
(2017) 01 AHC CK 0063
In the Allahabad High Court
Case No : Consolidation No. 154 of 2001

Ram Lakhan

APPELLANT

Vs

Deputy Director Consolidation, Barabanki

RESPONDENT

Date of Decision : 19-01-2017

Acts Referred:

Evidence Act, 1872 — Section 68

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 171

Citation : (2017) 135 RD 5

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : K.P. Singh, Amit Singh Upadhyaya, Mukesh Kumar Tewari and Sanjay Kumar Singh, Advocates, for the Petitioner; C.S.C. and V.K. Singh, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Rajan Roy, J.— Heard counsel for the petitioner and the counsel for the contesting respondent Nos. 4 and 5.

2. Shital and Badal were two brothers and there is no dispute in this regard. Badal died prior to Shital. This fact is also not in dispute. At this stage, it is necessary to mention that after the death of Badal his holdings devolved upon his brother Shital which was not put to challenge at any stage. In the consolidation proceedings which commenced in the year 1965, Ram Jiayee claiming herself to be the daughter of Shital filed objections under Section 9 before the Consolidation Officer. Bhairon Prasad, the then Pradhan of the village also filed objections under Section 9 claiming succession on the basis of a will said to have been executed by Shital on 26.4.1976. The Consolidation Officer accepted the objections of Ram Jiayee and rejected the objections of Bhairon Prasad.

3. Being aggrieved, the heirs of Bhairon Prasad filed an appeal under Section 11(1) of the Consolidation of Holdings Act, 1953(hereinafter referred to as the

Act) wherein the Settlement Officer Consolidation (S.O.C.) upset the findings of the Consolidation Officer (C.O.) with regard to the entitlement of Ram Jiayee categorically holding therein that she was not the daughter of Shital, but was the daughter of Badal and therefore, being the niece she did not fall in the line of succession prescribed under Section 171 of the U.P. Z.A and L.R. Act. As regards the claim of Bhairon Prasad and his legal heirs which is based on the will, the SOC opined that the date of birth was not very clear, as the certified copy of the family register adduced in evidence by the appellants before him had been torn. Therefore, on this issue he remanded the matter back to the CO for a consideration afresh, albeit after setting aside his order dated 18.2.1986.

4. On a perusal of the order of the SOC, this Court has no doubt in its mind that all that was remanded was the validity of the will and the issues ancillary thereto, not other issues. As far as the rejection of Ram Jiayee's claim is concerned it had attained finality with the findings of the SOC in respect thereof in his order dated 31.8.1988, not having been challenged any further by her, and the CO on remand rightly understood the order of SOC on this count.

5. On a careful perusal of this order, the Court finds that the SOC had not held the will to be valid in fact, he could not have done so without considering the evidence on record including the testimony of one of the attesting witnesses which was on record, in the light of the provisions of Section 68 of the Evidence Act and law on the subject which was never done. In fact in this context the counsel invited the attention of the Court to the earlier order of the Consolidation Officer and testimony of one of the attesting witnesses to the Will, Baidnath, whose statement was discussed therein and who alone was produced, to contend that requirements of Section 68 of Evidence Act were not satisfied and he did not say that the other attesting witnesses had signed before him.

6. But, somehow, the CO misread the said order as regards the observations with respect to the will on the basis of which Bhairon Prasad and his legal heirs were claiming title and opined that the SOC had held the will to be valid subject to ascertainment of the death of Shital with the observations that if the death was prior to the date of execution of the will it would be conclusively valid but, if it was subsequent to it then of course the will would not be so, it seems the contention of the party's counsel was read as finding of the SOC and on this premise, relying upon a fresh certified copy of the relevant extract of the family register the CO opined that the date of death of Shital was 15.5.1976 and as the will had been executed (though not registered) on 26.4.1976 therefore, he held it to be valid without going into other aspects of the validity of the will. Consequently, the legal heirs of Bhairon Prasad were held as having title over the holdings of Shital by way of testamentary succession.

7. Being aggrieved, the petitioners herein who are the legal heirs of Ram Jiayee challenged the said order of the CO dated 5.5.1995 before the SOC by way of an appeal under Section 11(1) of the Act, 1953 wherein the SOC opined that the extract of the family register relied upon by the CO for determining the death of

Shital was not at all reliable as according to him Bhairon Prasad, the then Pradhan had manipulated the entries therein. Therefore, the order of the CO dated 5.5.1995 was set aside and while doing so ordered the recording of name of legal heirs of Ram Jiayee in respect of the holdings of Shital. The Court is of the opinion that once the entitlement of Ram Jiayee had been finally adjudicated by the SOC in the earlier proceedings on 31.8.1988 clearly holding that she was not entitled to succeed to the holding of Shital, which was not put to challenge by her before the higher Court, the said finding operated as *res judicata* and it was not open for SOC to reconsider the same issue in the proceedings arising out of the order dated 5.5.1995 after remand, vide order dated 31.8.1988 as all that was remanded was the validity of the will and the rights of Bhairon Prasad based thereon. Therefore this part of the SOC's order was clearly unsustainable in law.

8. Be that as it may. The legal heirs of Bhairon took the matter further before the DDC under Section 48 of the U.P. Consolidation of Holdings Act, 1953 (in short "The Act") The DDC set aside the order of the SOC vide its judgment dated 11.12.2000, page 54 of the writ petition. However while doing so, the DDC also erred in proceedings on the premise that the SOC in his earlier order dated 31.8.1988 had held the will to be valid subject to determination of date of death of Shital and consequences flowing therefrom in law. As regards its validity as already noted herein above, the SOC had not done so and the CO while considering the matter afresh on remand should have looked into all relevant aspects of the matter relating to the validity of the will and the rights and interests of Bhairon Prasad and his legal heirs based thereon. Therefore, to this extent the order of the DDC is not sustainable. Consequently, the direction of the DDC for recording the name of the legal heirs of Bhairon Prasad in terms of the earlier judgment of the SOC dated 31.8.1988 regarding the will, as stated herein above, can also not be sustained, as a proper consideration of the matter is yet to take place. In the event the will is not found proved, or private respondents are not held to be entitled to succeed on its basis, the holdings shall devolve as per the line of succession prescribed under Section 171 of the U.P. Z.A. and L.R. Act, and consequences shall follow as per law.

9. For the reasons aforesaid, the order of the DDC dated 11.12.2000 and CO dated 5.5.1995 are hereby set aside. The matter is remanded back for consideration afresh by the CO in the light of the observations made herein above, keeping in mind the provisions of Section 68 of the Indian Evidence Act and legal requirements for proving the will based on the evidence already adduced including the testimony of one of the attesting witness. The CO shall finalize the proceedings on remand within a period of eight months, from the date a certified copy of this order is submitted. Consequences shall follow as per law.

10. The Chief Standing Counsel shall communicate this order to the concerned revenue authority for necessary action as per law.

11. The writ petition is disposed of in the aforesaid terms.