

(2017) 02 AHC CK 0044
In the Allahabad High Court
Case No : Consolidation No. 576 of 2002

Ram Kumar Singh

APPELLANT

Vs

D.D.C./Collector Gonda

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, Section 48, Section 9

Citation : (2017) 4 ADJ 625

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Q.M. Haq and B.K. Singh, Advocates, for the Petitioner; C.S.C., Ambrish Tripathi and P.V. Chaudhary, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Rajan Roy, J.—;Heard.

2. This Writ Petition has been filed under Article 226 of the Constitution of India arising out of the proceedings under Section 9 of the U.P. Consolidation of Holdings Act, 1953 and the appellate as also the revisional proceedings thereafter under Section 11 and 48 of the Act, 1953.

3. The case at hand has a chequered history. Bereft of unnecessary details, the facts of the case are that in the basic year Khatauni, Gata no. 1020 (1.26 acres) and 2113 (0.30 decimal) were recorded in the name of Indraj Singh, father of the contesting respondents herein. Chhotkau Singh, the brother of Indraj Singh and father of the petitioner herein, filed objections under Section 9 claiming co-tenancy rights to the extent of half share in the aforesaid holding, which according to him, was originally recorded in the name of Sher Bahadur Singh. It is said that at the level of the Consolidation Officer, a compromise was arrived at between the contesting parties on 29.12.1975 and accordingly, an order was passed in terms thereof, accepting the co-tenancy of Chhotkau Singh to the extent of half share in the holding. It is said by the petitioner that till 1981 no

dispute was raised by Indraj Singh.

4. On 11.09.1981, Indraj Singh filed an appeal which was dismissed on 22.12.1975 on the ground of limitation and also on merit. Indraj Singh filed a revision which was allowed on 27.05.1986. The delay in filing the appeal was condoned and the matter was remanded back to the S.O.C i.e. the Appellate Authority. The Appellate Authority on 27.09.1986 allowed the appeal of Indraj Singh, set aside the order of the Consolidation Officer which was based on compromise, and remanded the matter back to him for a decision afresh. On remand, the Consolidation Officer rejected the objections of Chhotkau Singh on 06.10.2001. Being aggrieved, Chhotkau Singh filed an appeal which was also dismissed on 22.07.2002. Some times prior to filing of the appeal or thereafter Chhotkau Singh as also Indraj Singh died and the legal heirs, who are before this Court, were substituted in their place.

5. Thereafter, legal heirs of Chhotkau Singh filed a revision under Section 48, which was also dismissed on 21.07.2002. Against this background, this writ petition has been filed assailing the orders passed by the Consolidation Officer, S.O.C and D.D.C. The contention of Sri Q.M. Haq, learned Counsel appearing for the petitioner, in nutshell, is that in 1359 fasli Gata No. 3160, 3161 and 2187 were recorded in the name of Sher Bahadur Singh, father of Chhotkau Singh and Indraj. He referred to khatauni relating to 1360 fasli to contend that due to error, the name of Indraj Singh alone got recorded in respect of Gata No. 3160, 3161 and 2817, whereas, Sher Bahadur Singh had six sons and out of these, four sons were in possession of land in another village, while the remaining two sons, namely, Chhotkau Singh and Indraj Singh were in possession of land in village Bakshipurwa. He further contended that the entries in the Khatauni of 1360 fasli even otherwise was erroneous, therefore, proceedings were initiated under Section 33/39 of Land Revenue Act, 1901, for correction of records, wherein, a compromise was arrived at between Narpath Singh, whose name was entered in respect of Gata No. 2113 and Indraj Singh, whose name was entered as aforesaid and an order was passed in terms of compromise on 22.10.1956 to the effect that Narpath Singh was in possession of Gatas no. 3160, 3161 and 2817, whereas, Indraj Singh s/o Sher Bahadur, was in possession of Gata no.2113. Based on this, it is contended that this error in fact existed in the Khatauni relating to 1359 fasli also wherein the name of Sher Bahadur Singh had been recorded, meaning thereby, according to the Counsel for the petitioner he was also sirdar in respect of Gata no. 2113 and not Gatas No. 3160, 3161 and 2817.

6. It is not in dispute that Gata No. 2113 is the subject matter of dispute in these proceedings. The contention is that none of these documentary evidence, which had been filed before the Consolidation Officer and were available before the courts below, were scrutinized and examined and absolutely perverse finding was recorded that no documentary evidence had been led to establish the claim of co-tenancy. Attention was also invited to the copy of Kutumb Register filed with the writ petition in the context of jointness of family in the context of co-tenancy,

which according to the Counsel for the petitioner, was also cursorily rejected without considering the evidence referred herein above in the light of the claim.

7. As regards Gata no. 1020, which is also in dispute, learned Counsel invited the attention of this Court to a document relating allegedly to the third settlement wherein according to him the old Gata no. is mentioned as 963 and the new Gata no. as 1020. It is the latter number which is in dispute herein. Based on this and on the document at page 21 of the writ petition relating to the third settlement, he contended that Sant Baksh Singh, the father of Sher Bahadur Singh, who is the common ancestor of the contesting parties is recorded in respect of parts of old Gata no. 963 i.e. new Gata no. 1020, which establishes that the holding had come from a common ancestor and the Kutumb Register and other documents on record demonstrated that the family was joint.

8. As regards the finding recorded by the Consolidation Officer that Gata no. 2113 being Abadi, as is borne out from CH Form 2A, the same could not be the subject matter of Section 9 proceedings under the Act, 1953, Sri Q.M. Haq invited the attention of the Court to Form CH 2A to contend that the total area of the said Gata was 0.30 decimal which has wrongly been mentioned in the order of the Consolidation Officer as 0.22 decimal. He contended that out of this only 0.18 decimal is mentioned as Abadi in Column 16, whereas, it should have been mentioned as CH 18.

9. He further invited the attention of the Court to the details mentioned in the said form as aforesaid with respect to 2113/1 as Abadi to the extent of only 0.18 decimal and 2113/2 as Grove to the extent of 0.12 decimal. Therefore, according to him the Abadi herein was "Abadi Shamil Jot", which is distinct from Abadi per se i.e. exclusively. The contention of counsel for the petitioner is that the Consolidation Officer has erred in treating this Gata as entirely comprising of Abadi per se and therefore, outside the purview of consolidation operations, whereas, in respect of "Abadi Shamil Jot", as, the Abadi is part of the cultivable land, therefore, the title in respect of the cultivable land, which includes Grove, as per the definition of Section 3(5) of the Act, 1953 would be determined, but, in respect of the Abadi, it would be mentioned "Abadi Shamil Jot" leaving it for the parties to get their disputes settled separately before the Civil Court as regards the title to the constructions existing thereon.

10. Based on the aforesaid, Sri Q.M. Haq, learned counsel contended that the courts below have adopted an erroneous approach and have not looked into the evidence on record but have cursorily, without judicious application of mind, dismissed the claim of the petitioner.

11. On the other hand, Sri P.V. Chaudhary, learned Counsel for the contesting respondents contends that the plaintiff Chhotkau Singh never appeared to get himself examined before the Consolidation Officer, which was must. He also contends that the documents which have been relied herein were not filed in the courts below nor relied upon. He contends that these documents cannot be seen

by the Court for the first time in exercise of jurisdiction under Article 226 of Constitution of India. He also contends that new pleas cannot be raised before this Court for the first time. It is also his contention that findings of fact recorded by the courts below cannot be interfered in exercise of power under Article 226 of the Constitution of India. He vehemently asserted that title in respect of Abadi land cannot be determined under Section 9 by the consolidation authorities and the remedy, if any, is before the Civil court. The document at page 21 of the writ petition is a khewat of the mohal and not a khatauni, therefore, it is no evidence for establishing title in support of the land in dispute. Therefore, the courts below have not erred.

12. This Court is conscious of the limitations in exercise of writ jurisdiction in matters pertaining to title. However, it is also aware that where the very approach of the courts below is erroneous or evidence which was produced before it, has been ignored without proper consideration, then certainly it would be a case for interference.

13. On a perusal of the order of the Consolidation Officer, this Court finds that most of the documents which have been relied upon have been filed before the Consolidation officer as is evident from the details of 15 documents filed by the petitioner which include the khatauni pertaining to 1359 fasli in respect of the land in question; the order passed in the proceedings under Section 33/39 of the Land Revenue Act dated 09.07.1956; the khasra relating to the third settlement; the Kutumb Register; Khatauni pertaining to 1362, 1378; Form CH 2A relating to Gata no. 2113; various other documents in support of the claim of co-tenancy and jointness of family, therefore the contention of learned Counsel for the respondent to the contrary is not acceptable, especially, as, in the order of the Consolidation Officer it is mentioned that the plaintiff had not submitted any oral evidence nor any documentary evidence, which is a perverse finding.

14. As regards the land forming part of Gata no. 2113 being Abadi land, therefore, outside the purview of consolidation operation is concerned, this finding is also belied from the entries contained in Form CH 2A, wherein the details relating to Gata No. 2113/1, it is mentioned as Abadi to the extent of 0.18 decimal only and with respect to Gata no. 2113/2 it is mentioned as grove to the extent of 0.12 decimal, therefore, apparently the Abadi appears to be "Abadi Shamil Jot" and not "Abadi" per se exclusively. "Abadi Shamil Jot" is personal Abadi of the tenure holder and those claiming to such status, whereas, the land on which Abadi exists exclusively vests with the Gaon Sabha.

15. In this regard, reference may be made to the definition of land as contained in Section 3(5), which reads as under:-

"3. Definition ? Unless there is anything repugnant in the subject or context,-
??..

(5) "Land" means land held or occupied for purposes connected with agriculture,

horticulture and animal husbandry (including pisciculture and poultry farming), and includes -

- (i) the site, being part of holding, of a house or other similar structure, and
- (ii) trees, wells and other improvements existing on the plots forming the holdings."

16. The term "Holding" is defined in Section 3(4)-C as under:-

"(4-C) "Holding" means a parcel or parcels of land held under one tenure by a tenure holder singly or jointly with other tenure-holders"

17. The term "Consolidation Area" is defined in Section 3(2)- A as under:-

"(2-A) "Consolidation area" means the area, in respect of which a notification under Section 4 has been issued, except such portions thereof to which the provision of the U.P. Zamindari Abolition and Land Reforms Act, 1950 [or any other law by which Zamindari system has been abolished], do not apply."

18. The term "Consolidation" is defined in Section 3(2) as under:-

"(3-2) "Consolidation" means rearrangement of holding in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact. Explanation-For the purpose of this clause, holding, shall not include the following:-

- (i) Land which was grove in the agricultural year \\\immediately preceding the year in which the notification under Section 4 was issued;
- (ii) Land subject to fluvial action and intensive soil erosion;
- (iii) land mentioned in Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, 1950;
- (iv) such compact areas as are normally subject to prolonged waterlogging;
- (v) usar, kallar and rihala plots forming a compact area including cultivated land within such area ;
- (vi) land in use for growing pan, rose, bela, jasmine and kewra ;and
- (vii) such other areas as the Director of Consolidation may declare to be unsuitable for the purpose of Consolidation.

19. The term "land" used in Section 4 of the Act, 1953 also has the same meaning as in Section 3(5) of the said Act.

20. Section 9A (1) was inserted in the Act, 1953 by Amendment Act VIII of 1963. Similarly Sections 9-A, 9-B & 9- C were also inserted by the Amendment Act VIII of 1963. Thus prior to 1963 the scope of inquiry in the consolidation proceedings were different to that after the said amendment.

21. On a conjoint reasoning of the aforesaid provisions, it is evident that in proceedings under Section 9-A, the Assistant Consolidation Officer shall, where objections in respect of claims to "land" or partition of joint "holdings" are filed, after hearing the parties concerned; and where no objections are filed, making such enquiry as may deem necessary; settle the dispute, correct the mistake and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of conciliation: provided that where the Assistant Consolidation Officer, after making such enquiry as he may deemed necessary, is satisfied that a case of succession is undisputed, he shall dispose of the case on the basis of such enquiry.

22. Consolidation operations in the present case started after 1963, therefore, the definition of "land" as inserted after 1963 is applicable.

23. As per sub Section 2 of Section 9-A, all cases which are not disposed of by the Assistant Consolidation Officer under sub-Section (1) as aforesaid, and those mentioned in the sub-Section 2 shall be forwarded by him to the Consolidation Officer who shall dispose of the same in the manner prescribed. These claims which would be considered under the aforesaid provisions would be in respect of land or partition of joint holdings. The term "land" as been defined under Section 3(5), consequent to the amendment of 1963, includes the site, being part of the holdings of a house or other similar structure, which is necessarily a reference to "Abadi Shamil Jot" meaning thereby the Abadi which is part of the agricultural holding or on it and not exclusively Abadi unconnected with the cultivable land.

24. The judgments in Kamla Shanker v. Deputy Director of Consolidation (1979 RD 78) and Triloki Nath v. Ram Gopal (1974 RD 5) were based on their own facts and even otherwise for the reasons aforesaid the said judgments are not applicable to "Abadi Shamil Jot" but an exclusive abadi per se.

25. Reference may also be made in this regard to the decision of this Court reported in 1983 1 LCD Page 10: Indrajeet Singh v. Sardar Arjun Singh & Ors wherein the concept of "Abadi Shamil Jot" has been explained in para-5 as under:-

"5. Learned Counsel for the plaintiff-appellant contended that since the land in suit was Abadi land, and as such the entries made during consolidation operations in favour of defendant no. 1 would not stop the Gaon Sabha from claiming the and the Gaon Sabha could, therefore, pass resolution for letting out the land to the plaintiff, and the Izazatnama executed by it was a valid document. I am unable to agree with this contention as well. In the basic year Khatauni, name of plaintiff's father was recorded as tenure-holder on the land in suit. No objection was filed by Gaon Sabha claiming any title in the land in suit. Objections was filed by the defendant no. 1 asserting that he is cotenure holder along with Sardar Pooran Singh, father of plaintiff. The said objection was decided on the basis of compromise and in those proceedings it was not asserted that the objection is not entertain able. Even if certain constructions were situate

on the land in suit in the form of Bhattis etc. concerning lime business, that would not make the land as Abadi land. Name of plaintiff's father was recorded as tenure-holder on the land in suit. Admittedly no declaration was made in respect of land in suit as is envisaged under Section 143 of U.P. Zamindari Abolition & Land Reforms Act. The land in suit, therefore, did not cease to be "land", and the rights of tenure holder could be determined by consolidation authorities in respect of the land in dispute, which was exclusively recorded in the name of plaintiff's father as tenure-holder thereof. If on certain plot, which forms part of holding, certain constructions were made, such land would not cease to be part of the holding; It would continue to be recorded as such, and the provisions of U.P. Zamindari Abolition & Land Reforms Act will govern such land in the absence of any declaration being granted under Section 143 of the U.P. Zamindari Abolition & Land Reforms Act. If any plot of holding has become Abadi, or is used as such, it will continue to be recorded in the holding with a remark against it as "Abadi Shamil Jot". The consolidation authorities, therefore, had jurisdiction to determine as to who is the tenure holder of the land in suit."

26. There is nothing on record of this Court to show that the said "Abadi Shamil Jot" was declared as being used for non-agricultural purposes under Section 143 of the U.P.Z.A. & L.R. Act. These aspects can be seen by the courts below.

27. At this stage, Shri P.V. Chaudhary, learned Counsel invited the attention of the Court to the part of CH Form 2A at page 24 wherein it is mentioned "Mauke par abadi hai". The fact of the matter is that the contents of CH Form 2A have not been examined by the courts below in proper prospective, therefore, the decision relied upon by the Consolidation Officer, a copy of which has been placed before this Court which is reported in [1979 RD Page 78] Kamla Shanker v. Deputy Director of Consolidation, does not apply to the facts of the present case as it related to Abadi per se and not "Abadi Shamil Jot". In respect of "Abadi Shamil Jot", the title would certainly be considered in respect of the land and the Abadi being part of it. With respect to any dispute as regards the houses constructed thereon the parties would be at liberty to get the same settled through the civil court but it does not mean that the Gata would not be part of the proceedings under Section 9.

28. From the perusal of the order of S.O.C. and the Revisional Court also, it is found that they have merely reiterated the findings and reasoning given by the Consolidation Officer, which for the reasons aforesaid cannot be sustained.

29. There is one aspect of the matter which needs to be considered i.e. as regards the bar, if any, created by the order dated 28.11.1974 by which it is said that the earlier objection of the petitioner allegedly submitted along with the other four brother had been rejected, therefore, it is said Chhotkau Singh could not raise a second objection in the same consolidation proceedings. On a bare perusal of the order dated 28.11.1974, the Court finds that it is not a rejection on merit at all but on account of absence of the plaintiff as also the defendants therein, therefore, in these circumstances, it cannot be said that the principle of

res judicata would apply *stricto sensu* especially, in view of the assertion herein that he had not signed the said objections.

30. As regards the additional issue having been struck down by the Revisional Court dated 30.04.1997, this was for the reason that it found framing of additional issues unnecessary and irrelevant. This has no bearing on the subsequent proceedings.

31. In view of the above discussion, it is apparent that the courts below have not adopted the correct approach in the matter and have failed to consider the evidence which has been adduced before them, therefore, in these circumstance, even though the court is conscious that it is remanding the matter back after so many years, but the only reason it is doing so is firstly, it cannot in writ jurisdiction evaluate evidence and record findings on questions of title, secondly, it is on account of the apparent errors which have been noticed as aforesaid, to which it cannot shut its eyes, as ultimately, substantial justice has to be done between the parties, especially as, the issues involved herein pertain to title to agriculture lands.

32. In these circumstances, the orders impugned herein passed by the Consolidation Officer are set aside. The matter is remand back to the D.D.C for consideration and a decision thereon afresh, keeping in mind the observations made herein above, after hearing the parties, in accordance with law, but with expedition. Considering the fact that the dispute has remained unresolved for quite long, the D.D.C is directed to conclude the proceedings before him as aforesaid within a period of six months, if necessary, on day to day basis, from the date of receipt of certified copy of this order. Unnecessary adjournment shall be shunned and every effort shall be made to conclude the proceedings within the aforesaid period. It is made clear that all pleas on merits of the issues as also evidentiary value of evidence adduced are open for being raised and considered by the Consolidation Officer. Either of the parties, if they so chose, they may adduce evidence afresh, except oral evidence. Till the conclusion of the proceedings before the D.D.C, status quo as existing today shall be maintained by the parties, who shall not alienate the property in question.

33. The Writ Petition is allowed to the aforesaid extent.