
(2017) 01 AHC CK 0265
In the Allahabad High Court
Case No : Consolidation No. 258 of 2015

Ram Samujh

APPELLANT

Vs

Deputy Director of Consolidation Faizabad/A.Nagar

RESPONDENT

Date of Decision : 17-01-2017

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(1)

Citation : (2017) 134 RD 847

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Pritish Kumar, Advocate, for the Petitioner; C.S.C. and Shiv Nath Goswami, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Rajan Roy, J.—Heard

2. On 3.12.1974 it is said that based on a compromise between the parties 2nd share in the holding of Khunkhun was recorded in the name of the petitioner, while 3rd was recorded in the name of Mangroo S/o Khunkhun. In 2008 the petitioner herein filed an appeal under section 11(1) of the U.P. Consolidation of Holdings Act 1953 challenging the said entry on the ground that no such compromise was entered; it was fraudulent; being the son of Khunkhun he was entitled to 2 share in his holdings, but fraudulently he was recorded only with regard to 3rd share. In the said appeal objections were filed by Mangroo alleging that the petitioner was not the son of Khunkhun, but was the son of Muneshar, though it was also stated that wife of Khunkhun after his death started living with Muneshar, his brother and out of their relationship Ram Samujh, the petitioner was born, therefore, based on a compromise 3rd share of the holding was granted, though as per the normal line of succession to the holding of Khunkhun, he was not entitled.

3. In the said objections a reference was also made to proceedings of a civil suit

which was filed by the petitioner-Ram Samujh in 2002, six years prior to filing of this appeal i.e. in 2008, seeking permanent injunction against the private respondent herein, asserting that he was the son of Muneshar. Various other facts and documents were referred to allege that Ram Samujh was son of Muneshar. It was only after this objection was filed that firstly an application for amendment of plaint was filed by Ram Samujh in the suit for permanent injunction which was allowed against which the revision of the respondents herein has been dismissed. Secondly, an application for amendment was filed in the appeal which was allowed by the Settlement Officer Consolidation (S.O.C.) on 23.6.2014 arising out of consolidation proceedings.

4. On a perusal of the order of the S.O.C. this court finds that the application was allowed on two grounds, firstly, that the civil court had allowed a similar application in the suit between the parties, secondly, the parties were not prejudiced by such amendment as the appellant would still have to prove his claim that Khunkhun and Muneshar were one and the same and he was son of khunkhun. Being aggrieved the private respondent herein filed a revision before the Deputy Director of Consolidation which has been allowed and the order of the S.O.C. has been set aside. It is against this order of the D.D.C. that he present writ petition has been filed.

5. The contention of the learned counsel for the petitioner was firstly that the revisional court while allowing the revision of the respondent has entered into merits of the issue as to whether the petitioner was son of Khunkhun or Muneshar, which it could not have done in view of the settled legal position that while considering an application for amendment the merits of the issues cannot be considered. Secondly it is argued that the amendment having been allowed by the civil court in a suit involving the same parties and the revision against the said order having been dismissed, it would be inequitable not to allow the same amendment in the appeal arising out of consolidation proceedings. Thirdly, it was contended that on the amendment being allowed the nature of the case does not change and no prejudice is caused to the respondent, as the claim of the petitioner-appellant still has to be proved on the basis of evidence as the issue as to whether Khunkhun and Muneshar are the same or not is a question of evidence.

6. More than a question of evidence, the first and foremost question which was to be considered by the courts below was as to whether by the amendment sought the very nature or basis of the claim had changed ?

7. This court has carefully perused the memo of appeal filed by the petitioner after about 32 years challenging the proceedings before the Assistant Consolidation Officer (A.C.O.) which took place in 1974. Paragraph 4 of the said appeal reads as under :

"g fd fyfid =qfV ds vihykFkhZ ds firk dk uke equus"oj fy[k fn;k x;k vkSj mldk va"k 1@3 ?kksf"kr dj fn;k x;k ysfdu ekSds ij vc rd dksbZ fookn ugha Fkk blfy,

xzke vfHkys[kksa dh vksj dksbZ /;ku ugha fn;k x;kA blfy;s vkyksP; vkns"k dh tkudkjH Hkh ugha gks ldhA"

8. On a bare perusal of the said pleadings the court finds that the basis of the appeal was that in the order of the A.C.O. due to clerical error the name of the appellant's father was mentioned as Muneshar, meaning thereby the claim set up in the appeal was that Muneshar was not the father of the appellant-petitioner herein, instead Khunkhun was his father. Thus, the basis was of existence of two different persons namely Khunkhun and Muneshar. In these circumstances for the petitioner-appellant to have moved an application for amendment, that too, after filing of the objections by the private respondent herein pointing out the discrepancies in the claim set up by the appellant, as already mentioned herein above, seeking an amendment by adding the alias "Muneshar" in front of the name of his alleged father Khunkhun, in the opinion of this court, changes the very basis of his claim, consequently, it changes the very nature of the claim, therefore, the D.D.C. cannot be faulted for having interfered with the order of the S.O.C. To contend that it is a question of evidence, is misconceived. First of all the question to be considered is whether it changes the nature of the claim, which it does. To say that as the civil court has already allowed the amendment, therefore, the appellate court in a proceeding involving title should also do the same, cannot be accepted in the facts of the present case firstly, for the reason, before the civil court the relief is for injunction and the question of title, if at all, would be involved only incidentally, whereas in the proceedings under section 9 of U.P. Consolidation of Holdings Act 1953, out of which the appeal arises, the question of title is directly and substantially in issue and the claim of the petitioner being based on his lineage from Khunkhun with a specific averment in the appeal that the A.C.O. had wrongly recorded the name of his father as Muneshar, which means that the two persons were different and separate, the amendment sought could not have been allowed. Such a volte face, from saying that Khunkhun was his father, not Muneshar whose name was erroneously mentioned as his father in the proceedings before the A.C.O., to saying that both were the same persons, can not be permitted by way of an amendment in the appeal.

9. As far as the contention that the revisional court has entered into the merits of the case, it is inconsequential in view of the reasons already given herein above, as, this court while arriving at the conclusion as aforesaid has not entered into the merits of the case. Moreover, the court on a perusal of the revisional order finds that the revision of the respondent has been allowed only on the ground that the amendment sought and allowed by the appellate court changes the nature of the claim and in its observations there is no finding on the issues touching the merits of the case, but only reference of certain facts and documents has been made. In any case, if there is any such observations on the merits of the issue as to who was the father of the petitioner that would obviously not be read in any other proceeding nor by the Courts below in these proceedings as evidence for the reason the only question before the revisional

court was whether the amendment was permissible or not, therefore, in view of the above the writ petition lacks merits and is accordingly dismissed.