
(2011) 04 AHC CK 0485

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31248 of 1997

Ram Karan @ Ramayan

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Specific Relief Act, 1963 — Section 42

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 20

Citation : (2011) 5 ADJ 362 : (2012) 1 AWC 444 : (2011) 113 RD 372

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : B.K. Gautam, S.P. Lal and Rajesh Ji Verma, for the Appellant; C.S.C., B.S. Yadav, D.K. Misra, Rajesh Kumar, J.P. Srivatava and Faujdar Rai, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri Rajesh Ji Verma, learned Counsel for the Petitioner, Sri Faujdar Rai, learned Counsel for the Respondent No. 2 and Sri J.P. Srivastava, learned Counsel for the Respondent Nos. 3 and 4.

2. Respondent Nos. 3 and 4 are real brothers of the Petitioner and they have not filed any counter-affidavit. A counter-affidavit has been filed on behalf of Respondent No. 2 to which a reply has been filed and the matter has been heard finally.

3. Sri Rajesh Ji Verma, learned Counsel for the Petitioner submits that the impugned order dated 22nd July, 1997 is a nullity, inasmuch as, neither the revision had been preferred by the Petitioner and the Respondent No. 3 nor does it bear their signatures. He further submits that no lawyer had been appointed by them to contest the revision and the Vakalatnama which has been filed in support of the revision also does not bear their signatures. In such a situation, the entire proceedings before the Deputy Director of Consolidation were a nullity

and totally ex parte to the Petitioner and the Respondent No. 3. He submits that as a matter of fact the order was obtained by manipulating a compromise orally recorded before the Deputy Director of Consolidation which was totally against the interest of the Petitioner and the Respondent No. 3, and it was an alleged settlement between the Respondent Nos. 2 and 4.

4. He further submits that the impugned order does not record any finding on the issues aforesaid before proceeding to pass the impugned order on 22nd July, 1997 and, therefore, the same deserves to be set aside and the matter deserves to be remitted back to the Deputy Director of Consolidation for deciding it afresh.

5. Sri Verma has invited the attention of the Court to paragraphs 9, 10 and 12 of the writ petition in particular to support his submissions and the reply given by the Respondent No. 2 to the aforesaid paragraphs in paragraphs 11, 12 and 14 of the counter-affidavit. It is submitted that in view of the aforesaid pleadings it is now established on record that the impugned order was totally without any knowledge to the Petitioner and the Respondent No. 3 and hence the impugned order deserves to be set aside.

6. Sri Faujdar Rai, learned Counsel for the Respondent No. 2 contends that as a matter of fact this litigation is an outcome of a collusion between the Petitioner and the Respondent Nos. 3 and 4, who are real brothers and they have set up this writ petition to some how the other non-suit the Respondent No. 2 on grounds which are not available in law, inasmuch as, not only the Petitioner and the Respondent No. 3 but all the brothers were having full knowledge of the filing and pendency of the revision and that the order which is impugned in the present writ petition has been passed well within their knowledge. Not only this in the revision filed by the Respondent No. 2, the Petitioner and the Respondent Nos. 3 and 4, were Respondents and from the orders passed in the restoration matter, including the orders dated 16.5.1988 and 21.4.1989, it is amply clear that the Petitioner and his brothers were heard when the matters were taken up, even though separately. They therefore have full knowledge of the entire proceedings. With the aid of these documents, he contends that the conduct of the Petitioner and the Respondent Nos. 3 and 4 leaves no room for doubt that the Petitioner and the Respondent No. 3 in spite of having full knowledge were simply sitting on the fence, and since the order dated 30.12.1986 was in their knowledge, the plea that they have no idea about the revision having been filed on their behalf is incorrect. He contends that if the factum of settlement is sought to be denied, then the remedy of the Petitioner is to file a civil suit u/s 42 of the Specific Relief Act where only the factum of compromise can be challenged. For this he relies on two decisions of this Court in the case of *Munshi Singh v. Director of Consolidation* 1966 RD 147 and the decision in the case of *Govind Singh and Ors. v. Deputy Director of Consolidation, Bijnore and Ors.* 1998 (89) RD 696, to support his submissions.

7. In essence, the contention raised on behalf of the Respondent No. 2 is that if the idea of remanding the matter before the Deputy Director of Consolidation is

to re-hear the matter again, then even otherwise, the same issue would crop up, namely, the genuineness of the said compromise/settlement which is the basis of the impugned order and, therefore, it will be a futile exercise of the writ jurisdiction under Article 226 of the Constitution of India.

8. Sri Rai contends that such matters particularly with regard to the allegations of the compromise being fraudulent cannot be gone into in the exercise of writ jurisdiction under Article 226 of the Constitution of India and therefore, the writ petition deserves to be dismissed.

9. Having heard learned Counsel for the parties, the dispute relates to Plot No. 364 and its allotment in proceedings u/s 20 of the U.P.C.H. Act 1953. These proceedings culminated finally with the passing of the impugned order dated 22nd July, 1997 which is under challenged in the present writ petition.

10. The Petitioner and the Respondent No. 3 are stated to have full knowledge about the said revision, in which the order impugned has been passed. The Petitioner and the Respondent No. 3 clearly took a stand that they had no knowledge about the filing of any such revision. For this a copy of the memo of revision has been filed as annexure-6 to the writ petition. This document indicates that the revision has been preferred by three persons but admittedly it has been signed by only one Ram Bachan Yadav, the Respondent No. 4 herein. This revision was decided ex parte and aggrieved the Respondent No. 2 filed a restoration application. The revision was restored. The orders which have been placed before the Court do not indicate that either the revision was signed by the Petitioner No. 1 and Respondent No. 3 or notices, on the restoration application moved by the Respondent No. 2, have ever been served on these persons before the revision was restored and then finally decided on 22nd July, 1997. The counter-affidavit does not bring on record any material to demonstrate the same. The impugned order does not indicate that the Petitioner and Respondent No. 3 were ever put to notice about the restoration filed by the Respondent No. 2 and the revision proceeding within their constructive knowledge.

11. Apart from this, the Petitioner has taken a clear case that the memo of revision was neither signed by him nor the Vakalatnama was executed and the same also could not be successfully rebutted in the counter-affidavit I have perused the photocopy of the Vakalatnama filed alongwith the writ petition as annexure-5. The same bears the signature of only Ram Bachan Respondent No. 4. These facts have been categorically stated in paragraphs 9 and 10 of the writ petition and the same have not been successfully denied by the Respondents in the counter-affidavit. The averments are categorical to that effect, and in the absence of a categorical denial, the contention raised on behalf of the Petitioner has to be accepted.

12. The impugned order completely over looks this aspect and has proceeded on the alleged settlement between Ram Bachan Yadav Respondent No. 4, and the counsel Mr. Swatantra Kumar Rai. It is therefore evident that even such a

settlement before the Deputy Director of Consolidation, was not between the Petitioner, the Respondent No. 3 and the Respondent No. 2. However, whether the Petitioner and the Respondent No. 3 had authorized any other counsel to enter into such settlement or not, is not borne out from the record. This being the position, the facts so noticed hereinabove do not find any reference in the order dated 22nd July, 1997.

13. The law that an order can be said to be perverse on the grounds of non-consideration of relevant and material facts are therefore, clearly attracted in the present case and I am supported in my view by the Full Bench Decision in the case of Nanha and Another Vs. Deputy Director of Consolidation, Kanpur and Others,

14. The contention raised by Sri Rai that the remedy of the Petitioner is to file a suit is not the issue before this Court, inasmuch as, the first issue which had to be decided by the Deputy Director of Consolidation was as to whether the revision had been presented by the parties and whether an adequate Vakalatnama was filed on behalf of all the revisionist. There being an absolute absence of findings on this fact, the impugned order appears to have been passed without considering the relevant material on record. Accordingly, the judgments relied upon by Sri Rai, the learned Counsel for the Respondent No. 2 do not come to his aid at this stage of proceedings and it shall be open to him to raise this issue before the Deputy Director of Consolidation.

15. Accordingly, the Court is of the firm opinion that the order dated 22nd July, 1997 for the reasons aforesaid is in violation of principles of natural justice and suffers from the want of non-consideration of relevant material on record. Therefore, the impugned order dated 22nd July, 1997 is hereby quashed. The matter is remitted back to the Deputy Director of Consolidation for decision afresh in the light of the observations made hereinabove preferably within a period of three months from the date of production of a certified copy of this order before him.

16. With the above observations, the writ petition is allowed.