(2012) 03 AHC CK 0096

In the Allahabad High Court

Case No : Writ Petition No. 657 (Cons.) of 2003

Ram Shiromani Dubey (died) substituted by L.Rs. and Another APPELLANT

Vs

Collector, Pratapgarh and Others RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340
Penal Code, 1860 (IPC) — Section 419, 420, 467, 468, 471
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10, 10(1), 10(2), 12A, 49
Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 15, 27, 27A, 28
Uttar Pradesh Land Revenue Act, 1901 — Section 41

Citation : (2012) 4 ADJ 602

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon''ble Shri Narayan Shukla, J.—Heard Mr. Mohd.Abid Ali alongwith Mr. Manoj Kumar Gupta, learned counsels for the petitioners as well as Mr. Mohd. Arif Khan, Senior Advocate alongwith Mr. D.C. Mukherjee, learned Advocate assisted by Mr. Vijay Bahadur Verma, learned counsel for the respondent No. 2.

2. Through the instant writ petition the petitioners have challenged the order dated 9th of April, 2003, passed by the Collector, Pratapgarh in the Misc. Case, whereby he has issued direction to delete the names of Ram Shiromani and Ram Pratap, sons of Gangadhar, petitioners No. 1 and 2, from the revenue record of Khata No. 20 and 40 of village Palupur, Pargana and Tehsil Patti, district Pratapgarh and also cancelled the chak allotted to them to the extent of their part of Chak No. 48.

Submission of Petitioners

3. It is stated that Gata No. 124 of the aforesaid Khatas was recorded in the name of Gram Sabha Palupur in the basis year. One Mr. Harish Chandra, who was

respondent No. 2, filed objection before the Consolidation Officer Kohndaur, Tehsil Patti, district Pratapgarh, claiming his title over the said Gata. The petitioners also moved an application for impleadment and claimed their right over Gata No. 124 as well as their share in the whole Khata Nos. 20 and 40 claiming themselves as co-tenants of respondent No. 2. The Consolidation Officer by means of order dated 23rd of August, 1972 acknowledged the petitioners'' cotenancy right over the said Khatas alongwith respondent No. 2 and also declared the petitioners'' right over the trees planted over Gata No. 124. Thus, the petitioners as well as respondent No. 2 are holding the possessions over the land of said Khatas in their respective share since 1972.

4. On 21st of December, 2000, the respondent No. 2 moved an application before the Collector, Pratapgarh claiming himself as tenure holder of the aforesaid Khatas and claimed the entry of the petitioners'' names in the revenue record as forged, on the ground that no dispute had been raised between the parties nor was instituted in case and further no order had been passed, whereas the petitioners succeeded to get entered their names in the revenue record in the forged manner. The Collector, Pratapgarh, respondent No. 1 called upon a report from the Consolidation Officer, Konhdaur, Pratapgarh and decided the case without issuing notices to the petitioners and issued direction to delete their names from Khata Nos. 20 and 40 and chak No. 48 in C.H. Form No. 11 and C.H. Form No. 23, respectively.

5. Aggrieved petitioners filed a writ petition before this Court being writ petition No. 363 (Cons.) of 2001. This court by means of order dated 15th of January, 2002 quashed the order dated 1st of January, 2001, passed by the Collector, Pratapgarh and issued direction to pass a fresh order after providing opportunity of hearing to the parties concerned.

6. Pursuant to the direction of this Court the Collector, Pratapgarh called upon the parties to submit their stand. The parties including the petitioners'' submitted their stand also. The petitioners produced the photostat copy of order dated 23.8.1972, passed by the Consolidation Officer in case No. 31/98 and 31/99, which was issued by the record office on 29th of December, 1990. It is stated by the petitioners that earlier the objection was filed with respect to Khata No. 16 and 35. Since C.H. Form No. 11 had already been prepared, they filed objection mentioning new numbers of Khatas. Thus, according to the petitioners it is incorrect to say that since the proceeding u/s 9-A was going on, by that time C.H. Form No. 11 was not finalized.

7. In reply to the submission of the respondent that the case No. 31/98 and 31/99 relates to Khata No. 16, in which the Consolidation Officer, Konhdaur, passed an order on 23.8.1972 for recording Gata No. 98/1, 139/1, 140/1 as Abadi Samil Jot, the petitioners submitted that the said order was passed in case No. 85/87, which was instituted between Ram Autar and Harish Chandra and decided on 8.1.1970. The decision of this case is noted at Sl.No. 72 of Fehrist Basta No. 389. So far as the non production of certified copy of order dated

23.8.1972 is concerned, it is stated by the petitioners that the same is doubted as the required descriptions viz. the names of the parties are missing. It was also not stamped. Thus, it is stated that the Collector has failed to appreciate the aforesaid fact.

8. So far as the allegation of the respondent that in Form No. 11, the petitioners'' reisdences are not mentioned, it is stated by the petitioners that in Form No. 11 and 23 the residences of tenure holders are not described, rather it is mentioned only in the family register. The petitioners'' further stated that the consolidation operation had already been de-notified by issuing notification u/s 52 of the Act, therefore, the Collector had no jurisdiction to interfere in the orders passed by the consolidation authorities as the proceeding before the Collector was barred by Section 49 of the Act. It is further stated that in C.H. Form No. 23, there is no cutting or over writing, rather the petitioners'' shares have been recorded under the order of the Consolidation Officer, passed on 23.8.1972.

9. Since 1972 the respective parties are enjoying their possession over their respective shares and after 27 years the respondents raised objection by moving an application on 21st of December, 2000, whereas by that time the relevant record had already been weeded out. Thus, the petitioners'' challenge the respondent''s bonafide also.

Submissions of Respondent No. 2.

10. In reply the respondent No. 2 through the counter affidavit has submitted that the order passed by the Consolidation Officer on 23.8.1972 is forged and fictitious. The entries made in C.H. Form No. 11 and 23 were also fictitious. So far as the delay in filing the application is concerned, it is stated that as and when the respondent came to know about the said fictitious entries, he moved the application. It is further stated that for the aforesaid forged entries, the first information report had already been lodged, which is registered as Case Crime No. 400/2002, under Sections 419, 420, 467, 468 and 471 of the Indian Penal Code against the petitioners. The petitioners challenged the First Information Report before this court through writ petition No. 6137 of 2002 (MB), which has been dismissed by means of judgment and order dated 7th of October, 2002. So far as the order passed with respect to Gata Nos. 98/1, 139/1 and 140/1 is concerned, it is stated that the answering respondent holds title since before the consolidation operation and when Ram Autar and others raised illegal constructions over the said plot, which is a grove, the dispute arose. They also filed objection before the Consolidation Officer, who registered the same as Case No. 3198 plus 3199 and decided the said objection by means of order dated 23rd of August, 1972. It is further stated that there is no such file of case No. 3198/31/99 is available in the concerned record office and no such case was registered. It is also stated that till date the petitioners have not produced the certified copy of the order dated 23.8.1972 before any court of law. The petitioners'' claim of possession over the land in dispute since 27 years has also been denied. It is further stated that since no order, allegedly passed on

23.8.1972 is in existence, there was no occasion for the answering respondent to file an appeal or revision against the said order, rather when he came to know about the said forged entries, he submitted an application before the opposite party No. 1, which has been considered and allowed by means of order impugned.

11. It has been also pointed out that the petitioners got implemented the order passed by the Consolidation Officer in 1972, after 22 years, while the writ petition No. 133 (Cons.) of 2000 had been dismissed with specific finding that the so called order was forged. The answering respondent through the supplementary counter affidavit has submitted that the petitioners being aggrieved with the order passed by the respondent No. 1, earlier filed a writ petition being writ petition No. 363 (Cons.) of 2001 alongwith which they brought on record C.H. Form No. 11, a copy of which has also been brought on record alongwith the counter affidavit as annexure No. 2. In support of application moved u/s 340 Cr.P.C. by the respondent, it is stated that in the said C.H. form No. 11 there was no such endorsement of order passed by the Consolidation Officer, as has been mentioned in C.H. Form No. 11, which has been filed alongwith the present writ petition as annexure No. 6. Thus, the C.H. Form No. 11 and 23 brought on record with the writ petition have been tempered by the petitioners. It is further stated that in the basic year the answering respondent was having 2 khatas i.e. Khata No. 16 and Khata No. 35, measuring 28 bigah, which is recorded in C.H. Form No. 11 as Khata No. 40 and 20, measuring 27 Bighas and thereafter Khata No. 48 was carved out having the same area of 27 bighas in C.H. Form No. 23 and C.H. Form No. 45. At the time of closure of the consolidation operation Khata No. 22 and Khata No. 52, totally measuring 26 bigha, 8 biswa and 16 biswansi, have been recorded in Kisan Bahi. Thus, the same land is coming down in the name of answering respondent recorded as bhumidhar with transferable rights. So far as the petitioners are concerned, they being tenure holders of Khata No. 8, 9, 10 and 13, measuring 6 bigha, is recorded in C.H. Form No. 11, out of which they were allotted Khata No. 10 and 16 within the area of 5 bigha, 5 biswa and in C.H. form No. 23 those Khatas have been newly numbered as Khata Nos. 32 and 33 for the area comprising of 5 bigha, 10 biswa, which is continued in C.H. Form No. 45.

12. The petitioners themselves admitted through the supplementary affidavit, filed on 13th of July, 2006 that the petitioner No. 1 was allotted chak No. 32 and petitioner No. 2 was allotted chak No. 33, each half share of Khata No. 10 and 16, which is still recorded in their names in C.H. Form No. 45 as chak No. 13 and 43 of petitioner No. 1 and chak No. 14 and 47 of petitioner No. 2. Thus, it is stated by the respondent that the identity of land of Khata No. 20 and 40 coming down continuously with respect to its area, therefore, it is incorrect to say by the petitioners that they have been given share in the said Khatas as the area of their land, as aforesaid, has not increased at any stage.

13. The answering respondent also moved an application u/s 41 of the U.P. Land

Revenue Act for demarcation of the land in which petitioner No. 2 was arrayed as a party.

14. The Sub Divisional Officer, Patti, Pratapgarh by means of of order dated 20.9.1990 demarcated the plots as allotted to the respondent in the consolidation proceeding. Being aggrieved with which the petitioners filed an appeal before the Additional Commissioner, which too was dismissed. Then the petitioners filed writ petition being writ petition No. 4246 of 1991 challenging the said order. However, the parties arrived at compromise, in which the petitioners'' right has been acknowledged over Gata Nos. 7, 17, 88 and 82, which is grove. The compromise has been alleged to be forged, on the basis of which the so called order dated 21.8.1972 was passed, as the same has been found forged by means of order dated 11.5.2000, passed by this court in writ petition No. 133 (Cons.) of 2000. After de-notification of the consolidation operation all these records, namely C.H. form Nos. 11, 23, 41 and 45 were consigned to record room. The respondent No. 2 applied for C.H. Form No. 23, in which the aforesaid plots were exclusively recorded in his name. He obtained certified copy in 2001. The alleged order of Consolidation Officer was not mentioned therein. Thus, it is established that the petitioners have committed forgery and succeeded to manipulate the records after consolidation operation was over, which has been corrected by means of order impugned dated 9th of April, 2003, passed by the respondent No. 1. The copy of C.H. Form No. 11, obtained by the petitioners in 2001, does not contain any endorsement of so called order dated 23.8.1972, passed by the Consolidation Officer about Khata No. 20 and 40, whereas the copy of C.H. Form No. 11 obtained by the petitioners in 1977 contains the said endorsement, which establishes the forgery committed by the petitioners with respect to the said document. It is further stated that the petitioners'' name did not find mention in any of the documents prior to the preparation of C.H. Form No. 11 nor after preparation of C.H. Form No. 23, either in C.H. Form No. 41 or in 45. In C.H. Form No. 45 the answering respondent''s name was recorded for the entire holdings comprising of Khata No. 22 and 52 and said entries are continued in Kisan Bahi.

Relevant Provisions of U.P. Consolidation of Holdings Act and Rules

15. Section 10 of the U.P. Consolidation of Holdings Act, 1953 is quoted below:-

10. Preparation and maintenance of revised annual registers.-(1) The annual register shall be revised on the basis of the orders passed under subsection (1) and sub-section (2) of Section 9-A. It shall thereafter be prepared in the form prescribed and published in the unit.

(2) Where any entry in the annual register, published under sub-section (1), is modified in pursuance of an order passed under this Act or under any other law, a reference to the order along with an extract of its operative portion shall be noted against the said entry.

16. Rules 27, 27-A and 28 of the U.P. Consolidation of Holdings Rules, 1954 are

quoted hereunder:-

27. [See Sections 9-A and 54].- The Consolidation Lekhpal shall note the orders of Assistant Consolidation Officer and the Consolidation Officer passed u/s 9-A with regard to-

(i) rights in and liabilities in regard to the land,

(ii) valuation of plot, trees, wells and other improvements, and

(iii) partition of joint holdings-

[a] in the basis Khatauni,

[b] Khasra Chakbandi in C.H. Form 2-A, and

[c] the relevant columns of the revised

Annual Register in C.H. Form 11 (as soon as it has been prepared) respectively.

He shall enter case number, the date of order and its operative portion in the records aforesaid. The correctness of the entries made by the Consolidation Lekhpal shall be attested by the Consolidator. The Assistant Consolidation Officer shall also check at least 20 percent of the entries to ensure that they have been correctly made.

27-A. [See Section 12-A].-(1) The Settlement Officer, Consolidation, shall cause to be prepared by the Consolidation Lekhpal a statement in C.H. Form 7 to show the amount of land revenue payable on new holdings, and apportionment or alteration, if any, in the amount of land revenue on existing holdings, where this may be necessary in view of the orders passed u/s 9-A. C.H. Form 7 will show the Fasli year from which the above changes in land revenue on the affected holdings become due.

(2) After the settlement has been checked by the Consolidator and the Assistant Consolidation Officer, to ensure its correctness it shall be published in the unit and all objections received within seven days of its publication shall be enquired into by the latter.

(3) After making such changes in it as the Assistant Consolidation Officer considers necessary, the statement shall be submitted by him to the Consolidation Officer, with a report on each of the objections received. The Consolidation Officer shall also check the statement with a view to satisfy himself about its correctness. He will prepare report of mistakes that come to his notice and initial the corrections thus made and will also sign the statement on each page. The statement and the report of the Assistant Consolidation Officer accompanying it will then be forwarded by the Consolidation Officer, with his own report, if any, to the Settlement Officer, Consolidation, who shall examine the statement and the objections, and pass orders for the assessment, apportionment or alteration, of the land revenue, as the case may be.

28. [See Section 10(2) and Section 12-A].- (1) A revised annual register in C.H. Form 11 shall then be prepared by the Consolidation Lekhpal incorporating all the orders relating to right and liabilities in respect of land passed by the Assistant Consolidation Officer under sub-section (1) of Section 9-A and the Consolidation Officer under sub-section (2) of Section 9-A and also the orders passed by the Settlement Officer, Consolidation under Rule 27-A. Details of the operative portions of the orders passed in partition and amalgamation cases shall be recorded in the appropriate column of the register. The record shall be checked by the Consolidator, the Assistant Consolidation Officer and the Consolidation Officer of the circle. The officer checking the entries in the record shall initial them in token of his having checked them. The revised annual register shall be signed by the Consolidation Lekhpal, the Consolidator, the Assistant Consolidation Officer, and also by the Consolidation Officer. It shall then be published in the unit under sub-section (1) of Section 10.

(1-A) An alphabetical list in Hindi in C.H. Form 10- A showing all the holdings of a tenure-holder at one place, after incorporating partition and amalgamation orders as shown in C.H. Form 11, shall be prepared by the Consolidation Lekhpal and checked by the Consolidator and the Assistant Consolidation Officer of the circle. The Officer checking the entries in the list shall initial them in token of his having checked them.

(2) All cuttings and over-writings in the annual register shall be initialled and dated by the person responsible for the cuttings or the overwriting and also by the Assistant Consolidation Officer. They shall then be brought on an Errata List in C.H. Form 6-B, to be prepared by the Consolidation Lekhpal in duplicate in carbon. The Errata list shall be signed by the Consolidator, and the Assistant Consolidation Officer also. A copy of the Errata List shall be sent to the Consolidation Officer of the circle for record in his office.

Findings

17. In light of the aforesaid facts and circumstances as well as the relevant rules the authenticity of entry made in C.H. Form No. 11 as well as the validity of order passed by the Consolidation Officer on 23.7.1972 has to be examined.

18. The respondent No. 1 examined the enquiry reported conducted in the matter and found that the original Form No. 11 and 23 have been tempered by the different inks and forged entries have been made therein. However, those entries have not forwarded in C.H. Form No. 41 and 45. It has further been found that the names of Ram Shiromani and Ram Pratap (minor) under the guardianship of Smt. Kunta sons of Gangadhar have been added in C.H. Form No. 11 by the different ink and different handwriting without indicating any case number as well as the date of order or the name of court, pursuant to which the entry has been made. In the basic year Khatauni of 1375 to 1377 the names of Harish Chandra, son of Bhagwat Prasad i.e. respondent No. 2 was recorded in Khata No. 16 and 35 solely, in which there is no endorsement for adding the

name of any other co-tenure holder or any order to divide the share of khatas, whereas the entries made in original C.H. Form No. 11 without mentioning the petitioners'' names are forwarded in C.H. form No. 45 correctly. During the course of enquiry, it has been found that C.H. Form No. 11 and C.H. Form No. 23 have been fabricated after consignment of those records in the record room without any order of any authority or court. Any order of mutation or declaration of right of co-tenancy is bound to be recorded in the basic year Khatauni as provisions of Act and Rules, but the same is missing. The opinion of the enquiry officer appears to be correct as had the endorsement of the alleged order dated 23.8.1972, passed by the Consolidation Officer, been in existence, it could have been produced before this court through the writ petition filed by the petitioners themselves claiming their right on the said basis. The petitioners produced photocopy of order dated 23.8.1972 allegedly passed in case No. 31/98 and 31/99, which was alleged to have been issued on 29.12.1990 from the record office, but it was not brought to the notice of this court through the writ petition filed subsequently in 2003.

19. It is pertinent to mention here that the petitioners have not been able to produce the certified copy of order dated 23.8.1972, passed by the Consolidation Officer at any stage.

20. After consolidation operation the records had been deposited in the record room on 1st of March, 1976 and the consolidation operation was de-notified in the village concerned on 10th of April, 1976. The respondent No. 2 obtained a certified copy of C.H. Form No. 23 and chak No. 48 on 15th of December, 1978, in which his sole name was recorded without entering the name of any other person. Thus, it is established that till 15th of December, 1978 no name of other person was recorded as cotenant either in C.H. Form No. 11 or in C.H. Form No. 23.

21. As is evident from the Rules, quoted here-in-above, it is obvious that it is imperative for the Consolidation Lekhpal to note the orders of the Assistant Consolidation Officer, passed u/s 9-A of the Act in the basis Khatauni, Khasra Chakbandi in C.H. Form 2-A, and in the relevant columns of the revised Annual Register in C.H. Form 11 as soon as it has been prepared respectively. Thus, there is no doubt that firstly the order passed by the Consolidation Officer u/s 9-A has to be recorded in the basis year Khatauni, which shall be carried out in the revised annual register in C.H. Form 11 as and when it is prepared, but there is no provision to record the order of the Consolidation Officer directly in the C.H. Form 11.

22. Sub Section (1) of Section 10 of the U.P. Consolidation of Holdings Act, 1953 speaks that the annual register shall be revised on the basis of order passed under sub-section (1) and sub-section (2) of Section 9-A. Sub-section (2) speaks that at the event of modification of entries, in pursuance to an order passed under the Act, a reference to the order along with an extract of its operative portion shall be noted against the said entry. Thus, it is clear that firstly the

orders passed by the Consolidation Officer has to be recorded in the basic year record, which shall be carried over in the next annual register in C.H. Form 11, but there is no provision to record directly those orders in C.H. Form 11.

23. It is not in dispute that the petitioners themselves have alleged that the order passed by the Consolidation Officer on 23.8.1972 has been passed u/s 9-A of the Act. However, the same was not incorporated in the basic year Khatauni, but directly in C.H. Form 11 and 23. Thus, it is established that there was no such order passed by the Consolidation Officer on 23.8.1972, but the petitioners names have been entered against the Khatas in question in the revenue record, that establishes that the entry is forged.

24. The learned Standing Counsel also produced relevant original record before me, which establishes the entry in C.H. Form No. 11 and C.H. Form No. 23 is in the different handwriting, which substantiate the order passed by the Collector, Pratapgarh.

25. The petitioners have also raised the question on the jurisdiction of the Collector to examine the record and correct the entries after publication of notification u/s 52 of the U.P. C.H. Act. However, now this controversy is not res integra as the Hon''ble Supreme Court in the case of Vikram Singh Jr.High School versus The District Magistrate (Finance & Rev.) and others, reported in 2002 (93) RD 278, has upheld the jurisdiction of the Collector to correct the forged entries recorded in the consolidation record, for the reason that he holds the authority of District Deputy Director of Consolidation.

26. Therefore, I do not find error in the order passed by the Collector, Pratapgarh and the writ petition is dismissed being devoid of merit.