17.06.2013 in Appeal No.1498/483-2012-13 under Section 11 (1) of U. P. C. H. Act thereby dismissing the appeal, challenged by the opposite party nos.3 and 4 by filing Revision No.447/320/13-14 and also challenged by one Ambarish Yadav by filing a Revision No.452/324/13-14. Deputy Director of Consolidation, Lucknow consolidated both the said revisions and heard together allowed by order dated 17.07.2014 and directed the Consolidation Officer, Sadar, Lucknow to decide the matter after giving opportunity of hearing to the parties to lead oral and documentary evidence.

10. After hearing learned counsel for the parties and going through the records, it is not in dispute between the parties that in respect to Khata no.92 a

compromise has been entered between the petitioner and Laxmi Chandra/father of the opposite party nos.2 to 4 and on the basis of the same, an order dated 07.12.1984 was passed by Assistant Consolidation Officer in favour of the petitioner.

11. Later on, opposite party nos.2 to 4/sons of late Laxmi Prasad have challenged the order dated 07.12.1984 which was passed on the basis of the compromise entered between the petitioner and Laxmi Prasad (now deceased) on the ground that the same is forged one in the matter in issue. Lastly, order dated 17.07.2014 passed by Deputy Director of Consolidation, Lucknow thereby remanding the matter to the Consolidation Officer, Sadar, Lucknow to decide afresh after giving opportunity to the parties to lead oral and documentary evidence in order to prove their case.

12. Taking into consideration the said facts as well as law laid down by Hon''ble the Apex Court in the case of Mangal Prasad Tamoli (D) by LRs. Narvedshwar Mishra (D) by LRs. 2005 (99) RD 177, wherein it has been held that remand order is an interlocutory order which does not terminate the proceedings. It is open to the aggrieved parties to challenge the order of remand after the final judgment made on remand. (See Satyadhyan Ghoshal and others v. Smt. Deo Rajain Devi and another (1960) 3 SCR 590 and Kshitish Chandra Bose v. Commissioner of Ranch (1981) 2 SCC 764 and Gopal Prasad v. Board of Revenue at Lucknow, 2007 (102) RD 310).

13. And in the case of Dularey and other v. Deputy Director of Consolidation and others 2005 (99) RD 174, this Court has held that if the appellate authority has remanded the matter to the Consolidation Officer for fresh consideration there was absolutely no justification either on the fact or in law for the revisional court to interfere in the order of the appellate authority.

14. At this stage, no legal injury is caused to the petitioner by order dated 17.07.2014 passed by Deputy Director of Consolidation, Lucknow as he will have ample opportunity to prove his case that compromise entered between the petitioner and Laxmi Prasad/father of opposite party nos.2 to 4 is a valid and on the said compromise, the signature has been put by Laxmi Chandra. For which purpose, he can move an appropriate application which is to be considered and decided by Consolidation Officer, Sadar, Lucknow on merit as direction has been issued by D.D.C. By order dated 17.07.2014 to Consolidation Officer, Sadar, Lucknow to decide the matter after giving opportunity to the parties to lead oral and documentary evidence in order to prove their case.

15. For the foregoing reasons, the writ petition is dismissed and Consolidation Officer is directed to decide the matter, expeditiously, say, within a period of one year from today as per direction given by Deputy Direction of Consolidation, Lucknow in the order dated 17.07.2014.

16. For a period of one year or till the decision taken by the authority concerned, whichever is earlier, parties are directed to maintain status quo, as exists today, in

respect of property in dispute.