
(2011) 11 AHC CK 0154
In the Allahabad High Court
Case No : Writ - B no. - 2319 of 1989

Rasheed Ahmad and Others

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (2011) 11 AHC CK 0154

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Prakash Krishna, J.—Raising a short controversy relating to the applicability of the principles of res judicata, the present writ petition has been filed against the judgment and order dated 2nd of November, 1988 passed by the Deputy Director of Consolidation, Bareilly in revision no. 12/87-88 whereby he has allowed the revision and has held that out of the two petitioners herein each is entitled 1/8th share i.e. total 1/4th share in the property in dispute and remaining 3/4th share belongs to the contesting respondents herein. The facts of the case are not much in dispute and are being noted in brief.

2. Before the commencement of the consolidation operation in the village there was a litigation u/s 176 of the U.P.Z.A. & L.R. Act between the parties for partition. It was suit no. 196/78: Rasheed Ahmed and others v. Wali Mohammed and others. The said suit was decreed on 31st of August, 1978 by passing a preliminary decree holding that the plaintiffs Rasheed Ahmed and others have 1/4th share and the remaining 3/4th share belongs to the defendants therein. Before the final decree could be passed the village was notified under the U.P. Consolidation of Holdings Act for consolidation purposes. During the course of consolidation proceedings, a dispute arose between the parties with respect to the extent of their share in respect of two Khata Nos. 156 at village Kalari and 84 of village Lalpur.

3. Rasheed Ahmed and Maznoo sons of Iddoo (petitioners) claimed half share in the aforesaid two Khatas. The claim of the petitioners was denied by the respondents herein on the ground that they are entitled to 1/4th share. There is a small pedigree. Buddhi is the common ancestor who had two sons namely Maula Bux and Iddoo. The petitioners are sons of Iddoo and the contesting respondents are sons of Maula Bux. The Consolidation Officer by his judgement and order dated 4th of August, 1986 held that the petitioners herein have 1/4th share in all. The matter was carried in appeal Nos.573 and 1273 before the Settlement Officer of Consolidation who allowed the appeals by a common judgment dated 21st of August, 1987 holding that the petitioners herein have half share in the aforesaid two Khatas.

4. The matter was carried further in revision no. 12/87-88 before the Deputy Director of Consolidation, who by the impugned order, allowed the revision and restored the order of the Consolidation Officer.

5. Heard the learned counsel for the parties and perused the record. Sri R.P. Agrawal, learned counsel for the petitioners submits that the Settlement Officer of Consolidation has categorically found that the petitioners are in occupation of the half of the property in dispute. Elaborating the argument, he submits that the said finding having not been set aside by the Deputy Director of Consolidation, the Deputy Director of Consolidation committed illegality in passing the impugned order and reducing the share of the petitioners in the aforesaid two Khatas.

6. Sri A.M. Zaidi, learned counsel appearing on behalf of the contesting respondents, on the other hand, submits that the property in dispute was jointly recorded in 1344 Fasli in the joint names of Buddhi and Maula Bux. He submits that the sons of Maula Bux will also get half of the remaining half share and they further get half in the share of Maula Bux (total $\frac{1}{2} + \frac{1}{4} = \frac{3}{4}$). Thus, the petitioners are entitled to 1/4th share of the entire holding. Elaborating the argument, he further submits that earlier there was a litigation by way of suit filed u/s 176 wherein the present petitioners were plaintiff, it was held that the plaintiffs are entitled to 1/4th share in the entire holding. The said judgment has attained finality and is binding on the parties as no appeal etc. was preferred.

7. Considered the respective submissions of the learned counsel for the parties. It is not in dispute that the Khata in dispute was jointly recorded in the name of Buddhi and his son Maula Bux. It is also not in dispute that Buddhi had got two sons Maula Bux and Iddoo. The petitioners are sons of Iddoo. While the contesting respondents are sons of Maula Bux.

8. The dispute between the parties is with regard to the extent of their share in the disputed properties. The said dispute was raised earlier by the petitioners herein by filing a suit for partition before revenue court u/s 176 of the U.P.Z.A. & L.R. Act, against the present respondents being Case no. 196 of 1978. The said suit was decreed after contest by the judgment and decree dated 31st of August,

1978. It was found therein that the disputed property was purchased by Buddhi and one of his sons Maula Bux jointly. On this premise, it was held that Buddhi and Maula Bux each had half share, and half share of Buddhi after his death devolved upon his two sons Maula Bux and Iddoo. Thus, Iddoo has got 1/4th share and Maula Bux has got 3/4th share. The said judgment has become final between the parties. There is nothing on record to show that the said judgment was questioned by the petitioners at any stage.

9. The learned counsel for the respondents submits that in view of the judgment in *Mukund Lal v. Board of Revenue*, 1988 AWC 685, the decree passed in the partition suit is final and binding on the parties. It has been laid down therein that the parties are bound by preliminary decree. This judgment supports the respondents' contention and in my considered view covers the issue.

10. In *Kausalya Devi and v. Baijnath Sayal (deceased) and others*, AIR 1961 SC 780 it has been laid down that where in a partition suit a preliminary decree is passed the said decree is final and binding and it could not be challenged subsequently at the stage of preparation of final decree. It also tends support to the case of the respondents herein.

11. So far as decision relied upon by the learned counsel for the petitioners in the case of *Balak Ram and others v. Board of Revenue*, 2005 (98) RD 655 is concerned, it has no application to the facts of the present case. The dispute therein arose in connection with preparation of final decree. In that connection the High Court has laid down that Qura should be carved out taking into consideration the persons who were found in possession. The observation made therein has nothing to do with regard to the determination of the share of parties. The decision relied upon is, therefore, distinguishable and has no application to the facts of the present case.

12. Before concluding it is apt to notice a judgment of the Apex Court in *Ram Prasad (dead) by LRs. and others Vs. Assistant Director of Consolidation and others*, , para 8 in particular whereof is reproduced below:-

8. Undoubtedly no fresh evidence was adduced in the proceedings before Consolidation Officer except the judgments and decrees of the Civil Court and the appellate Court. The authorities under the Act held that though the civil suit stood abated, the evidence considered by the civil court and the findings recorded therein would be available for consideration and can be relied upon. We find that the view taken by the authorities is well justified. Though the suit stood abated, yet the evidence recorded in the suit or appeal and the findings recorded by civil courts do not get wiped out; are entitled to be considered and that, therefore, it being the relevant evident the authorities under the Consolidation Act, unless contrary evidence is established, could go into the evidence and were entitled to rely upon the findings recorded by the Civil Court in support of its conclusions. Undoubtedly the tribunals below had gone into the question and held that the decree obtained by the respondent was collusive and fraudulent

decree and that, therefore, it does not bind the appellants.

13. In view of the above, the Deputy Director of Consolidation has committed no illegality in placing reliance upon the judgment of the revenue court which is binding on the parties in determining shares of the parties.

14. In view of the above discussion, I do not find any merit in the writ petition. It is devoid of substance and therefore, is dismissed.