

(1995) 07 AHC CK 0041
In the Allahabad High Court
Case No : C.M.W.P. No. 8319 of 1975

Ram Pyare Singh

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (1996) AWC 150 Supp

Hon'ble Judges : G.S.N. Tripathi, J

Bench : Single Bench

Advocate : Radhey Shyam, for the Appellant;

Final Decision : Dismissed

Judgement

G.S.N. Tripathi, J.—This is a petition under Article 226 of the Constitution praying for a writ of certiorari quashing the order passed by the Respondent Nos. 1 and 2 in respect of Khata No. 168.

2. Before the Consolidation Officer, two Khatas were in dispute, namely 239 and 168. Both the parties filed their objections u/s 9A(2) of the Consolidation of Holdings Act and the objections were considered by the Consolidation Officer. Smt. Sheo Kumari gave a pedigree, which went unchallenged till today. It means that the parties belong to the same family. Smt. Sheo Kumari's objection's main thrust was that the properties in both the Khatas were Joint. Similarly, the Petitioner Ram Pyare Singh wanted to say that he had special right in respect of Khata No. 168 and he has got these Khatas by virtue of a fresh settlement with him on 31.8.46. The Consolidation Officer considered the points of the parties and came to a definite conclusion that the properties of both the Khatas were joint. The theory of fresh settlement in favour of Ram Pyare Singh was found to be wrong. Ram Pyare Singh filed an appeal before the Settlement Officer, Consolidation. The Settlement Officer, Consolidation upheld the finding of the

Consolidation Officer in respect of Khata No. 239 and found that both the parties were co-tenants. But in respect of Khata No. 168, he found that the patta in favour of the Petitioner was valid and he declared him to be the sole tenure-holder of this Khata. Smt. Sheo Kumari remained dissatisfied. She filed a revision. The learned Dy. Director of Consolidation upheld the claim of Smt. Sheo Kumari again and rejected the theory of fresh settlement in respect of Khata No. 168 in favour of Ram Pyare Singh. The result was that the judgment of the Consolidation Officer was upheld by the learned Dy. Director of Consolidation.

3. Feeling aggrieved. Ram Pyare Singh has filed this petition.

4. I have heard learned Counsel for the parties at stretch and gone through the record. I find that there is absolutely no force in this petition and it deserves to be dismissed.

5. From the unchallenged pedigree given in the judgment of Consolidation Officer, it appears that Jauhar Singh was the ancestor of the parties. in the third settlement, the disputed plot was entered in the name of Kotai Singh, s/o Pal Singh, who was the son of Jauhar Singh. Some plots were recorded in the name of Gaj Raj Singh, who was the brother of Desh Raj Singh, husband of Sheo Kumari. A suit was filed u/s 229B of the Zamindari Abolition and Land Reforms Act, which was decided inter-party on 29.11.68 on the basis of a compromise. in this compromise, Ram Pyare Singh pleaded that the whole family was Joint and according to the pedigree, he admitted that both the parties had got their due shares. This compromise was in respect of both the Khatas. That has not been challenged so far. It amounts to an admission as a whole. If an admission goes unexplained, it binds the maker of the admission and he cannot resile from the same.

6. Another speciality of the case was that the land recorded in the name of Vishwa Nath Singh, the father-in-law of Smt. Sheo Kumari, was claimed by Ram Pyare Singh and his claim was not contested, but when the property recorded in the name of Kotai Singh, who was an ancestor of Ram Pyare Singh came to be disputed, Ram Pyare Singh denied the claim of Smt. Sheo Kumari. This was the height of inequity which was displayed by Ram Pyare Singh.

7. Another feature of the judgment of the Consolidation Officer was that the patta relied upon by Ram Pyare Singh was found to be fictitious. For that, he gave three reasons. Firstly, it was not attested within the prescribed period of 4 months. Secondly, Ram Pyare Singh was a minor, aged about 10-12 years. He could not enter into a contract of tenancy with the Zamindars without the aid of any next friend or guardian. There was absolutely no evidence muchless any allegation that any next friend acted on behalf of Ram Pyare Singh. The third ground, which weighed with the learned Consolidation Officer was that both the branches were found to be in possession which was evidenced by the filing of irrigation slips on behalf of Smt. Sheo Kumari.

8. This way, the judgment of the learned Consolidation Officer, which was based

on evidence on the record, was quite equitable and Just. That has been upheld by the learned D.D.C.

9. Ram Pyare Singh filed an appeal before the Settlement Officer Consolidation. The points which weighed with the learned CO., had not been properly considered by the learned S.O.C. At one point, he admitted the cotenancy of the parties in respect of Khata No. 239 by holding them to be Joint but without assigning any special reason that Kotai was the sole tenant and he was ever dislodged by the Zamindars and a fresh settlement could have taken place between the minor Ram Pyare Singh and the Zamindars, he upheld the claim of fresh patta with the Petitioner. The learned S.O.C. came to the conclusion that even such a cryptic and defective settlement could be upheld in favour of Ram Pyare Singh. Not only this, the height of illegality committed by the S.O.C. is that he did not consider the compromise and an admission by Ram Pyare Singh in the suit u/s 229B of Z. A. and L. R. Act referred to earlier by the learned Consolidation Officer. Simply on the basis of entries in the name of Ram Pyare Singh, the learned S.O.C. upheld the case of his fresh tenancy.

10. The matter went before the learned Dy. Director or Consolidation. He did not give any fresh finding, rather dittoed the reasons given by the learned Consolidation Officer and this way, after appreciation of facts and circumstances on the record, he came to a factual conclusion, which cannot be said to have been based on no evidence or suffering from any manifest error of law. This is not an appellate court. Only illegality committed by the lower courts should be considered in a writ petition. At this very stage, it will be relevant to consider some of the entries.

11. As per revenue papers, Kotai had died some times in 1945-46 A. D. Annexure 1 is a Khatauni from 1354 to 1362 Fasli. The name of Ram Pyare Singh was recorded in 1354 Fasli with a period of 25 years standing, although there is a reference of 1330 Fasli. It means that the period of 25 years should be computed from that year, Le., 1330F. Ram Pyare Singh was not born in 1330 Fasli. The same mistake was repeated in 1355 Fasli with a minor change. Instead of 25 years, the period was recorded as 26 years. This simply shows that the Lekhpal or patwari, whosoever he might be, was playing fiddle with the records and he did not realize the sanctity of those documents before making entries without carefully observing the legal and factual position. On the basis of such fictitious entry, the claim of Ram Pyare cannot be upheld.

12. As observed earlier, the settlement in favour of Ram Pyare could not have taken place in 1348 Fasli as alleged by him, because he was a minor and there is no evidence on the record to suggest that any next friend on his behalf had procured the settlement. Satya Narain Singh, one of the Zamindars and settlers was examined by Ram Pyare Singh as D.W.Z., before the learned Consolidation Officer. in the cross-examination, he has said that he could not tell in which year the land was settled and in which year, he made the settlement in favour of Ram Pyare Singh. At the third page, he says that Ram Pyare Singh never paid any

rent to him. Rather, he would have paid to Jodhar Singh. Pucca receipts were issued for 5 to 6 years. But not even a single rent receipt issued by the Zamindar in favour of Ram Pyare Singh was filed before the lower court. This way, the theory of fresh settlement in the shape of patta in favour of Ram Pyare Singh could not have been upheld and the learned S.O.C. had not considered this salient feature of the case. His judgment is full of factual contradictions. These contradictions were marked by the learned Dy. Director of Consolidation and it cannot be said that he transgressed the Jurisdiction vested in him u/s 48 of the Consolidation of Holdings Act.

13. Taking the totality of the circumstances on record, into consideration, I find that this petition has no force. It is accordingly dismissed.

14. In pursuance of the order dated 25.7.95, certain deposits had been made by the Petitioner. That shall be withdrawn by the Respondent Smt. Sheo Kumari.