
(2017) 03 AHC CK 0124
In the Allahabad High Court
Case No : Writ B. No. 7428 of 2017

Ram Kishore

APPELLANT

Vs

Deputy Director of Consolidation, Allahabad

RESPONDENT

Date of Decision : 07-03-2017

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5(1)(c)(ii)

Citation : (2017) 135 RD 130

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Rajeev Misra, Advocate, for the Petitioner; C.S.C, Diwakar Singh and Subedar Mishra, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—The case has been called out in the revised list. It had been adjourned for today, on the request of learned counsel for the petitioner. However, on the matter being called out, neither the petitioner nor counsel for the respondent have appeared.

2. On the previous occasion the matter had been heard and the factual matrix as also the submissions made, had been dictated in open Court.

3. Since none has appeared, the Court is proceeding to decide the matter finally on the basis of submissions that have been made of the previous hearing when I had Shri Rajeev Misra for the petitioner and Shri Diwakar Singh, on behalf of respondent Nos. 2/1 to 2/3.

4. The instant writ petition arises out of proceedings under Section 12 of the UP Consolidation of Holdings Act.

5. Admittedly, the land in question was recorded in the name of one Sukhdev, who is stated to have died in the year 1975.

6. The predecessor in interest of the respondent Nos. 2/1 to 2/3 filed an

objection under Section 12 of the Act, claiming mutation as daughter of the deceased-Sukhdev.

7. It has been submitted that this mutation application was opposed by her mother, who did not have seek any independent right in herself, but only stated that Sukhdev had, during his lifetime, executed a sale-deed in favour of one Ram Adhar, the father of the current petitioner.

8. It appears that Ram Adhar also filed an objection under Section 12 of the Act, claiming on the basis of a sale-deed executed by Sukhdev in his favour on 7.2.1975.

9. The Consolidation Officer, by his order dated 26.4.1983, discarded the sale-deed on the ground that it had been executed regarding land, which was Sirdari land and that in any case, no permission had been obtained from the Settlement Officer Consolidation prior to the sale-deed being executed, as was mandatorily required under law. The land in question was directed to be recorded in the names of the two daughters of Sukhdev, namely, Satya and Kamali, on the basis of succession.

10. It appears that three appeals were filed; one by Satya, claiming the entire property. Two appeals are alleged to have been filed by Ram Adhar, one against each order in two objections, one by Satya and one by Ram Adhar himself, under Section 12, which had been decided by a common order.

11. The Settlement Officer Consolidation decided the three appeals by his common judgment dated 17.1.1984. The sale-deed, set up by Ram Adhar with regard to Chak No. 441, was accepted. The Settlement Officer Consolidation directed mutation in favour of Ram Adhar after setting aside the order passed by the Consolidation Officer.

12. This appellate order has been reversed in revision vide order dated 25.1.2017. Hence this writ petition.

13. First contention of learned counsel for the petitioner that in view of law laid down by this Court in the case of *Jhurai v. Ram Bali*, 2013 (120) RD 315 and the Apex Court in the case of *Bindha Prasad and others v. Bhanudatt*, 2008 (2) SCC 537 the grant of a bhumidhari sanad shall relate back to the date on which 20 per cent of the land revenue was deposited by the tenure-holder. A bhumidhari sanad, was conferred bhumidhari rights on a tenure holder, on his depositing 20 times of the land revenue payable regarding sirdari land in accordance with Section 143 of the UP Zamindari Abolition and Land Reforms Act.

14. It is submitted that Sukhdev had made the deposit prior to executing the sale-deed in favour of Ram Adhar but the bhumidhari sanad was never actually issued because he died before its issuance.

15. On the question of the sale-deed being discarded on the ground that no permission had been obtained from the Settlement Officer Consolidation, he has

submitted that a photostat copy of the permission had been filed. The Settlement Officer Consolidation had accepted the same on the reasoning that no evidence in rebuttal had been filed by the respondents. Therefore, Deputy Director of Consolidation is not justified in holding to the contrary and the impugned order is liable to be set aside on this ground also.

16. There appears to be material on record to show that the case, wherein permission was allegedly granted to Sukhdev, to execute the sale-deed, does not find a mention in the Goswara.

17. Learned counsel for the petitioner submits that once the photostat copy of the order had been filed, the respondents could have summoned the relevant register from the office of the Settlement Officer Consolidation, to determine as to whether the permission had actually been granted or not. Since they failed to do so, it was not open for the Deputy Director of Consolidation to hold that due permission was not established.

18. He further submits that certified copy of the order granting permission could not be filed as the original had been destroyed in a fire in the record room.

19. The other limb of the argument raised is that Consolidation Officer had granted rights by way of succession to the two daughters of Sukhdev. In case, the sale-deed, allegedly executed by Sukhdev, was discarded the order of the Consolidation Officer granting half share each to both the daughters, was liable to be affirmed but the Deputy Director of Consolidation had wrongly and illegally granted the entire land to only one daughter, excluding the other.

20. Learned counsel for the Gaon Sabha has supported the impugned order.

21. I have considered the submissions made and have perused the record.

22. Learned counsel for the petitioner had also submitted that the revisional order had been passed against a dead person, as Ram Adhar had died during the pendency of the revision. He subsequently conceded that this point is of no consequence as the petitioner, who is the son and heir of Ram Adhar, was on the record of the revision and, therefore, there was no abatement of the revision.

23. It emerges from the record as also the submission made that the sale-deed, which was the basis of the claim, raised by Ram Adhar, has been discarded by the Deputy Director of Consolidation on two grounds. First, that the land, sold, was sirdari land and that no bhumidhari sanad had been granted to the vendor-Sukhdev. The second ground was that the sale-deed was executed without obtaining prior permission from the Settlement Officer Consolidation as required under Section 5 (1)(c)(ii) of the UP Consolidation of Holdings Act, at the relevant point of time.

24. Even if, submission of learned counsel for the petitioner that 20 times of the land revenue had been deposited by Sukhdev prior to executing the sale-deed and that the grant of a bhumidhar sanad would relate back to the date of this

deposit is accepted, as has been held by the various judgment relied upon by the petitioner, the fact remains that the sale-deed could not be accepted till such time, it was established that it had been executed after obtaining the permission contemplated by Section 5 (1)(c)(ii) of the Act.

25. In this regard, the submission of learned counsel for the petitioner is that the permission was, in fact, granted and a photostat copy of the order was filed on the record of the proceedings. This photostat copy had been accepted by the Settlement Officer Consolidation on the reasoning that no evidence was produced by the respondents to rebut this photostat copy. Therefore, the D.D.C. has committed illegality in holding to the contrary.

26. Upon a consideration of the submissions made, I am unable to agree with stand taken by learned counsel for the petitioner.

27. It is settled law that a photostat copy of a document is not admissible in evidence. It is not in dispute that only a photostat copy of the order, allegedly granting permission, was filed. Secondly, the Deputy Director of Consolidation has referred to a report submitted by the A.C.O. to the effect that the case number mentioned in the photostat copy of the alleged permission does not find a mention in the Goswara. This finding has been assailed by the petitioner on the ground that the report, regarding a Goswara Entry, could not have been submitted by the A.C.O and this report should have come either from the record-room or from the office of the Settlement Officer Consolidation.

28. Although, submission of learned counsel for the petitioner is attractive, the same cannot be accepted because once the Deputy Director of Consolidation had decided against the petitioner, he could have filed relevant documents as also the extracts of the relevant register, at least in the writ petition. The petitioner has not filed any cogent evidence, which would, even prima facie, show that Sukhdev had obtained prior permission before executing the sale-deed in favour of Ram Adhar.

29. Besides, the sale-deed had been set up by Ram Adhar, and therefore, the onus of proving its due execution, after permission had been obtained by the S.O.C., was upon him. The Settlement Officer Consolidation had wrongly cast the onus of disproving a photostat copy of the alleged permission, which in any case, was not admissible in the evidence, upon the respondents.

30. This Court is, therefore, of the opinion, that the Deputy Director of Consolidation has committed no illegality in setting aside the order of Settlement Officer Consolidation and in holding that Ram Adhar, the predecessor in interest of the petitioner, had failed to prove that the sale-deed, in his favour, was executed after due permission had been obtained.

31. Additionally, learned counsel for the petitioner has tried to argue that since the Consolidation Officer had granted equal share to both the daughters of Sukhdev after discarding the sale-deed, set up by Ram Adhar, it was not open for

the Deputy Director of Consolidation to have granted the entire land to one of the daughters, alone.

32. In my considered opinion, it is not open for the petitioner to raise this issue, which is an issue to be raised by the other daughter of Sukhdev. The other daughter, namely, Kamali is not petitioner in the writ petition. Therefore, this submission is not liable to be considered at all.

33. In view of the above discussion and since submissions of learned counsel for the petitioner are without substance, the writ petition fails and is hereby dismissed.