
(2006) 05 AHC CK 0155

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1138 of 1990

Ram Rajji

APPELLANT

Vs

D.D.C., Varanasi & Ors.

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2006) 05 AHC CK 0155

Hon'ble Judges : S.U.Khan, J

Final Decision : Allowed

Judgement

S.U. Khan, J.—In the basic year, land in dispute was recorded in the revenue records in the names of Bechan respondent No. 2 and Smt. Maktoola. During consolidation proceedings a dispute arose between the two and matter was settled through compromise. In terms of compromise name of Bechan was recorded over half the land and name of Samu grand son of Maktoola was recorded over rest half of the land. Members of Consolidation Committee Bechan and Maktoola signed the said compromise which was filed before Assistant Consolidation Officer on 2551974 and on the same date A.C.O. decided the case in terms of the said compromise. The revenue records were accordingly corrected and said position continued for about 11 years.

2. Samu respondent No. 3 through registered saledeed dated 42/2261985 sold his half share in the land in dispute to the Petitioner. Shortly thereafter i.e. 1291985 respondent No. 2 Bechan filed appeal before SOC against order of C.O. dated 2551974, which was based on compromise. Apparently the reason for filing appeal after more than 11 years was the saledeed executed by Samu in favour of the Petitioner. Appeal was registered as Appeal No. 1867. Settlement Officer Consolidation (S.O.C.), Varanasi through judgment and order dated 1621986 dismissed the appeal as barred by time after holding that no explanation for delay had been given. Against the said order Bechan respondent No. 2 filed Revision No. 521/957/710. Deputy Director of Consolidation (D.C.C.)

Varanasi through judgment and order dated 26121989, allowed the revision, set aside the order of S.O.C. dated 1661986 and order of C.O. dated 2551974 and remanded the matter to C.O. for deciding the same on merit. D.D.C. held that compromise was not valid. The said order of D.D.C. is under challenge in this writ petition.

3. D.D.C. in any case should not have decided the matter on merit, as S.O.C. had not disposed of the appeal on merit. D.D.C. did not record any finding in respect of explanation of delay given by respondent No. 2. The only thing, which he said was that as in Consolidation matters rights are finally decided hence lenient view should have been taken on the question of limitation. If this reasoning is accepted then the provisions prescribing for limitation to take objections and file appeal etc. will become redundant and any person will be at liberty to raise objection whenever he likes and file appeal etc. at his sweet will even after 10 or 20 years.

4. Even on merit D.D.C. has not found any such defect in the compromise, which could warrant its setting aside. If a person alleges that he did not enter into compromise then the said plea is to be investigated. However, if only some technical defects are pointed out in the compromise, the compromise and consequent order accepting the same shall not be set aside. A compromise is always a better way of resolving the dispute than judgment of the Court (a lean compromise is better than a fat judgment a proverb). The main fault found in the compromise by the D.D.C. was that Maktoola could not transfer her share to Samu her grandson through compromise. This plea was not open to respondent No. 2. Even if compromise is held to be illegal on the ground that Maktoola could not transfer her share to Samu, her share will not devolve upon respondent No. 2. In any case, it appears that when appeal and revision were decided Maktoola had died hence, her share would have devolved upon her grandson respondent No. 3 in this writ petition. This entitled the Petitioner to the protection of Section 43 Transfer of Property Act.

5. There is one more aspect of the matter, which requires consideration. Under Section 41 of Transfer of Property Act it is provided that "where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it." With the consent of Bechan respondent No. 2, name of Samu was entered in the revenue records, which remained there for 11 years. On the basis of said entry, Petitioner purchased the land in dispute from Samu. Section 41 T.P. Act was, therefore, squarely applicable as Samu was ostensible owner with the consent of Bechan.

6. In the end it may be mentioned that D.D.C. has mentioned that revisionist i.e. Bechan respondent No. 2 is villager, illiterate, Harijan and rustic. All these adjectives equally applied to Maktoola also and she was under additional disadvantage of being an old woman hence Bechan could not be permitted to

take advantage of his alleged disqualifications, which he pressed for his advantage.

7. Learned Counsel for the petitioner has cited an authority of the Supreme Court in N. Bala Krishnan v. M. Krishnamurthy, 1998 (89) RD 607(SC). In the said authority it has been held that if delay has been condoned by the lower Court, higher Court shall not interfere in the said finding. In the said authority the delay was of about 2 and half years and there was sufficient explanation for the said delay which had been accepted by the Courts below. In the instant case delay is of 11 years. No satisfactory explanation was given for the said delay was not condoned by the first Court concerned i.e. S.O.C. Even D.D.C. did not record any finding accepting the explanation of delay. D.D.C. rather laid down unique principle of law that in Consolidation matters delay must always be condoned. In view of this the above authority of the Supreme Court is not applicable to the facts of the case.

8. I, therefore, hold that the judgment and order passed by the D.D.C. is utterly erroneous in law and liable to be set aside.

9. Accordingly, writ petition is allowed. Judgment and order passed by the D.D.C. dated 26121989 is set aside and order of C.O. dated 2551974 and order of S.O.C. dated 1661986 are restored.