
(2014) 02 AHC CK 0257
In the Allahabad High Court
Case No : Writ B No. 7829 of 2014

Ram Dular

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 19-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9

Citation : (2014) 123 RD 46

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

Bench : Single Bench

Advocate : R.P. Upadhyay and Rajesh Kumar Pandey, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Rajesh Kumar Pandey for the petitioner. This writ petition has been filed against the orders of Consolidation Officer dated 16.6.2004, Settlement Officer, Consolidation dated 5.9.2006 and Deputy Director of Consolidation dated 12.9.2013, passed in title proceedings, arising out of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act").

2. The dispute related to plot Nos. 1036 and 1060, situated in village Sherdeeh, pargana Jhunsi, tahsil Phoolpur, district Allahabad. In basic consolidation record, the land in dispute were recorded in the names of Lal Bahadur, Panna Lal, Ram Singh and Ram Awadh sons of Ram Nath (hereinafter referred to as the respondents). The petitioner raised a dispute at the time of partial , claiming co-tenancy of 1/2 share in the land in dispute. Subsequently, the petitioner filed an objection u/s 9 of the Act and stated that the father of the respondents was his real brother and the land in dispute was acquired by their father, in which the petitioner as well as the father of the respondents have 1/2 share each. After the death of father of the petitioner, the name of the petitioner could not be mutated over the land in dispute. Thereafter, the petitioner filed an amendment application on 5.7.1997 and amended the pleadings and said that in the family

settlement, plot No. 1036 was given in exclusive possession of Ram Nath (father of the respondents) while plot No. 1060 was given in exclusive possession of the petitioner. Before Consolidation Officer, the petitioner, apart from his statement, examined one Ram Kailash and the respondents, apart from documentary evidence, examined Lal Bahadur and Chottey Lal. The Consolidation Officer after hearing the parties, by order dated 16.6.2004, found that the petitioner could not prove that the land in dispute was acquired by his father Kali Deen. The petitioner, prior to filing the objection in consolidation, himself filed a suit u/s 229B of the Act, in respect of joint family property, in which, the land in dispute was not included in the schedule of the properties, which shows that the petitioner had no share in it. On this finding, the objection of the petitioner was dismissed. The petitioner filed an appeal (registered as Appeal No. 1986) from the aforesaid order. The appeal was heard by Settlement Officer Consolidation, who also held that the petitioner could not prove that the land in dispute was acquired during jointness of the family from the joint family found. Contrary to it, it has been proved that the land in dispute were purchased by Ram Nath in his name in the year 1955 and 1957, respectively. As in the suit u/s 229-B of the Act, these plots were not included in the schedule of the joint family property, as such, it is apparent that these plots were not joint family property. Accordingly, the appeal was dismissed. The revision filed by the petitioner has also been dismissed on the same ground.

3. The Counsel for the petitioner submits that amendment application filed by the petitioner has been, allowed by Consolidation Officer by order dated 23.1.1999 and the objection of the petitioner has been permitted to be amended. The petitioner has specifically raised the plea that under the family settlement, plot No. 1036 has been given in the exclusive possession of Ram Nath and plot No. 1060 has been given in exclusive possession of the petitioner. However, no issue has been framed by Consolidation Officer in this respect. From the khasra filed by the petitioner of the year 1373-F, the possession of the petitioner over plot No. 1060 was proved. In this way, the family settlement claimed by the petitioner has been proved, but no finding has been recorded on it's basis. He further submits that Consolidation Officer has illegally noted in its judgment that plot No. 1036 was purchased in the year 1955 and plot No. 1060 was purchased in the year 1957, while the fact was otherwise, i.e. plot No. 1060 was purchased in the year 1955 and plot No. 1036 was purchased in the year 1957. Thus, the correct facts have not been considered, which shows non application of mind. The appeal and revision of the petitioner were also dismissed.

4. I have considered the arguments of Counsel for the parties and examined the record.

5. The petitioner has claimed 1/2 share in both the plots, i.e. plot Nos. 1036 and 1060 on the ground that these plots were acquired by Kali Deen (his father) and after his death, it was inherited by Ram Dular and Ram Nath in equal share. The plea of family settlement has been raised only to justify the claim as these

properties were not included in the schedule of joint family property in the suit u/s 229-B. But controversy on the basis of family settlement has not been raised. The real controversy between the parties was as to whether these plots were purchased by Kali Deen or by Ram Nath. Incidentally, the question arises as to whether the property was purchased in the name of Ram Nath from the joint family fund. The petitioner could not adduce any evidence to show that the land in dispute was purchased by Kali Deen or it was purchased from the joint family fund, apart from an interested witness who happens to be his relation. Contrary to it, the respondents have proved that the land in dispute was purchased by Ram Nath, from his own income. In such circumstances, co-tenancy cannot be granted to the petitioner.

6. Admittedly, the petitioner himself has filed the suit u/s 229-B of U.P. Act No. 1 of 1951, for declaring his 1/2 share in the joint family property. In the schedule of the property of the plaint of this case, these two plots were not included, although these plots were exclusively recorded in the name of Ram Nath. In this case, the petitioner has not pleaded any family settlement. As such, at the subsequent stage, the claim of the petitioner for co-tenancy in these two plots, are barred by estoppel and acquiescence as well as under Order II, Rule 2, C.P.C. All the consolidation authorities have concurrently held that land in dispute was self acquired property of Ram Nath. Apart from khasra for only one year, there is no other documentary evidence in favour of the petitioner. Khasra entries do not carry any presumption of correctness. It is well settled that in case, any different person is found in possession of the land at the time of partial by lekhpal, then before recording his possession, lekhpal was required to issue PA 10 to the recorded tenure holder as well as Pradhan. In this case, there is nothing to show that lekhpal has followed the mandatory provisions of Land Records Manual before making entry in favour of Ram Nath. Alleged family settlement has never seen light of the day and has been rightly disbelieved. In view of the aforesaid discussion, there is no illegality in the orders of Consolidation Authorities. The writ petition has no merit and is dismissed.