

(1975) 05 AHC CK 0028
In the Allahabad High Court
Case No : Writ Petition No. 754 of 1969

Ramkripal Singh and another

APPELLANT

Vs

Dy.Dir.of Consolidation, U.P., Lucknow in Camp at Sultanpur
and others

RESPONDENT

Date of Decision : 09-05-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1975) 05 AHC CK 0028

Hon'ble Judges : T.S.Misra, J

Final Decision : Allowed

Judgement

T.S. Misra, J.

The dispute in this petition relates to Khata No. 122 consisting of 17 plots situate in village Pure Kunwar Shah Shah Purabgaon, district Sultanpur. Zalim Singh was the common ancestor of the petitioners and opposite party No. 4 Mundoo Singh. A partition took place between Darshan Singh father of the petitioners and Mundoo Singh, and the parties came in possession of their respective shares in the plots in question. However, some dispute arose with regard to plot Nos. 178, 202, 209, 310, 325, 327 and 328. Darshan Singh then filed a suit for declaration of his rights on January 13, 1958 in the court of Judicial Officer II, Sultanpur against Mundoo Singh in respect of the said plots. During the pendency of that suit Darshan Singh died and the petitioners were substituted in his place as plaintiffs. The suit was then stayed under the provisions of U.P. Consolidation of Holdings Act as the village where the said plots of land are situated came under consolidation operation. In the basic year records the land in Khata No. 122 was recorded in favour of Mundoo Singh. However, the names of the petitioners were recorded in class IX of Khatauni over plots Nos. 325 and 328, and their possession was recorded over plot in To. 310 on the publication of records. The petitioners preferred objections before the Asstt. Consolidation Officer claiming tenancy rights to the extent of half share in Khata No. 122. Along with those

objections schedule of plots in dispute was also given. The Asstt. Consolidation Officer submitted a report enumerating three types of disputes which were to be decided by the Consolidation Officer. The first dispute was in respect of entering the names of the petitioners as cotenants along with opposite party Mundoo Singh. The second dispute was in respect of partition and entry of specific plots separately in the names of the parties. The third dispute was in respect of plot Nos. 325, 328 and 310 over which the petitioners had been found in possession at the time of field to field Partal.

The Consolidation Officer accordingly framed three issues in respect of the aforesaid three disputes and held that the petitioners father Darshan Singh had entered into possession in virtue of private partition. He, therefore, decided issues 1 and 2 in favour of the petitioners and ordered that the petitioners be recorded as Sirdars of the plots in question excepting plot No. 328. As plot No. 328 had been omitted in the order of the Consolidation Officer from being recorded in favour of the petitioners, they preferred an appeal before the Settlement Officer (Consolidation). Mundoo Singh also preferred three appeals from the said order. These four appeals were heard by the Settlement Officer (Consolidation) and disposed of by an order dated September 1, 1967. The appeal of the petitioners was allowed but the appeal of opposite party No. 4 were dismissed. Mundoo Singh then filed four revisions before the Deputy Director of Consolidation who allowed the revision on the ground that issue No. 2 had been framed only in respect of adverse possession on three plots, but the petitioners were allowed to be Sirdars of more than three plots.

The Deputy Director of Consolidation observed that the Consolidation Officer did not admit cotenancy rights on the basis of pedigree but conferred Sirdari rights over plots Nos. 178, 202, 209, 310, 325 and 327 on the ground of adverse possession. He further observed that issue No. 2 was in respect of plots Nos. 325, 328 and 310. Other plots were not under determination in any of the issues. He found that Ram Kripal or Darshan Singh was not in possession of plot No. 310. In these circumstances, he disagreed with the findings of the court below and allowed Sirdari rights to the petitioners with respect to plots Nos. 325 and 328 only. The rest of the plots were ordered to remain with Mundoo Singh according to the basic year entry.

For the petitioners it was urged that the Deputy Director of Consolidation has misread the findings recorded by the Consolidation Officer and the Settlement Officer (Consolidation) and has not properly construed the pleading of the parties and the evidence on record. I find force in this contention. As pointed out above, the Consolidation Officer had recorded a finding that Darshan Singh was put into possession on the basis of a private partition, and that therefore the petitions were entitled to claim the declaration sought for. He had decided issue No. 1 in favour of the petitioners. The Settlement Officer (Consolidation)" did not disturb this finding. The learned Deputy Director of Consolidation, however, did not deal with this matter. The impugned order of the Deputy Director of Consolidation

thus suffers from manifest error of law and has to be quashed.

In the result, the petition is allowed with costs and the order of the Deputy Director of Consolidation dated May 15, 1969, a certified copy of which is Annexure 4 to the writ petition, is quashed. The Deputy Director of Consolidation shall readmit the revision and decide the same on merits on the basis of the pleadings of the parties and the evidence already adduced in the case and after hearing the parties.