

(1969) 12 AHC CK 0033

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4100 of 1967

Rishal Singh

APPELLANT

Vs

Board of Revenue, UP, Allahabad and Others

RESPONDENT

Date of Decision : 02-12-1969

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49

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

Citation : (1970) 40 AWR 123

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : Naresh Chandra Rajvanshi, for the Appellant; S.C. for opp. parties.,
for the Respondent

Final Decision : Allowed

Judgement

Hari Swarup, J.—Rishal Singh has filed this petition against the order of the Board of Revenue dismissing the Plaintiffs' appeal arising out of a suit filed by him u/s 176 of the UP ZA and LR Act for partition of the holding.

2. The holding which is now the subject matter of dispute emerged out as a result of consolidation proceedings. The Petitioner claimed to have a one-third share in the holding along with Kashiram and Raj Singh, opposite parties Nos. 4 and 5. In the basic year the plots the valuation of which was taken into consideration for the formation of the present holding were entered in the names of Rishal Singh, Kashiram and Bharat Singh father of Raj Singh. The shares of the parties were mention-en as one-third each. According to the Petitioner no party filed any objections u/s 9 of the Act and final orders were passed by the Asstt. Consolidation Officer u/s 9-A(1)(ii) and the entry was maintained. The revised annual returns on the basis of the order were prepared u/s 10 of the Act and thereafter the allotment of chaks was made. The entries were made accordingly u/s 27 of the Act in the revenue records and consequent forms Nos. 25 and 45 were issued to the parties including the Petitioner. The Petitioner

thereafter filed the suit giving rise to these proceedings. The Defendants took the defence in the suit that the entries made during consolidation proceedings were not legally correct as the Plaintiff had no right in the land in dispute. Their case was that the lease of the plots in 1942 was although executed in favour of the Plaintiff and the two Defendants who are brothers, the Plaintiff was really not the tenureholder and his name had been mentioned only for consolidation. They also pleaded that they were in adverse possession and the Plaintiff had lost rights if he had any much before the consolidation proceedings had commenced.

3. The trial court held that the defence of the opposite parties Nos. 4 and 5 was barred by Section 49 of the UP Consolidation of Holdings Act and that the matter was no more open to adjudication. It, therefore, decreed the suit.

4. The Defendants were at up in appeal and the appeal was allowed by the Addl. Collector (Judicial) Meerut. He went into the merits of the rights of the parties as they existed at the date the consolidation proceedings started and came to the conclusion that the Plaintiff had no right in the plots the valuation of which was taken into consideration for the allotment of the chak in favour of the parties. The Plaintiff filed an appeal before the Board of Revenue but the appeal was also dismissed.

5. The learned Counsel for the Petitioner has contended that the Board of Revenue has taken an erroneous view of law in holding that the revenue court had jurisdiction to go behind the recorded determination rights as made by the consolidation authorities. The learned Counsel for the Petitioner also contends that the Addl. Collector who decided the appeal had no jurisdiction to decide the same but this point has not been considered by the Board of Revenue and the Petitioner's claim that he argued it before the Board of Revenue is disputed by the other side. This point need not be decided in these proceedings as the contention of the learned Counsel for the Petitioner, on the first point has force and the petition is entitled to succeed on that ground alone.

6. Section 49 of the UP Consolidation of Holdings Act (hereinafter referred to as the Act) provides that "notwithstanding anything contained in any other law for the time being in force the declaration of adjudication of rights of tenureholders in respect of land lying within an area for which a notification has been issued u/s 4 or adjudication of any right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no civil or revenue Court shall entertain any suit or proceeding with respect to right in such land or with respect to any other matters for which the proceeding could or ought to have been taken under this Act". Interpreting this section along with Section 5 of the Act, the Supreme Court in the case of Ram Adhar Singh v. Ram Roop Singh 1968 AWR 14 SC hel: "Section 49 excludes the jurisdiction of Civil Courts to entertain any suit or proceeding with respect to rights in respect of lands covered by the notification, u/s 4, or with respect to any other matter for which a proceeding could or ought to have been taken under the Act." Admittedly the

opposite parties could have taken the plea before the consolidation authorities Under Sections 9 and 9-A of the Act to the effect that they were the exclusive owners of the plots and that the Petitioner had no right therein. It is also not denied that no such action was taken. The adjudication on this point is, therefore, barred by the provisions of Section 49 of the Act. Section 9-A(1)(ii) provides that where no objections are filed the Asstt. Consolidation Officer shall, after making such enquiry, as he may deem necessary, correct the mistakes. Section 10 of the Act deals with the preparation and maintenance of the revised annual register in accordance with the order passed u/s 9 A of the Act. Any order passed u/s 9-A of the Act is appealable u/s 11 of the Act and the same becomes final and not liable to be questioned in any court of law. If no appeal is filed the order of the Asstt. Consolidation Officer remains final. Sub-section (3) of Section 9-A provides that the Asstt. Consolidation Officer while acting Under Sub-section (1) of Section 9-A of the Act shall be deemed to be a court of competent jurisdiction notwithstanding anything contained in any other law. It may be that the Asstt. Consolidation Officer is not a court in the strict sense of the term but for the purposes of determining the rights of the parties to the land which is brought under consolidation he is deemed to be a court and any order passed by him directing the making of corrections or not ordering any corrections in the event it is not necessary will be deemed to be final and not questionable in any civil or revenue court. This is the effect of Section 49 read with Section 5 of the Act.

7. After the proceedings u/s 9-A of the Act are over, the land which is subject to consolidation scheme is brought into the common consolidation pool and thereafter the land is distributed to the various persons who have contributed to the pool. The Chaks are thereafter formed and proceedings are taken for finalisation of the chaks. After the Chaks are ultimately formed information is given by form No. 25 and thereafter the entries are made in the revenue records u/s 27 of the Act and form No. 45 is prepared to show the names of the parties and the consolidated areas which they have been allotted. After the consolidation comes to an end the rights of the parties get crystallised and new areas get allotted to the Chakholders. These also become final.

8. The learned Counsel for the opposite parties Nos. 4 and 5 relied on the following cases in support of his contention that the matter can be looked into on merits by the revenue court in the present suit; (1) Thakur Sant Bux Singh v. S.C. Singh Dy. Director of Consolidation Lucknow 1965 AWR 416 (2) Unreported decision of this Court in Shah Mohammad v. Niaz Mohammad Second Appeal No. 2456 of 1967 and (3) Dalel Singh v. Board of Revenue 1968 AWR 314. None of these cases are applicable to the circumstances of the present case. The case reported in 1965 AWR 416 (supra) and the unreported case mentioned above both were cases of grove land and not of cultivatory plots. Though rights in respect of grove land are determined under consolidation proceedings they are not brought into common pool of consolidated area to which the cultivatory plots are brought in. In Thakur Sant Bux Singh's case (supra) the Court dismissed the

writ petition on the ground that an order u/s 27 of the Act does not concern itself with a question of title and hence anything done in it will not debar a suit by the application of Section 49 of the Act. The Court in that, case was not required to decide about the maintainability of the suit where rights had crystallised and the land had gone into the common pool and distributed in the form of Chaks. Section 27 obviously comes in after the rights in the parties of the land before consolidation have been finally settled and deals only with the recording of the areas as distributed after the common pool had been formed. The case of Shah Mohammad and others (supra) clearly makes out the distinction between the case of a grove land and the case of cultivatory plots which go into the common consolidation pool. It was observed in that case: "If the dispute was in respect of the agricultural land and Chaks had been framed in respect thereof and had been allotted to one party or the other it could safely have been argued relying on the principle of the constructive res judicata that a plot having been given to one party or the other during consolidation proceedings it was not open to challenge in civil or revenue Court, but in case of a grove land when there is no adjudication about the title by the consolidation authorities it cannot be said necessarily that the suit is barred by Section 49 of the UP Consolidation of Holdings Act...." This case, therefore, goes to establish that in case of cultivatory plots Section 49 stands as a bar. The case of Dalel Singh (supra) stands on entirely a different footing. In that case the Court found that it was not proved that alteration made in the form No. 25 was in conformity with the entries in the record of rights prepared u/s 27(1) of the UP Consolidation of Holdings Act. No question of rights was considered in the case. It is certainly always open to a party to show that a form issued is not in conformity with the results of the consolidation proceedings but it is not open to a party to ask the revenue court to go into the merits of the consolidation proceedings. The rights determined either after contest or without contest by the consolidation authorities in respect of the land before it came to the common consolidation pool are final and cannot be challenged on merits in any civil or revenue court. All that a person can agitate before a revenue court after the consolidation proceedings are over is about the right that flow from the rights finally crystallised in consolidation proceedings in the form of Chaks.

9. The learned Counsel for the opposite parties 4 and 5 also contended that Section 49 of the Act only barred the institution of the suit and not the determination of the rights. There is no force in this contention. Section 49 bars the adjudication of the rights of the tenure-holders through a suit. If the institution of the suit itself is barred for the determination of the rights of the tenure-holders in respect of land which has gone to the consolidation pool it will certainly bar the adjudication of those rights whether the plea is raised by the Plaintiff or the Defendant. The defence that the Plaintiff did not have any right in the land in dispute before it came to the consolidation pool was, therefore, not open to the Defendants.

10. The learned Counsel for the opposite parties 4 and 5 then contended that the

suit for partition was itself barred by Section 49 read with Section 11-A of the Act. There is no force in this contention also. A partition can be claimed by co sharers at any time. The cause of action for a suit for partition is not dependent on the determination of the right of the parties. The parties can choose to remain joint upto a certain period of time and then claim partition. In consolidation proceedings the rights of the parties were determined and they were given a common Chak and the Plaintiff had a right to claim a partition even after the consolidation proceedings were over on the basis of the rights as determined in the consolidation proceedings in the common Chak allotted to them.

11. The Board of Revenue erred in law in permitting the Defendants to raise the plea regarding the rights of the parties in the land which had merged in the common consolidation pool and in respect of which the rights of the parties had been finally reflected in the common Chak formed by the consolidation authorities. The order of the Board of Revenue which suffers from a patent error of law has got to be quashed. As the Board of Revenue has not gone into and has not decided the other pleas raised by the parties, the case will have to be reheard and decided. The Board of Revenue will consider the various pleas that may be raised by the parties before it and then decide the appeal on merits in accordance with law.

12. The petition is allowed with costs and the order of the Board of Revenue dated 21-7-1967 is set aside and a direction is issued to it to decide the appeal afresh in accordance with law.