

(2010) 09 AHC CK 0605
In the Allahabad High Court
Case No : C.M.W.P. No. 38437 of 2003

Ram Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(A), 48, 9, 9(2)
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 25(A)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 157(A)(B),
169, 176, 34, 52

Citation : (2010) 6 AWC 6327

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Advocate : Sankatha Rai and Amit Kumar Srivastava, for the Appellant; R.K. Upadhyaya, R.P. Dubey, V.K. Rai and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Poonam Srivastav, J.—Heard Sri Sankatha Rai counsel for Petitioners and Sri R.K. Upadhyaya counsel for Respondents.

2. The instant writ petition has been filed challenging the orders dated 13.8.2003 passed by Dy. Director Consolidation, Varanasi, 31.3.1994 passed by Assistant Settlement Officer Consolidation, Varanasi, and 2.5.1992 passed by Consolidation Officer Baraga on Varanasi.

3. Counsels for respective parties have exchanged counter and rejoinder-affidavits. Written arguments have also been submitted on behalf of both parties.

4. Petitioners are co-tenure holders along with one Jokhan son of Kharpattu and the disputed land in question was a Joint holding. Pedigree as claimed by Petitioners is reproduced herein below:

Bhola | _____ | | Kauleshwar Visheshwar | |

Raghubir Kharapattu | | Tengari Jokhan | (Died issueless on 12.1.199 | during pendency of writ | petition) | _____ | | | Ram Lal Ram Bharose Sadanand P-1 P-2 P-3

5. The dispute in the instant petition relates to Khata No. 52 consisting of 3 plots having an area of 1.54 acres, Khata No. 68 consisting of 6 plots having an area of 2.47 acres and Khata No. 271 consisting of 13 plots having an area of 4.14 acres situated in village Chandausi, Pargana Ralhupur, District Varanasi (now district Chandauli).

6. When consolidation operation commenced, Jokhan son of Kharpattu was recorded as Sirdar of Khata No. 271 whereas he was recorded as Bhumidhar in Khata Nos. 52 and 68. Objection was preferred by Smt. Dulari wife of Dev Raj mother of contesting Respondents on behalf of her sons namely Prabhu Narain, Suraj Prasad and Shiv Prasad claiming Sirdari right over Khata No. 271 on the ground of long standing possession. A compromise was also brought on record in respect of Khata No. 271 between Jokhan and Respondents. Objection in regard to the said Khata was allowed by Assistant Consolidation Officer vide order dated 22.9.1977.

7. Petitioners claimed that neither any notice was given to them nor they had any knowledge about the order of Assistant Consolidation Officer. Petitioners have challenged the said compromise primarily on the ground that it is in violation of correct procedure as provided under Rule 25A of Rules framed under U.P. Consolidation of Holdings Act.

8. On perusal of the compromise, it transpires that name of one Shyam Lal as member of Consolidation Committee present at the time of conciliation was mentioned but there is neither any signature of Shyam Lal nor two members of Consolidation Committee were present at the time of so-called compromise. It is thus emphasized on behalf of Petitioners that so-called compromise is a complete sham for the reason that no Sirdari right can be acquired through possession on the basis of the alleged compromise. Besides, compromise was not executed in conformity of Rule 25A of Rules framed under U.P. Consolidation of Holdings Act as well as relationship of opposite parties with Jokhan was not disclosed. Dev Raj son of Kuber (husband of Smt. Dulari) was resident of village Narharpur, Pargana Chakiya, District Varanasi and he died in the year 1971 in his village. Thus, Dev Raj had no concern whatsoever either with Jokhan of village Chandausi or any land in question situated there.

9. Petitioners preferred a separate set of objection u/s 9 of the Act before Consolidation Officer Mughalsarai on 11.12.1991 in respect of Khata No. 271 against Jokhan claiming co-tenancy right to the extent of half share. It is admitted position that the disputed property is an ancestral property.

10. It is also brought to my notice that contesting Respondents failed to file any objection regarding Bhumidhar of Khata Nos. 52 and 68. Consolidation Officer rejected both objections filed by Petitioners regarding Khata No. 271, 52, 68 on

the ground of limitation vide order dated 2.5.1992. Copy of the order is annexed as Annexure 3 to the writ petition.

11. Petitioners filed a time barred Appeal No. 25/2182, Ram Lal and Ors. v. Jokhan and Ors. Appeal No. 25/2182 along-with an application for condonation of delay against ex parte order dated 22.9.1977 passed by Assistant Consolidation Officer Mughalsarai. Assistant Settlement Officer Consolidation Varanasi dismissed the said appeal on the ground of limitation itself vide order dated 31.3.1994.

12. Petitioners preferred two revisions being Revision Nos. 334, 126, 151, 170, 252, 338, 502, Ram Lal and Ors. v. Jokhan, Prabhu Narain. Suraj Prasad and Shiv Prasad, and Revision Nos. 333, 408, 502, 791, Ram Lal and Ors. v. Jokhan, Prabhu Narain, Suraj Prasad and Shiv Prasad against the order dated 2.5.1992 passed by Consolidation Officer in Case Nos. 34 and 35. Jokhan died during pendency of revision on 12.1.1999. Substitution application was preferred by Prabhu Narain and others to substitute them in place of Jokhan on the basis of a Will dated 16.10.1995. A separate set of substitution application alongwith an affidavit was preferred by Petitioners as well on the basis of another Will dated 11.1.1999. Substitution application filed by both parties were allowed by Dy. Director Consolidation vide order dated 13.8.2003.

13. Counsel for contesting Respondents has raised preliminary objection with regard to maintainability of writ petition. Contention is that the impugned orders dated 13.8.2003 passed by Dy. Director Consolidation, 31.3.1994 passed by Assistant Settlement Officer Consolidation and 2.5.1992 passed by Consolidation Officer are challenged only on the two grounds ; first is co-tenancy with Jokhan and second is an unregistered Will dated 11.1.1999 in favour of Petitioners Just one day before he expired. Contesting Respondents claim that there is already a registered Will dated 16.10.1995 in favour of Respondent Nos. 5 to 7t therefore, co-tenancy right with Jokhan came to an end when partition suit No. 48/172 u/s 176 of U.P.Z.A. and L.R. Act (hereinafter referred to as the Act) Smt. Jhari v. Laxami Narain and Ors. was decreed on 14.7.1964.

14. Jokhan was arrayed as Respondent No. 5 claiming his 1/4th share and Tengari as Respondent No. 7 claiming 1/32 share in the entire property. Jokhan was given share in Khata No. 271, which was duly entered in the basic year of the consolidation operation and notification u/s 52 of the Act, claim of the Petitioners is highly time barred and could not be looked into, therefore, it was rightly rejected by consolidation courts. Question of maintainability of the instant petition is raised on this ground that since Petitioners have no claim, writ petition should not have been filed by them.

15. I have taken into consideration objection raised on the ground of maintainability and I find that preliminary objection is without any basis, therefore, I am not inclined to dismiss the petition on the basis of preliminary objection itself.

16. Contesting Respondents claim their share on the basis of Will in respect of certain land of Jokhan who possessed only Sirdari right. Section 169 of the Act as stood at the relevant time is quoted herein below:

169. Bequest by a bhumidhar with transferable rights.--(1) A bhumidhar with transferable rights may by Will bequeath his holding or any part thereof except as provided in Sub-section (2A).

(2A) In relation to a bhumidhar with transferable rights belonging to a Scheduled Caste and Scheduled Tribe, the provisions of Sections 157A and 157B shall apply to the making of bequests as they apply to transfer during lifetime.

(3) Every Will made under provisions of Sub-section (1) shall notwithstanding anything contained in any law, custom or usage be in writing, attested by two persons and registered.

17. Petitioners' counsel has placed reliance on a Division Bench decision of this Court in the case of Budhlal and Anr. v. Dy. Director of Consolidation Gorakhpur and Ors.. 1982 RD 324, wherein Division Bench of this Court held that the position under the Tenancy Act was that a person could become a co-tenant by estoppel or acquiescence. There is however, no way in which a person could become a co-tenant by co-option or acquiescence or estoppel under Z.A. Act in so far as Sirdari holdings are concerned. Therefore, contention of Sri Sankatha Rai, advocate is that assuming that there was a compromise even then contesting Respondents could not inherit and the courts below refused to look into settled principle of law on the pretext that appeal was preferred at a very belated stage.

18. Besides, objection of contesting Respondents is that mutation proceeding u/s 34 of Land Revenue Act was initiated on the basis of a registered Will of year

1995 vide suit No. 847 of 2002 which was decreed on 26.9.2002 and the said order had become final. Therefore, Petitioners cannot challenge at this stage. I am not in agreement with this argument since the order passed in mutation proceedings did not decide title. Mutation is carried out on the basis of certain document which is produced by a party and that too names of the contesting Respondents were mutated ex parte.

19. I have gone through the decision cited by Petitioners' counsel ; Smt. Kiran Devi Vs. Deputy Director of Consolidation and Others, This Court held that Section 11A of the Act is akin to principle of res judicata and no objection regarding title and valuation etc. of the plot can be raised at that stage. It creates a bar. In the instant case, no objection whatsoever was preferred by contesting Respondents in respect of Bhumidhari rights of Khata Nos. 52 and 68 before Consolidation Officer Baragaon, therefore, any subsequent claim is barred by Section 11A of the Act. This Court had followed a decision of Hon'ble Apex Court in the case of Gafoora and Another Vs. Deputy Director of Consolidation, Meerut and Others, of the said decision is quoted hereinbelow:

3. The short question that arises for consideration is whether the High Court is correct in not interfering with the order of the Deputy Director (Consolidation) under Article 226 of the Constitution. Jurisdiction under Article 226 is well-settled. The High Court will interfere only if some order is passed by an authority in excess of jurisdiction or there is a manifest error of law apparent on the face of the records. The principal question that was canvassed before the Deputy Director (Consolidation) was whether failure to prefer objection within the time-limit prescribed u/s 9(2) of the Act would entitle an aggrieved party to agitate the matter beyond the prescribed period without explaining the cause of delay in preferring the objection and obtaining a proper order of condonation of delay from the appropriate authority. It is clear from the records that no objection was preferred within the prescribed time. The Deputy Director (Consolidation) refused, if we may say so, rightly to accept that the Appellants had earlier lodged any objection on November 21, 1966. That being the position, there was no material whatsoever before the Settlement Officer (Consolidation) for exercising his jurisdiction to condone the delay in lodging objection u/s 9(2) of the Act. Section 11A bars all objections in respect of claim to land, partition of joint holdings and valuation of plots, etc. relating to the consolidation area which have been raised u/s 9 or which might or ought to have been raised or heard at any subsequent stage of the consolidation proceedings. That being the position there is not error of law in order of Deputy Director (Consolidation) not is there any excess of jurisdiction committed by him in disposing of the matter as he did in exercise of his revisional power u/s 48

20. It is evident that claim of the contesting Respondents on the basis of Will before consolidation authorities in respect of Khata No. 271 of which Jokhan was only Sirdar could not be given by means of compromise. So far no objection was raised in respect of Bhumidhari plot before Assistant Consolidation Officer when the consolidation commenced, therefore, they cannot claim any right at the stage of the allotment of chaks.

21. In view of what has been stated above, I am of the opinion that consolidation authorities have cursorily failed to look into actual dispute on the pretext of limitation as well as that no objection was raised by Petitioners at the initial stage. In the circumstances, I am of the considered view that Assistant Settlement Officer Consolidation is liable to hear the appeal of Petitioners without raising any objection regarding limitation whatsoever and decide the actual dispute between parties on the basis of correct law as enumerated hereinabove. The matter is remanded to Assistant Settlement Officer Consolidation who shall fix a date within six weeks from the date a certified copy of this order is produced before him and hear the appeal and pass final order in accordance with law deciding the dispute between parties within a period of four months. Notices shall be given to both parties for appearance. The impugned orders dated 13.8.2003 passed by Dy. Director Consolidation, Varanasi, 31.3.1994 passed by Assistant Settlement Officer Consolidation, Varanasi, and 2.5.1992 passed by Consolidation Officer Baragaon Varanasi, are quashed. The the instant writ

petition is allowed.