
(2015) 08 AHC CK 0055
In the Allahabad High Court
Case No : Writ-B No. 14480 of 2015

Sangam Agarwal	Vs	APPELLANT
Joint Director of Consolidation, Kanpur Nagar and Others		RESPONDENT

Date of Decision : 21-08-2015

Acts Referred:

Transfer of Property Act, 1882 — Section 41
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9-A

Citation : (2016) 130 RD 651

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

Bench : Single Bench

Advocate : K. Shahi, M.C. Chaturvedi, Anil Kumar Pathak and Rohan Gupta, for the Appellant; R.S. Mishra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J—Heard Sri M.C. Chaturvedi, Senior Advocate, assisted by Sri Anil Kumar Pathak, for petitioner-1, Sri Rohan Gupta, for petitioner-2 and Sri R.S. Mishra, for contesting respondents-4 and 5 (hereinafter referred to as the respondents).

2. The writ petition has been filed against the orders of Consolidation Officer dated 08.08.2011, Settlement Officer Consolidation dated 30.05.2014 and Deputy Director of Consolidation dated 20.02.2015, passed in title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

3. The dispute relates to the land of basic consolidation year khata 57 (consisting plots 610 (area 18 biswa), 620 (area 1 bigha 6 biswa), 621 (area 9 biswa) and 622 (area 1 bigha 3 biswa) (total 3 bigha 16 biswa) of village Mohammadpur, tahsil Kanpur, district Kanpur Nagar. In basic consolidation year, khata in dispute was recorded in the names of Narain and Durga sons of Murli, in which an amaldaramad was also made by Supervisor Kanoongo on the basis of report on PA-11 that Narain was dead and his brother Durga was his heir. Om Prakash

(petitioner-2) filed an objection (registered as Case No. 3434) under Section 9-A of the Act, for recording his name as an heir of Narain, being his adopted son. Another objection was filed by Sadhu Singh (registered as Case No. 3435) under Section 9-A of the Act, claiming his adverse possession over plot 621 (area 9 biswa). The Consolidation Officer, by order dated 01.06.1978 dismissed the objection of Sadhu Singh and that order has become final.

4. The objection of Om Prakash proceeded ex parte He examined Smt. Bhagwati, his natural mother, Pt. Ram Hriday Dixit, Parasuram and Putti Lal, witnesses to prove his adoption according to Hindu rites by Narain and filed an agreement to sell in favour of Narain, judgment and decree obtained on the basis of agreement to sell and some receipts of land revenue paid by Narain. The Consolidation Officer, by order dated 01.06.1978, held that from evidence on record, adoption of Om Prakash by Narain was proved. From documentary evidence, it was proved that Om Prakash was living along with Narain from his life time. On these findings, he allowed objection of Om Prakash and directed to record his name as an adopted son and heir of Narain and to delete the name of Durga. On coming to know about the ex parte order dated 01.06.1978, Durga filed an application dated 12.06.1978 for setting aside ex parte order dated 01.06.1978. The Consolidation Officer, by order dated 31.01.1979, set aside the order dated 01.06.1978 and restored the case to its original number.

5. Om Prakash filed a revision (registered as Revision No. 81) from the aforesaid order, which was dismissed by Deputy Director of Consolidation, by order dated 24.03.1979. Om Prakash then filed a writ petition (registered as Writ Petition No. 3351 of 1979), in which initially an interim order was obtained. Thereafter, the writ petition was dismissed in default on 17.02.2005.

6. In the meantime Durga Prasad died and his son Mahavir also died on 09.02.2005 leaving behind him Smt. Usha Devi, his widow and Sachin, his son (the respondents) as his heirs. Smt. Usha Devi and Sachin, (the respondents) filed an application dated 14.03.2005, before Consolidation Officer, for start of proceedings of Case Nos. 3434 and 3435) after summoning its original records from record room as the writ petition filed by Om Prakash had been dismissed. When requisition was sent to record room for sending records of the aforesaid cases, a report has been submitted that original records were not available. The respondents, then, filed an application before Settlement Officer Consolidation for reconstruction of the record. Settlement Officer Consolidation called for a report from Consolidation Officer, who submitted report dated 18.09.2006, showing that original records of the Cases were missing. Settlement Officer Consolidation, by order dated 18.09.2006, held that as the matter is pending before Consolidation Officer, as such he was competent to reconstruct the record. Om Prakash appeared before Consolidation Officer and filed List of Documents for reconstruction of record, which was kept on record by Consolidation Officer by order dated 27.05.2007. Thereafter, the objection was dismissed in default by order dated 28.09.2007. As the objection of Om Prakash was dismissed in

default, the respondents filed an objection under Section 9-A on 06.12.2007 for recording their names over the land in dispute. Om Prakash filed an application for recall of order dated 28.09.2007, which was allowed on 22.02.2008 and the objections were restored. The respondents also filed various papers, including copy of Writ Petition No. 3351 of 1979 along with its annexures, for reconstruction of the record, which were accepted by Consolidation Officer by order dated 22.02.2008. Consolidation Officer also framed issue on 22.02.2008. Thereafter, the case was adjourned several times. Om Prakash filed an application before Consolidation Officer dated 19.09.2008, directing the respondents to supply the copies of the papers filed by them.

7. It may be mentioned that Om Prakash filed an application for recall of the order dated 17.02.2005, dismissing Writ Petition No. 3351 of 1979, in default, before this Court, which was allowed by order dated 03.12.2008. Om Prakash, then moved an application dated 06.01.2009, before Consolidation Officer for staying proceedings in Case Nos. 3434 and 3435 as the writ petition was restored. On this application, Consolidation Officer invited an objection from the respondents. In the meantime, Writ Petition No. 3351 of 1979, again dismissed in default on 13.05.2009, which order was produced by the respondents before Consolidation Officer as such Consolidation Officer did not stay the proceeding of objection. In the meantime Om Prakash executed a sale deed dated 03.11.2009 in favour of Smt. Sangeeta wife of Mukesh. Smt. Sangeeta executed a sale deed dated 02.05.2011 (17.05.2010, according to Supplementary Affidavit of Om Prakash) of new plot 364 (area 0.169 hectare) in favour of Sangam Agarwal.

8. After filing the application dated 06.01.2009, Om Prakash did not appear before Consolidation Officer. Consolidation Officer, therefore, proceeded ex parte against Om Prakash. Consolidation Officer, recorded statements of witnesses of the respondents, namely Bharose son of Suda, Mahendra Singh son of Subedar Singh and Ram Dutt son of Narain. Consolidation Officer, by order dated 08.08.2011 held that Om Prakash could not adduce any evidence to prove adoption. Name of Durga was already mutated as an heir of Narain, being his real brother, as Narain died issueless. It is proved that Mahavir was son of Durga and Sachin is son of Mahavir and Smt. Usha is widow of Mahavir as such the respondents are heirs of Durga and Mahavir. On these findings, name of Om Prakash was deleted and names of Smt. Usha and Sachin were recorded over the land in dispute.

9. One Vinay Sanan filed an appeal (registered as Appeal No. 59/109) and Sangam Agarwal (petitioner-1) filed another time barred appeal (registered as Appeal No. 67/118) from the aforesaid order. Both the appeals were consolidated and heard by Settlement Officer Consolidation, who by order dated 30.05.2014, held that even in Electoral Roll of the year 2004, father's name of Om Prakash was recorded as Ram Dayal as such adoption of Om Prakash by Narain was not proved. At the time of death of Narain, Durga, his brother was alive. As Narain died issueless as such he was inherited by Durga, whose name was rightly

mutated by Supervisor Kanoongo. Order of Consolidation Officer does not suffer from any illegality. On these findings, the appeals were dismissed, condoning delay.

10. Sangam Agarwal (petitioner-1) filed a revision (registered as Revision No. 11/36). Vinay Sanan filed another revision (registered as Revision No. 14/39) against aforesaid orders. Both the revisions were consolidated and heard together. Joint Director of Consolidation, by order dated 20.02.2015 dismissed both the revisions. Hence this writ petition was filed by Sangam Agarwal on 18.03.2015. On 27.07.2015, Om Prakash filed his vakalatnama and sought for his impleadment as petitioner-2 in the writ petition. As the writ petition was not admitted and Sri M.C. Chaturvedi, Senior Advocate, counsel for Sangam Agarwal agreed for his impleadment as the petitioner, as on his own persuasion, Om Prakash had appeared before this Court as such, Om Prakash was impleaded as petitioner-2 in the writ petition, by order dated 27.07.2015. In the Supplementary Affidavit filed by the son of Om Prakash, it has been stated that he had filed an application dated 10.08.2009 for recall of the order dated 13.05.2009. Sri A.K. Sinha, Advocate High Court, informed him that the application was allowed in August 2009. On 27.07.2015, when an inquiry was done by another counsel, then it was noticed that recall application and delay condonation application were rejected in default on 29.01.2013. Then an application along with delay condonation application was filed on 29.07.2015 for recall of the order dated 29.01.2013, which is pending.

11. In paragraph-21 of the writ petition, it has been stated that Consolidation Officer, without reconstruction of the record, proceeded to decide the objection on merit. As such this Court, by order dated 20.03.2015, directed Standing Counsel to produce original record of Consolidation Officer, relating to this case. The Consolidation Officer produced the original record on 31.03.2015 in the Court. Inspection of the record was done in presence of Sri K. Shahi, counsel for the petitioner and Sri R.S. Mishra, counsel for the respondents and an inspection note has also been prepared on 31.03.2015, which is kept on record, noticing that Consolidation Officer took proceedings for reconstruction of record. Om Prakash appeared before Consolidation Officer and filed his List of Document, which was kept on record by Consolidation Officer by order dated 27.05.2006. Thereafter, the objection was dismissed in default by order dated 28.09.2007. Om Prakash filed an application for recall of order dated 28.09.2007, which was allowed on 22.02.2008 and the objection was restored. The respondents also filed various papers, including copy of Writ Petition No. 3351 of 1979 along with its annexures, for reconstruction of the record, which were accepted by Consolidation Officer, by order dated 22.02.2008, Consolidation Officer, also framed issue on 22.02.2008. Om Prakash filed an application before Consolidation Officer dated 19.09.2008, for direction to the respondents to supply the copies of the papers filed by them. Om Prakash, then moved an application dated 06.01.2009, before Consolidation Officer for staying proceedings in Case Nos. 3434 and 3435 as the writ petition was restored. In the

meantime, Writ Petition No. 3351 of 1979, again dismissed in default on 13.05.2009, which order was produced by the respondents before Consolidation Officer as such Consolidation Officer did not stay the proceeding of objection. However, Om Prakash did not attend the case, thereafter.

12. The counsel for Om Prakash submitted that a perusal of order of Consolidation Officer dated 01.06.1978, shows that Om Prakash adduced documentary evidence i.e. an agreement to sell in favour of Narain, judgment and decree obtained on the basis of agreement to sell and some receipts of land revenue paid by Narain. He also examined Smt. Bhagwati, his natural mother, Pt. Ram Hriday Dixit, Parasuram and Putti Lal, witnesses to prove his adoption according to Hindu rites by Narain. These documents were not filed while reconstructing the record. By the order dated 03.12.2008, Writ Petition No. 3351 of 1979 was restored and order dated 17.02.2005, dismissing the writ petition in default was recalled as such interim order passed in it was revived. Om Prakash bonafide believed that on his application dated 06.01.2009, the proceedings before Consolidation Officer would be stayed as such he did not participate in the proceedings thereafter. He was misguided due to wrong information given by Sri A.K. Sinha, Advocate High Court. The consolidation authorities could have considered evidence which had been adduced by Om Prakash, before 01.06.1978 but it has been illegally ignored. Order of Consolidation Officer is an ex parte order. Om Prakash is an adopted son of Narain and due to an ex parte order grave injustice has been caused to him. The counsel for Sangam Agarwal (petitioner-1) submitted that Om Prakash was recorded tenure holder. His name was recorded over the land in dispute by order of Consolidation Officer dated 01.06.1978. He was in possession over the land in dispute. Om Prakash sold the land in dispute to Sangeeta wife of Mukesh on 03.11.2009. Her name was also mutated in the revenue records. Smt. Sangeeta executed a sale deed dated 02.05.2011 in favour of Sangam Agarwal, who is a bonafide transferee for valuable consideration without notice as such his interest is liable to be protected under Section 41 of Transfer of Property Act, 1882. The name of Sangam Agarwal was also recorded in revenue record. Proceeding of Case No. 289 was started on the objection of the respondents filed on 07.12.2007 under Section 9-A of the Act. The village was notified under consolidation operation in the year 1977. Highly time barred objection filed by the respondents was liable to be dismissed on the ground of delay. But it has been illegally allowed by order dated 08.08.2011, without issuing any notice to the recorded tenure holders. He also adopted all the arguments of Om Prakash. They submitted that orders of consolidation authorities are illegal and liable to be set aside.

13. I have considered the arguments of the counsel for the parties and examined the record. A perusal of order of Consolidation Officer dated 01.06.1978 shows that it was an ex parte order. The Consolidation Officer relied upon the oral evidence for the findings that adoption of Om Prakash by Narain was proved. Oral evidence were recorded ex-parte and Durga had not cross examined the witnesses as such their statements were not liable to read in evidence. Om

Prakash participated in the proceeding for reconstruction of record. He filed List of Documents which was kept on record by Consolidation Officer by order dated 27.05.2006. He did not file copies of oral evidence recorded earlier. Thus copies of statements of the witnesses were not available on 08.08.2011. In any case, the witnesses were not cross examined by Durga as such no reliance could be placed on it. No documentary evidence to prove adoption had been adduced. On the other hand, Settlement Officer Consolidation found that even in Electoral Roll of the year 2004, parentage of Om Prakash was noted as Ram Dayal. Thus there was sufficient material to disbelieve, the case of Om Prakash. Documentary evidence of Om Prakash were not related to adoption.

14. As noticed above, after dismissal of writ petition on 17.02.2005, when proceeding in the objection of Om Prakash was started on the application of the respondents dated 04.03.2005, Om Prakash appeared before Consolidation Officer and filed List of Documents, which was taken on record by order dated by order dated 27.05.2006. Thereafter, he filed application for recalling order dismissing his objection in default dated 28.09.2007. Om Prakash filed an application for recall of order dated 28.09.2007, which was allowed on 22.02.2008 and the objection was restored. Om Prakash filed an application before Consolidation Officer dated 19.09.2008, directing the respondents to supply the copies of the papers filed by them. Om Prakash, then moved an application dated 06.01.2009, before Consolidation Officer for staying proceedings in Case Nos. 3434 and 3435 as the writ petition was restored. Thus Om Prakash was present before Consolidation Officer during 27.05.2006 to 06.01.2009, which has been admitted in Supplementary Affidavit filed on his behalf. He deliberately absented without any reason, thereafter. He, for the first time, appeared before this Court on 27.07.2015. He has stated that his counsel, Sri A.K. Sinha, Advocate High Court had given false information that his writ petition was restored in August, 2009. The respondents filed order dated 13.05.2009, dismissing the writ petition in default. The proceedings before Consolidation Officer was never stayed. If he received oral information that order dated 13.05.2009 was recalled in August, 2009, then he would have filed certified copy of the order before Consolidation Officer as proceeding before him was going on. His statements, that his counsel had given false information is not liable to be believed for the reason that he had not obtained certified copy of the order and remained silent for about six years, in spite of the fact that he was knowing that Consolidation Officer had not stayed proceeding in his objection. Thus cause shown for absence before Consolidation Officer is false.

15. So far as Sangam Agarwal is concerned, he is a pendente lite transferee as such principle of bonafide transferee without notice is not applicable. The petitioners have purchased litigation. Before obtaining sale deed, petitioner-1 was required to take reasonable care. Order of Consolidation Officer dated 01.06.1978 was so illegal in as much as although Om Prakash was claiming 1/2 share of Narain by way of inheritance but Consolidation Officer had deleted the name of Durga also from the land in dispute, who was admittedly co-sharer of

1/2 share. How Durga and his heirs, who was co-sharer of 1/2 share was dispossessed from the land in dispute, when order of Consolidation Officer dated 01.06.1978 was recalled by the application of Durga dated 12.06.1978 on 31.01.1979. Allegation that Om Prakash was in possession of the land in dispute was not liable to be believed.

16. In basic consolidation year names of Narain and Durga were recorded over the land in dispute. The khatauni also contained an amaldaramad that Narain was dead and his share was inherited by his brother Durga. The objection was filed by Om Prakash claiming 1/2 share of Narain on the ground that he was an adopted son of Narain. Thus burden was upon Om Prakash to prove his adoption by Narain but after recall of the order of Consolidation Officer dated 1.6.1978 no evidence has been adduced by Om Prakash to prove his adoption. On the other hand the Settlement Officer Consolidation found that in the Electoral Roll of 2004 parentage of Om Prakash was noted as Ram Dayal. Thus Om Prakash could not prove his adoption as such he had no right over the land in dispute and on the basis of sale deed executed by Om Prakash no right can be conferred upon Sangam Agarwal over the land in dispute.

17. In view of aforesaid discussions, the writ petition has no merit and is dismissed.