
(2014) 03 AHC CK 0230

In the Allahabad High Court

Case No : Writ Petition Nos. 284 of 2004 and 644 of 2005 (Conso.)

Ram Pratap

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 28-03-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 49, 9, 9(2), 9A

Citation : (2014) 125 RD 767

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Brij Raj Tripathi, Advocate for the Appellant; Sudhir Pandey and Vishnu Srivastava, Advocate for the Respondent

Judgement

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Anjani Kumar Mishra, J.—This writ petition has been filed seeking a writ of certiorari quashing the order dated 3.6.2005 passed by the Dy. Director of Consolidation, (for short, DDC) the order dated 6.12.2004 passed by the Settlement Officer, Consolidation, (for short, SOC) and the orders dated 23.8.2004 and 24.8.2004 passed by the Consolidation Officer (for short, CO). The dispute in the writ petition pertains to plot Nos. 974/1 and 974/2 of village Barawan Bhadauli, pargana, tehsil and district Bahraich. In the basic year record these plots were recorded in the name of father of respondent No. 6, namely, Rupendra Vikram Singh @ Bade Yuvraj Kumar.

2. It is the case of the petitioner that a patta of the aforesaid land was executed by the zamindar in favour of Bal Govind, uncle of the petitioner. Bal Govind, who was in possession over the land in dispute on the basis of the lease aforesaid, became sirdar of the same on the abolition of zamindari. It is further alleged that in 1955 he deposited 10 times of the land revenue and obtained a bhumidhari sanad in his name. Despite the sanad in favour of Bal Govind his name was not recorded over the land in dispute; Bal Govind executed a registered Will in favour of the petitioner. On the death of Bal Govind on 21.5.1977 the petitioner

succeeded to the land in dispute on the basis of the aforesaid Will. The trees planted by the petitioner and his uncle Bal Govind exist over the land in dispute, apart from the house, as also a Shivala (a temple of Lord Shiva) and the petitioner is in possession over the same. On 18.12.1999, respondent Nos. 5 and 6 executed a sale-deed in favour of respondent No. 4, the contesting respondent. The purchaser filed an objection under section 12 of the U.P. Consolidation of Holdings Act (for short, CH Act) claiming mutation on the basis of sale-deed in his favour. The Consolidation Officer on 15.3.2004 passed an order to proceed ex parte against the petitioner. The petitioner filed a recall application which was dismissed by order dated 23.8.2004. On 24.8.2004 the objection filed by respondent No. 4 was allowed and he was ordered to be mutated over the land in dispute. The order of the Consolidation Officer has been affirmed in appeal by the SOC vide order dated 6.12.2004. The consequential revision was dismissed by the DDC on 3.6.2005. Hence this writ petition challenging three orders of the Consolidation Courts, as also the order dated 23.8.2004 passed by the Consolidation Officer rejecting the recall application filed for recalling the order dated 15.3.2004 whereby the matter was ordered to proceed ex parte against the petitioner.

3. For the purposes of the writ petition, the order dated 23.8.2004 passed by the Consolidation Officer is very crucial. By this order recall application of the petitioner was dismissed and the matter was permitted to proceed ex parte against him. This order has been passed on the reasoning that the petitioner had preferred an objection under section 9-A(2) of the CH Act, which gave rise to Case No. 862, which was dismissed by the Consolidation Officer by the order dated 8.12.1999. Appeal No. 529 against this order in Case No. 862 aforesaid was dismissed on 15.11.2000 by the SOC. The petitioner, thereafter, preferred Revision No. 57/140/179/2003-2004, which was also dismissed. The import of these orders was that the objection of the petitioner stood dismissed. All the three Courts rejected the claim of the petitioner on the reasoning that in the earlier round of consolidation operations in the village, the uncle of the petitioner, namely, Bal Govind, failed to raise any claim as regards the land in dispute on the basis of the bhumidhari sanad alleged to have been obtained by him in the year 1955. It was, therefore, held that the claim of Bal Govind is barred by the provisions of section 49 of the Act after the first consolidation operations came to a close. Under the circumstances, the claim of the petitioner, which is based on a Will alleged to have been executed by Bal Govind in his favour would confer no right, title or interest upon the petitioner, and this claim also stood barred by provisions of section 49 of the CH Act as his predecessor-in-interest had failed to take any proceedings for getting his name recorded during the first consolidation operations. In this connection, it is also relevant to state that the aforesaid three orders passed by the consolidation authorities, namely, the orders dated 8.12.1999, 15.11.2000 and 3.2.2004 have been affirmed upto this Court. Writ Petition No. 842 (Cons.) of 2004 filed by the petitioner was dismissed on 10.3.2004, a copy whereof is on record of the writ petition as Annexure SCA-1 to

the supplementary counter affidavit filed on behalf of respondent No. 4.

From the aforementioned facts and the reasoning given in the order of the Consolidation Officer dated 23.8.2004 passed while rejecting the application to recall the order for proceeding ex parte against the petitioner, it is clear that the petitioner's claim of the land in dispute has been rejected upto this Court and the instant writ petition, which arises out of proceedings under section 12 of the CH Act is based on a plea identical to one that has already been negatived upto this Court.

4. I have heard Sri R.N. Tripathi, holding brief of Sri B.L. Tripathi, learned Counsel for the petitioner and Sri Sudhir Pandey, who appears for respondent No. 4, as also the learned Standing Counsel for the State-respondents.

5. Learned Counsel for the petitioner has primarily argued that he is claiming on the basis of a Will executed in his favour by Bal Govind. This Will came into operation on the death of Bal Govind on 21.5.1977. On the strength of this date, learned Counsel for the petitioner submits that there was no occasion for him to raise any claim earlier to 21.5.1977 and, therefore, the Courts below have wrongly rejected his claim holding it to be barred by the provisions of section 49 of the CH Act. He has relied upon a Division Bench decision of the Court in the case of Shriram and others v. D.D.C. and others 2011 (112) RD 734. He has primarily relied upon paragraph Nos. 48 to 50 of the said judgment, which are quote hereinbelow:

"48. The bar under section 49, does not come into play in context of consolidation proceedings itself. Section 49, cannot be read as containing any bar with regard to raising an objection under section 9 or section 9-A of the Act, 1953. For Consolidation proceedings which are under way no facet of section 49 of the Act is attracted.

49. In Jagdeo's case (supra) the learned Single Judge had relied on his earlier judgment in Mangroo v. Ram Sumer and has quoted in paragraph 7 as under:

"The purpose of consolidation is taken to be dead (buried) dispute or revival of dormant ones. In fact this is not the spirit of Consolidation Act. Under section 9(2) of the U.P.C.H. Act only disputes of recent past may be raised. Consolidation Act provides a new Forum for adjudication of disputes, but not a new opportunity for the same."

50. The aforesaid observations are not in conformity with the scheme of the Act of section 9 and 9-A of the Act, 1953. In filing objection no kind of limitation can be read in filing objection under section 9 and 9-A, nor there can be any classification on the ground of disputes of recent past or dispute of remote past. When an objection can be filed by any interested person, objection can be raised on any conceivable or valid ground and to read any prohibition in the provision that objection should relate to only recent disputes is doing violence to the express provision of the Act."

6. Learned Counsel for the petitioner, therefore, submits that the orders impugned cannot be sustained as they have taken a view contrary to law laid down in the case of *Shriram (supra)*. He prays that the impugned orders be quashed and the matter be remanded back for a fresh decision on merits.

7. In rebuttal, learned Counsel for the respondents has supported the impugned orders. He has further submitted that the reasoning given by the consolidation authorities for rejecting the claim of the petitioner and holding him to be an unconcerned person and directing the matter to proceed *ex parte* against him, was the correct view and the same has been affirmed by this Court as well when the writ petition filed by the petitioner was dismissed, as already indicated above.

8. Thus, the only material submission made by the learned Counsel for the petitioner is that non-raising of a claim in the earlier round of consolidation operations will not bar raising of the same claim in subsequent consolidation operations in view of the law laid down in the case of *Shriram (supra)*. Although the argument raised appears to be very attractive, the same does not entitle the petitioner to any relief. In any case, this plea becomes redundant in view of the decision of this Court dated 10.3.2004 passed in Writ Petition No. 284 (Cons.) of 2004. Since a Co-ordinate Bench had already held the claim of the petitioner to be barred by section 49 of the CH Act, which order has become final between the parties not having been subjected to challenge any further, the same will be binding as *res judicata* and it is not open for this Court to take a contrary view. Even an illegal or erroneous judgment on an issue between the parties is binding as *res judicata* unless set aside by a Superior Court of competent jurisdiction. The petitioner filed an objection under section 9-A(2) of the Act against respondent Nos. 5 and 6, which was dismissed upto this Court holding the claim to be barred by section 49. In subsequent proceedings between the petitioner and a person claiming on the basis of a registered sale-deed from the same respondent Nos. 5 and 6, the Courts below have rightly held that such claim stood barred in view of the earlier decision in proceedings under section 9-A(2). Now it is not open for the petitioner to object to the mutation of respondent No. 4 on the basis of a registered sale-deed executed in his favour by persons with whom the petitioner litigated upto the High Court and lost. The petitioner lost his claim against the respondent Nos. 5 and 6 upto this Court and the contesting respondent No. 4 in claiming on the basis of a sale-deed executed by the same respondent Nos. 5 and 6, i.e. he (respondent No. 4) is the successor-in-interest of respondent Nos. 5 and 6. The decision of this Court in Writ Petition No. 284 (Cons.) of 2004 dated 19.3.2004 is binding, having attached finality.

9. Under the circumstances, the orders impugned are fully justified and the same call for no interference.

10. Accordingly, and in view of the discussion above, the writ petition [Consolidation No. 644 of 2005] is devoid of merits and is dismissed. There shall be no order as to costs. As regards the connected writ petition [Consolidation No. 284 of 2004], no order is required to be passed as the same stands already

decided vide order dated 10.3.2004.