(2016) 02 AHC CK 0220

In the Allahabad High Court

Case No : Consolidation No. 416 of 1997

Ram Tirath	APPELLANT
Vs	
Deputy Director of Consolidation and Others	RESPONDENT

Date of Decision : 11-02-2016

Acts Referred:

Citation : (2016) 130 RD 675

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Prahalad and R.K. Maurya, for the Appellant; C.S.C., R.P. Maurya and Vinod Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—1. Heard Sri R.K. Maurya, for the petitioner and Sri Vinod Pandey, for the contesting respondents.

2. The writ petition has been filed against the orders of Assistant Settlement Officer Consolidation dated 23.04.1977 and Deputy Director of Consolidation dated 12.08.1997, passed in title proceeding, under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

3. The dispute between the parties relates to the land of basic consolidation year khata-93 of village Saidpur Umaran, pargana Surhurpur, district Ambedkar Nagar, which was recorded in the name of Ram Tirath (the petitioner). Jagdish Prasad, Ram Bahal and Ram Iqbal (respondents-2 to 4) (hereinafter referred to as the respondents) filed an objection, claiming co-tenancy of 1/4 share each, in the land in dispute. The respondents pleaded that land in dispute was acquired in the name of Ram Tirath, by joint family of the petitioner and the respondents, through joint family fund. After death of Chandra Bhushan, father of the petitioner and respondents-3 and 4 and grand father of respondent-2, share of all of them has become equal i.e. 1/4 each. The case was contested by the petitioner on the ground that he was living separately from his father. He

purchased the land in dispute through sale deed dated 26.11.1959, from his own income, which was his self acquired property and his other brothers had no share in it. Before Consolidation Officer, apart from documentary evidence, the petitioner examined himself as witness. The respondents, apart from documentary evidence, examined Ram Asre, Ram Iqbal, Ram Bahal and Jagdish as witnesses. Consolidation Officer, by his order dated 14.12.1976 dismissed the objection of the respondents.

4. The respondents filed an appeal (registered as Appeal No. 18815) from the aforesaid order. The appeal was heard by Assistant Settlement Officer Consolidation, who by order dated 23.04.1977, held that Chandra Bhushan, father of the petitioner and respondents-3 and 4 and grand father of respondent-2 died on 10.01.1973. Till then family of the petitioner and the respondents was joint and after 1973, separation took place in the family. From evidence on record, it was proved that Ram Bahal, who was employed as driver in Delhi, used to sent money to his father, time to time either through money order or by hand through his friends. Chandra Bhushan had about 20 bigha agricultural land in his name, at the time when the land in dispute was purchased and his three sons were also earning as such joint family had sufficient fund to purchase the land in dispute. The petitioner could not prove that sale consideration of sale deed dated 26.11.1959 was paid by him alone. On these reasons, he held that disputed land was purchased from joint family fund in the name of the petitioner, in which the respondents had share. He allowed the appeal and directed to record the names of the respondents as co-sharer of 1/4 share each, in disputed land.

5. The petitioner filed a revision (registered as Revision No. 1436 of 1977) from aforesaid order. The revision was heard by Joint Director of Consolidation, who by his order dated 05.03.1979, dismissed the revision. The petitioner filed a writ petition (registered as Writ Petition No. 929 of 1979), which was partly allowed by this Court by judgment dated 07.08.1984 on the ground that Joint Director of Consolidation has not recorded any finding as to whether disputed land was purchased by the petitioner, exclusively from his own income. Writ petition was dismissed in respect of khata 94 but allowed in respect of khata 93 and the matter was remanded to Joint Director of Consolidation to decide the revision afresh in respect of khata 93.

6. After remand, Deputy Director of Consolidation, who by order dated 12.08.1997 held that the family of the petitioner and the respondents was joint till 1973. The petitioner could not give any evidence to prove that he was living separately from his father and brothers at the time of sale deed. The petitioner could not prove that he had sufficient fund to pay sale consideration of Rs. 800/- of sale deed dated 26.11.1959. On the other hand, Chandra Bhushan had 20 bighas of land at that time and had sufficient fund to pay sale consideration. Thus it was proved that family was joint and had sufficient fund from which land in dispute was purchased. On these findings, he dismissed the revision. Hence

this writ petition has been filed.

7. The counsel for the petitioner submitted that under law, a member of joint Hindu family, or even karta is not debarred from acquiring property for himself. The petitioner was doing job of driver in private motor vehicles since 1943. Subsequently, he was employed as driver in Horticulture Department of State of U.P. The petitioner had sufficient source of income to purchase the land in dispute. The petitioner had a separate account in Post Office, where he used to deposit his savings regularly since 1952. Disputed land was purchased by the petitioner from his own income. Although Chandra Bhushan had 20 bighas of agricultural land but he had heavy liability upon him, in as much as, he had four sons and three daughters, who were depended upon agricultural income. Expenses of their food, clothes, medicines, educations and marriages were depended upon agriculture itself. As such Late Chandra Bhushan or joint family was unable to purchase land. Shiv Murat, elder son of Late Chandra Bhushan, died in 1957. It is only when the sons of began to earn money from their services, various properties were purchased by them separately after 1958 as and when they were able to arrange money. First sale deed dated 08.10.1959 was obtained from Smt. Dharmaraji of an area of 0-15-5 bigha (recorded in khata-94), in the names of Ram Tirath, Ram Bahal and Ram Iqbal for Rs. 300/-. Second sale deed dated 26.11.1959 was obtained from Smt. Dharmaraji, in the name of Ram Tirath for Rs. 800/- of an area of 7-6-5 bigha (recorded in khata-93). Third sale deed dated 28.03.1960 was obtained from Smt. Dharmaraji for Rs. 500/- of an area of 3-7-0 bigha, in the name of Chandra Bhushan. Forth sale deed dated 01.06.1960 was obtained from Ram Prasad, in the name of Chandra Bhushan of an area of 0-6-5 bigha. Fifth sale deed dated 31.03.1964 was obtained from Ghirau, in the name of Chandra Bhushan for Rs. 300/- of an area of 1-15-0 bigha. Sixth sale deed dated 24.12.1969 was obtained from Ram Sumer in the names of Ram Tirath, Ram Bahal and Ram Iqbal of an area of 0-2-0 bigha. Last sale deed dated 25.09.1971 was obtained from Ram Prasad and Shambhu Nath, in the names of Ram Tirath, Ram Bahal and Ram Iqbal of an area of 0-6-0 bigha. From various sale deeds in different names make it clear that all the members of the family used to purchase property in their names without any objection to each other. Sale deeds dated 28.03.1960, 01.06.1960 and 31.03.1964 were taken in the name of Chandra Bhushan, there could be no reason to obtain sale deeds dated 08.10.1959 and 26.11.1959 in the names of sons except that sons had paid sale consideration from their own income. Other sale deeds were of small area while sale deed dated 26.11.1959 was in respect of 7-6-5 bigha as such the respondents malafide in order to grab the land of the petitioner, began to say that sale deeds were obtained from joint family fund. The orders of respondents-1 and 5 are illegal and liable to be set aside. He relied upon the judgments of this Court in Ram Lakhan Vs. DDC and others, 1993 (11) LCD 1, in which it has been held that there can be no presumption that property recorded in the name of member of joint Hindu Family was joint family property. Bodh Raj Vs. JDC and others, , 1995 (13) LCD 1121, in which it has been held

that burden of proof is upon the person who claims that the name of a member of joint family was recorded in representative capacity. Ruchha and others Vs. DDC and others, , 2007 (25) LCD 1420, in which it has been held that unless it is proved that holding in the name of member of joint Hindu family was obtained in representative capacity from joint family fund, co-tenancy cannot be claimed by other member of the family.

8. I have considered the arguments of the counsel for the parties and examined the record. Supreme Court G. Narayana Raju v. G. Chamaraju, , AIR 1968 SC 1276, held that it is well established that there is no presumption under Hindu law that a business standing in the name of any member of the joint family is a joint family business even if that member is the manager of the joint family. Unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with the joint family estate, the business remains free and separate. The question therefore whether the business was begun or carried on with the assistance of joint family property or joint family funds or as a family business is a question of fact and has to be proved by evidence. Same view has been followed by this Court in the cases of Ram Lakhan, Bodh Raj and Ruchha (supra).

9. In the present case, the petitioner took the plea that he was living separately from other member of the family and purchased the land in dispute from his own income. His plea has not been accepted by respondents-1 and 5. Findings of respondent-5 that family of Chandra Bhashan, his sons and grand son remained joint till his death on 10.01.1971, has been affirmed by this Court in previous judgment dated 07.08.1984. The case was remanded by this Court with specific direction to record findings as to whether land in dispute was purchased by the petitioner from his own income exclusively as member of joint Hindu family and whether he could have acquired the property separately. The petitioner took plea that although Late Chandra Bhushan had 20 bighas of agricultural land but he had heavy liability upon him in as much as he had four sons and three daughters, who were depended upon agricultural income. Expenses of their food, clothes, medicines, educations and marriages were depended upon agriculture itself. As such Late Chandra Bhushan or joint family was unable to purchase land.

10. Admittedly, Shiv Murat was eldest among his brothers, who died in 1957. The petitioner was younger to Shiv Murat. According to the petitioner, he began to earn since 1943. It has also been proved that his other brothers were also earning from long before 1959. Argument that in the year 1958-59, Chandra Bhushan had heavy liability and was unable to purchase the land in dispute, is not liable to be believed. Finding that Chandra Bhushan had sufficient source of income, in as much as, he had about 20 bigha agricultural land and at least his two sons were also giving their earning in his hand, does not suffer from any illegality. Sale deeds dated 28.03.1960, 01.06.1960 and 31.03.1964 were taken in the name of Chandra Bhushan, sale deeds dated 08.10.1959 and 24.12.1969

were taken in the names of three brothers of the petitioners proves that joint family of Chandra Bhushan and his sons had sufficient means to purchase the properties and at that time family was free from other liability.

11. The arguments of the petitioner that he was doing job of driver in private motor vehicles since 1943. Subsequently, he was employed as driver in Horticulture Department of State of U.P. The petitioner had sufficient source of income to purchase the land in dispute. The petitioner had a separate account in Post Office where he used to deposit his savings regularly since 1952. He had purchased the land in dispute from his separate income. To prove these facts, the petitioner has filed photographs of his Pass-book of Post Office. A perusal of Pass-Book shows that the petitioner had balance of Rs. 910/- in December 1958 and balance of Rs. 951/- in April 1960. From which, it is proved that the petitioner did not withdraw any amount from this Pass-Book for paying sale consideration of sale deed dated 26.11.1959. Thus the petitioner has failed to prove that he had purchased the land in dispute from his own income. On the other hand, from Pass-Book it is proved that the petitioner used to keep in income in Post Office, which was not used for payment of sale consideration.

12. Supreme Court in Bala Shankar Maha Shanker Bhattjee v. Charity Commr., Gujarat State, , AIR 1995 SC 167, held that burden of proof would mean one of two things, namely, (1) that a party has to prove an allegation before it is entitled to a judgment in its favour; and (2) that the one or the other of the two contending parties has to introduce evidence on a contested issue. The question of onus is material only where the party on which it is placed would eventually lose if it failed to discharge the same. Where issues are, however, joined, evidence is led and such evidence can be weighed in order to determine the issues, the question of burden becomes academic. When both the parties had adduced evidence, the burden of proof looses its importance. The Court is supposed to decide the issue after considering entire evidence of the parties on record. In this case, Deputy Director of Consolidation, after considering evidence of the parties, found that the family of the petitioner and the respondents was joint till 1973. The petitioner could not give any evidence to prove that he was living separately from his father and brothers at the time of sale deed. The petitioner could not prove that he had sufficient fund to pay sale consideration of Rs. 800/- of sale deed dated 26.11.1959. On the other hand, Chandra Bhushan had 20 bighas of land at that time and had sufficient fund to pay sale consideration. Although findings regarding jointness of the family at the time of sale deed dated 26.11.1959 is irrelevant but from the evidence of the petitioner it is proved that his self income remained in deposit of Post Office and was not utilized for payment of sale consideration of the sale deed dated 26.11.1959. Findings of Deputy Director of Consolidation that sale consideration was not paid by the petitioner does not suffer from any illegality.

13. In view of the aforesaid discussions, writ petition is concluded with findings of facts. The impugned orders do not suffer from any illegality. The writ petition

has no merit and is dismissed.