
(2015) 09 AHC CK 0222
In the Allahabad High Court
Case No : Writ-B No. 54177 of 2015

Ram Ji Lal

APPELLANT

Vs

Board of Revenue, Alld. and Others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 12-A, 9

Citation : (2015) 129 RD 505

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

Bench : Single Bench

Advocate : Madan Mohan and P.S. Verma, for the Appellant; Ashish Kumar Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Madan Mohan for the petitioner. The writ petition has been filed against the order of Board of Revenue, U.P. dated 21.7.2015 dismissing the revision of the petitioner and the orders of Sub Divisional Officer dated 18.6.2015 and 1.9.2014 by which in the preliminary decree the name of Umesh Sharma, respondent-6, has been substituted in place of Vijai Singh on the basis of sale-deed executed by Vijai Singh of his share in his favour, and Lekhpal has been directed to submit a fresh report relating to kurra of the parties.

2. Ram Ji Lal (the petitioner) filed a suit for division under section 176 of U.P. Act No. 1 of 1951 of plot Nos. 693, area 0.057 hectare, 695 area 1.7330 hectare situated in village Dadhki, pargana and tehsil Khairagarh, district Agra. Initially, a preliminary decree in the suit was passed ex parte by order dated 23.9.2012. The petitioner as well as Vijai Singh and Ajai Chandra (defendants-1 and 2) were real brothers and Sub Divisional Officer by order dated 23.9.2012 held 1/3rd share of each in the land in dispute. Thereafter, the Sub Divisional Officer directed the Lekhpal for preparation of kurra. Lekhpal has prepared kurra and submitted his report dated 4.6.2013. In the meantime, Umesh Sharma

(respondent-6) filed an application for substitution of his name as legal representative of Vijai Singh (respondents) on the basis of the sale deed executed by him in respect of his 1/3rd share in the land in dispute. On his application the Sub Divisional Officer by order dated 1.9.2014 modified the preliminary decree and in place of Vijai Singh, the name of Umesh Sharma has been substituted and his share was held as 1/3. Thereafter Umesh Sharma has filed an objection to the kurra prepared by Lekhpal in which he has raised the plea that the land in dispute is situated adjacent to canal and demanded his kurra by the side of the canal. Thereafter the matter was heard by the Sub Divisional Officer, who after hearing the parties by order dated 18.6.2015 set aside the kurra prepared by Lekhpal and directed the Lekhpal to prepare fresh kurra. The petitioner filed a revision against the aforesaid orders dated 1.9.2014 and 18.6.2015, which has been dismissed by the Board of Revenue by order dated 21.7.2015. Hence, this writ petition has been filed.

3. The Counsel for the petitioner submits that after service of summons upon the defendants none of the defendants appeared before the Trial Court. Therefore, the trial Court by order dated 19.9.2012 proceeded ex parte against the defendants. None of the defendants filed any application for recall of the order dated 19.9.2012 and ex parte preliminary decree dated 23.9.2012 was passed. Umesh Sharma (respondent-6) is pendente lite transferee of Vijai Singh. On his application the preliminary decree has been recalled and modified by the order dated 1.9.2014. So far as the kurra prepared by Lekhpal is concerned, the petitioner has been in possession of the land in his share by the side of canal and the kurra was prepared on the basis of previous possession according to the principles as given under Rule 131 of U.P. Zamindari Abolition and Land Reforms Rules, 1952 (hereinafter referred to as "the Rules"). The Sub Divisional Officer has illegally set aside the kurra prepared by the Lekhpal and directed for preparation of fresh kurra and the revision filed by the petitioner has been dismissed.

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

5. So far as the argument that Umesh Sharma had no locus standi to get the preliminary decree dated 23.9.2012 recalled as no application was filed by any of the defendants for recalling the order dated 19.9.2012 is concerned, a perusal of the order dated 1.9.2014 shows that the Sub Divisional Officer has merely modified the preliminary decree dated 23.9.2012 and in place of the name of Vijai Singh, the name of Umesh Sharma, the transferee of Vijai Singh, has been substituted in the preliminary decree. Therefore, it does not cause any prejudice to the petitioner. So far as the share of the petitioner as 1/3rd in the land in dispute is concerned, it has not been affected at all.

6. So far as the order dated 18.6.2015 is concerned a detailed principle of division of joint holding has been provided under Rule 131 of the Rules. Under Rule 158 of the Rules provisions contained under Rules 127 to 132 have been

applied mutatis mutandis for division of the holdings. The argument that Sub Divisional Officer illegally directed Lekhpal to prepare fresh kurra and thus he had usurped the jurisdiction of Lekhpal for preparation of kurra, is not liable to be accepted as under section 176 read with section 182-B Sub Divisional Officer is the statutory authority for division of the holdings. Lekhpal is an authority subordinate to him who assists him in discharge of his statutory duty. The Counsel for the petitioner submits that impugned orders have been passed in utter disregard of Rule 131(1)(e) of the Rules. Rule 131 is quoted below--

Rule 131(1):--In making partition of holding into two or more portions the following principles shall be observed:--

- (a) The valuation of the portion allotted to each party shall be proportionate to his share in the holding;
- (b) The portion allotted to each party shall be as compact as possible;
- (c) As far as possible no party shall be given all the inferior or all the superior classes of land;
- (d) As far as possible existing field shall not be spit up;
- (e) Plots which are in separate possession of a tenure holder shall as far as possible be allotted to such tenure holder if they are not in excess of his share.

7. The word "holding" has been defined under section 3(7) of U.P. Tenancy Act, 1939 as follows:--

"holding", means parcel or parcels of land held under one lease, engagement or grant or in the absence of such lease, engagement or grant under one tenure and in the case of a thekedar includes the theka area;"

8. Thus word "holding" used in Rule 131 means the total land held by tenure holders. Rule 131 contemplate principles of division of holding. Under Rule 131(1)(d) effort should be made to avoid to split the existing filed. In order to assure to follow the principles of Rule 131(1)(d), it has been further provided under Rule 131(1)(e) that plots which are in separate possession of a tenure holder shall, as far as possible, be allotted to such tenure holder if they are not in excess to his share. Thus principles of Rule 131(1)(e) serves the object of Rule 131(1)(d). If there are several plots for division between co-sharers, then in order to avoid split of the plots, the plot in separate possession of a tenure holders be allotted in their kurra. Suppose if a plot situated on a High Way, having commercial value, has to divided between co-sharers and one of the co-sharer was having his share covering whole frontage on roadside land in private separation and other co-sharers were on backside. Then according to the principles under Rule 131(1)(a) that valuation of the portion allotted to each party shall be proportionate to his share in the holding, Assistant Collector would be justified in allotting share to all the co-sharers giving frontage on roadside and previous possession in such a situation has to be disregarded. Thus, the principle

contained under Rule 131(1)(e) is not the solitary principle. The principles as provided under Rule 131(1)(a)(b) and (c) have also to be followed. Dividing joint holding has to be made considering all the principles contained under Rule 131.

9. In partition suit in *M.L. Subbaraya Setty (Dead) by Lrs. and Others Vs. M.L. Nagappa Setty (Dead) by Lrs. and Others*, . Supreme Court held that the legal position is well settled that on mere severance of status of joint family, the character of any joint family property does not change with such severance. It retains the character of joint family property till partition. The character of any joint family property does not change with the severance of status of the joint family and a joint family property continues to retain its joint family character so long as the joint family property is in existence and is not partitioned amongst the co-sharers. We may also clarify that the direction that the present possession of the parties shall be respected as far as possible also does not mean that if the plaintiff is not in possession of any immovable property and the same are in possession of the defendants, he could not be allotted the immovable property even though he is so entitled as per his share. If that was so, the words "as far as possible" in the said direction would become redundant. When the Court directs that the present possession of the parties shall be respected, it means that if partition of the property is to be effected, then as far as possible the person in possession of a property should be allowed to retain it by equalization of share but it does not mean that a person out of possession of all immovable properties should not be allotted any part of the immovable property whatsoever.

10. The phrase "as far as possible" used under section 12-A of U.P. Imposition of Ceiling on Land Holdings Act, 1960, came up for consideration before Supreme Court in *Rajendra Singh and Others Vs. State of U.P. and Others*, . Supreme Court held that the words "as far as possible" have been used in the main section as also in clause (d) of the proviso. These words are not prohibitory in nature. They rather connote a discretion vested in the prescribed authority which can exercise that discretion at the time of carving the surplus area from out of the total holding of a person. Section 9 provides that the prescribed authority shall by a general notice published in the Official Gazette, call upon every tenure-holder holding land in excess of the ceiling area applicable to him, to submit a statement in respect of all his holdings wherein he shall also indicate the plots which he would like to retain as part of his ceiling area. It is this choice which is referred to in section 12-A and it is provided that the prescribed authority shall, as far as possible, accept the choice indicated by the tenure-holder as to the plots which he would like to retain as part of his ceiling area. It is at this stage that the discretion can be exercised by the prescribed authority and he may not take over those plots as part of the surplus area. It is thus "discretion" and not "compulsion" which constitutes the core of this statutory provision. It is obvious that before taking over any area as surplus area or leaving any area as ceiling area of the tenure-holder, the prescribed authority shall first take into consideration the choice indicated by the tenure-holder and if it is not possible to act wholly upon the choice, for which there may be a variety of reasons, the

prescribed authority will proceed in his own way to leave the area determined by him as the ceiling area with the tenure-holder and take over the other area as surplus area. Again in *Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another*, it has been held that the phrase "as far as possible" provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the Court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.

11. In view of the above section 131(1)(a) provides that valuation of portion allotted to each party shall be proportionate to his share in the holding. Since in this case both the holdings are adjacent to each other and situated by the side of canal, therefore, according to the principle as contained in Rule 131(1)(a) of the Rules, the Sub Divisional Officer is required to adjust the proportion of valuation to each of the cosharers. The Lekhpal has prepared kurra giving share to one of the cosharers in the back side of the canal due to which the Sub Divisional Officer has set aside the kurra prepared by the Lekhpal as giving kurra one of the cosharers in the back side of the canal, the valuation will not be equal. In such circumstances, the order of the Sub Divisional Officer does not suffer from any illegality. Kurra is yet to be prepared by the Lekhpal. In case the petitioner feels aggrieved by the kurra prepared by Lekhpal, he may file objection before the Sub Divisional Officer, who shall decide the objection in accordance with law. In view of the aforesaid discussion, there is no illegality in orders of Courts below. The writ petition has no merit, it is dismissed.