
(2014) 02 AHC CK 0014
In the Allahabad High Court
Case No : Writ-B No. 11178 of 2014

Ramjas and Others

APPELLANT

Vs

Collector/D.D.C. and Others

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 45-A, 5, 5(1)(c)
(ii), 5(1)(c)(u)

Citation : (2014) 123 RD 55

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

Bench : Single Bench

Advocate : Satya Prakash Singh, Advocate for the Appellant; K.C. Yadav,
Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Satya Prakash Singh, for the petitioners and Sri K.C. Yadav, for the respondents. The writ petition has been filed against the orders of Consolidation Officer dated 3.10.2009, Settlement Officer Consolidation dated 18.12.2010 and Deputy Director of Consolidation dated 29.11.2013, passed in the proceeding u/s 12 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute relates to the land of chak 170 of village Ranipur tappa Gaur, pargana Basti Pashchim, district Basti, which was carved out in the name of Ram Sagar son of Chirkut. Matau son of Jugga (now represented by the petitioners) filed an application (registered as Case No. 190/215) u/s 12 of the Act, for mutating his name over the land in dispute on the basis of sale deed 12.4.1978, executed by Ram Sagar in his favour. It has been stated that Ram Sagar entered in to an agreement to sell the land in dispute in his favour on 19.1.1978 and took Rs. 4000/- (out of total sale consideration of Rs. 6000/-) and delivered possession over the land in dispute. Subsequently he executed sale deed dated 12.4.1978 in his favour. Sale deed dated 1.3.1978, produced by Somai son of

Goli and Ramdev son of Shivnand was not executed by Ram Sagar rather it was a fabricated document.

3. Somai son of Goli and Ramdev son of Shivnand (now represented by respondent-4) (hereinafter referred to as the respondent) filed another objection for mutating their names over the land in dispute. They have stated that Ram Sagar executed a sale deed dated 1.3.1978 of the disputed land in their favour and handed over possession over it. On 12.4.1978, Ram Sagar was left with no title in the land in dispute as such alleged sale deed dated 12.4.1978 is void. Both the applications were consolidated and tried together, life petitioner apart from filing the unregistered deed of agreement to sell dated 19.1.1978, registered sale deed dated 12.4.1978 and Finger Prints Expert Report of Sri R.K. Sahay, which was proved by Rakesh Ranjan Sahgal examined Ram Sagar, Jokhu Prasad, Jokhan Singh, Bhagendu, Matau and Rakesh Ranjan Sahgal as the witnesses. The respondents apart from documentary evidence of registered sale deed dated 1.3.1978, registered sale deed dated 27.9.1965 and Finger Prints Expert Report of Sri C.H. Siddiqui, examined Buddhu, Smt. Nirmala Devi, Ramdeo and C.H. Siddiqui as witnesses. After hearing the arguments of the parties, the Consolidation Officer by his judgment dated 3.10.2009 held that Finger Prints Expert Report of Sri R.K. Sahay shows that thumb impressions on the sale deed dated 1.3.1978 and 12.4.1978 were of different persons. Finger Prints Expert Report of Sri C.H. Siddiqui, shows that thumb impressions on the sale deed dated 1.3.1978 and 12.4.1978 were of the same person. As such other evidence and circumstances are liable to be examined. Ram Sagar in his statement denied execution of the sale deed dated 27.9.1965 in favour of the respondent although it was a registered document and since 1965 no step has been taken by Ram Sagar for its cancellation as such his statement denying execution of the sale deed dated 1.3.1978 in favour of the respondent is liable to be disbelieved. Due execution of the sale deed dated 1.3.1978 has been proved by the marginal witness Buddhu and also admitted by Nirmala wife of Ram Sagar. Ram Sagar also obtained permission for sale u/s 5(1)(c)(ii) of the Act from Settlement Officer Consolidation. Thus execution of the sale deed dated 1.3.1978 by Ram Sagar has been proved. On the other hand the agreement to sell dated 19.1.1978 was an unregistered document as such was inadmissible in evidence. Ram Sagar did not obtain permission for sale u/s 5(1)(c)(u) of the Act from Settlement Officer Consolidation before execution of the sale deed dated 12.4.1978. As such it was held that as Ram Sagar had already sold the land in dispute in favour of the respondent on 1.3.1978 as such he had no right to execute sale deed dated 12.4.1978. On these findings name of the respondent was directed to be mutated over the land in dispute on the basis of sale deed dated 1.3.1978.

4. The petitioners filed an appeal (registered as Appeal No. 780) from the aforesaid order. The appeal was heard by Settlement Officer Consolidation, who by his order dated 18.12.2010 affirmed the findings of Consolidation Officer and dismissed the appeal. The petitioners filed a revision (registered as Revision No.

298/1660) from the aforesaid orders. The revision was heard by Deputy Director of Consolidation, who also by order dated 29.11.2013, affirmed the findings of Consolidation Officer and Settlement Officer Consolidation and dismissed the revision. Hence this writ petition has been filed.

5. The Counsel for the petitioners submitted that Ram Sagar, who was owner of the land in dispute, himself appeared in witness box and denied execution of the sale deed dated 1.3.1978 in favour of the respondent and admitted execution of the agreement to sell dated 19.1.1978 and sale deed dated 12.4.1978 in favour of the petitioners and payment of sale consideration as well as delivery of possession to the petitioners over the land in dispute. Otherwise also due execution of the sale deed was proved by the petitioners by examining marginal witness of the deeds and Finger Prints Expert Report of Sri R.K. Sahay. Possession of the petitioners has been proved by independent witnesses. The consolidation authorities have illegally gave undue weight to the fact that no permission to sell was obtained by Ram Sagar u/s 5(1)(c)(ii) of the Act although entire chak was sold and permission was not required as held by this Court in Sheo Narain Singh v. Sudama Singh 1980 RD 202. The consolidation authorities have illegally disbelieved the mass of documentary evidence adduced by the petitioners. The orders of consolidation authorities are illegal and liable to be set aside.

6. I have considered the arguments of Counsel for the parties and examined the record. So far as the argument of Counsel for the petitioners that sale deed dated 12.4.1978 has been illegally ignored on the ground that prior permission u/s 5(1)(c)(ii) of the Act was not obtained, is concerned, by U.P. Act No. XXXVIII-of 1958, the Act was amended. The relevant provisions are quoted below:--

5. Effect of declarations.--(1),.....

(a).....

(b).....

(c) Notwithstanding anything contained in the U.P. Zamindari Abolition and Land Reforms Act, 1950, no tenure holder, except with the permission in writing of the Settlement Officer Consolidation previously obtained shall--

(i).....

(ii) transfer by way of sale, gift or exchange any part of his holding in the consolidation area.

45-A. Penalty for contravening provisions of section 5.--(1).....

(2) A transfer made in contravention of the provisions of section 5(1)(c)(ii) shall not be valid or recognized; anything contained in any other law for the time being in force to the contrary notwithstanding.

7. Section 5(1)(c)(ii) was further amended by U.P. Act No. 34 of 1974 as

follows:--

(ii) transfer by way of sale, gift or exchange his holding or any part thereof in the consolidation area. Section 5(1)(c)(ii) was deleted by U.P. Act No. 30 of 1991 w.e.f. 19.2.1991.

8. The words "any part of his holding" as mentioned in section 5(1)(c)(ii) of the Act, came up for consideration before Full Bench of this Court in Smt. Asharfunisa Begum Vs. Dy. Director of Consolidation Camp at Hardoi and Others, in which Full Bench held that expression " any part of his holding" did not include entire holding and the ban applied only where part of holding was transferred and not where whole holding-was transferred. In order to take effect of the Full Bench decision, Act was amended by U.P. Act No. 34 of 1974 and the word "his holding or any part thereof" has been used by this amendment. Amended provisions came for consideration before this Court in Kali Charan and Others Vs. Deputy Director of Consolidation and Others, and Pancham v. DDC and others 1994 RD 366 and this Court held that after amendment prior permission was necessary for executing the sale deed even for whole chak. Sale deed dated 12.4.1978 was executed after coming into force of U.P. Act No. 34 of 1974. Thus in this case permission to sell was necessary. As no permission was obtained as such sale deed is void u/s 45-A of the Act.

9. The Consolidation Officer recorded valid reasons for ignoring the statement of Ram Sagar. Ram Sagar in his statement has denied execution of the sale deed dated 27.9.1965 in favour of the respondent although it was a registered document has been given effect to and since 1965 no step has been taken by Ram Sagar for its cancellation. It was further found that prior to execution of the sale deed dated 1.3.1978, Ram Sagar obtained permission for selling the land in dispute in favour of the respondent, while no such permission was obtained before executing the sale deed dated 12.4.1978. Nirmala wife of Ram Sagar herself admitted execution of the sale deed dated 1.3.1978 in favour of the respondent. Thus finding of fact is based upon assessment of evidence on record and this Court has no jurisdiction to interfere in the matter.

10. The sale deed of the respondent was prior in time as such after selling the land in dispute Ram Sagar left with no right to execute another sale deed. The agreement to sell dated 19.1.1978 was unregistered and was inadmissible in evidence. Thus there is no illegality in the order of the consolidation authorities. In view of the aforesaid discussion, the writ petition has no merit and is dismissed.