

(2009) 12 AHC CK 0213
In the Allahabad High Court

Ram Chet and Others

APPELLANT

Vs

Gumar and Others

RESPONDENT

Date of Decision : 19-12-2009

Acts Referred:

Citation : (2009) 12 AHC CK 0213

Hon'ble Judges : Rajiv Sharma, J

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.

Heard learned counsel for the petitioners and learned counsel for the opposite parties.

1. In the instant writ petition, the petitioners have assailed the order dated 30.7.1981 passed by the Deputy Director of Consolidation, whereby the opposite parties 1 to 4 have been given cotenancy rights and the petitioners were deprived of their half share over the land in dispute.

2. The controversy in the instant writ petition has given rise on account of the notification of the village in question under the provisions of Consolidation of Holdings Act and the dispute though was in respect of Gata Nos. 104, 106, 107 and 112, but in the proceedings before the Revisional Authority, the dispute was confined to Gata No.107 only.

3. Brief facts of the case are that Gata no. 104 was recorded in the name of Guman (opposite party No.1). In the consolidation proceedings, the names of Phunnu and Ram Sunder, being real brothers of Guman and Jia Lal, cousin were proposed to be added. As no objections were raised, their names were recorded.

4. As regards Khata No. 106, the name of Guman (opposite party No.1), Ram Sunder and Punnu were recorded in the basic year. Subsequently, on an application moved by Jia Lal, cotenancy right over the property was claimed. The same was recorded as no one has filed the objections.

5. With regard to Khata No. 107, the same was recorded in the basic year in the name of Jia Lal and during consolidation proceedings, the names of Guman, Ram Sunder, Phunnu and Ram Chet (petitioner) were proposed to be added. Phunnu, Ram Sunder and Guman filed written objections stating therein that the property is out of the funds of Joint Hindu Family nucleus so the names be recorded with Jia Lal and their shares may be divided accordingly, i.e. half share each may be partitioned.

6. As regards Khata No. 112, the same was solely recorded in the name of Jia Lal, Phunnu and his brother. Jia Lal and his brother moved an application for recording the names as cotenancy holders. As no objections were filed, the same was also allowed.

7. As stated hereinabove, a dispute with regard to the pedigree has been raised in respect of Khata No. 107 before the Revisional Authority. It has been stated that Dase was not Dooli, but Bhiku was Dhooli's son and he has died issueless, whereas the petitioner claims that Dase alias Dooli is the same person and Bhiku had two sons, viz. Jorai and Bhorai. Bhorai died issueless whereas Jorai had five sons, viz. Ram Chet, Ram Kewal, Krishna, Ram Dayal and Paras Nath.

8. It has also been stated that in Khetauni for the Fasli Year 1301, the name of Dase is recorded over an area of 4120. But no evidence has been produced to show that Dase was Dooli. The Revisional Authority has come to a conclusion that Dase alias Dooli was the one and the same person. Further, in the Khetauni for the Fasli year 1352, the names of Jorai and Bhorai were recorded as sons of Bhiku. For the Fasli Year 137577, the names of Ram Chet and his four brothers were recorded being sons of Jorai.

9. The Revisional Authority while recording a finding with regard to the dispute is of the view that nonoccupancy and statutory holdings in Oudh were not heritable under Oudh Rent Act. Tenancy in Oudh was created by a contract between the Zamindar and the tenant. A holding therefore does not become the property of joint family because it is entered in the name of a member of that family. Jointness cannot be presumed between khatas which stood separately in the names of branches of the pedigree. It has also been recorded that the entries are isolated and astray which did not confer title on the petitioners. Being aggrieved by the said finding, the instant writ petition has been filed inter alia on the grounds that the pedigree has been proved before the authorities below and as such, in reversing the said pedigree by the Revisional Authority is illegal. Further, there was a settlement and on the basis of the settlement, the petitioners are in possession but in reversing the finding, the Revisional Authority has committed an error apparent on the face of record. The Revisional Authority has partly allowed the revision preferred by Jia Lal and fully allowed the revision preferred by Ram Sunder and others.

10. It has been contended by the counsel for the petitioner that the Deputy Director of Consolidation has no jurisdiction to substitute its own findings on

reappraisal of evidence. The findings of appellate authority if found incorrect and illegal case could be remanded after upsetting the findings, but the Revisional Authority while reversing the findings has come to the conclusion that the findings recorded by the Consolidation Officer were correct, whereas the Settlement Officer Consolidation has exceeded jurisdiction so the findings are not correct.

11. In support of the submission, learned counsel has relied upon the case of Wali Mohammad and others versus Deputy Director Consolidation [2003 (94) RD 614] wherein it has been observed that the Deputy Director of Consolidation did not record any such findings, he has himself reappraised the evidence and substituted his own findings for the findings recorded by the Consolidation Officer and the Settlement Officer Consolidation, which is, in view of the aforesaid decisions, not permissible under the law. In case the findings recorded by the Consolidation Officer and the Settlement Officer consolidation were found to be incorrect, illegal or improper, after upsetting them, he could remand the case to the Settlement Officer Consolidation or the Consolidation Officer for decision afresh. He could not, as stated above, substitute his own findings for the findings recorded by the authorities and could not allow the revision outright.

12. Controverting the aforesaid submissions, it has been submitted that in the case of Ram Autar v. Deputy Director of Consolidation [1994 RD 290], after considering the powers of Deputy Director of Consolidation under the amended provisions of U.P. Consolidation of Holdings Act, 1953, the Apex Court has held that in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact finding authority by appreciating for itself of those facts de novo.

13. In the instant case, the findings which have been recorded by the Settlement Officer Consolidation are per verse and based on wrong motion of law and thus the same has rightly been set aside by the Deputy Director of Consolidation and upholding the findings recorded by the Consolidation Officer.

14. For the reasons aforesaid, I do not find any infirmity or illegality in the impugned order of the Deputy Director of Consolidation and the writ petition is liable to be dismissed.

15. Accordingly, the writ petition is dismissed.