(1986) 01 AHC CK 0074

In the Allahabad High Court

Case No : Writ Petition No. 1668 of 1978

Sant Bux Singh APPELLANT

Vs

Joint Director of Consolidation and Others RESPONDENT

Date of Decision : 28-01-1986

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 57

Citation : (1986) RD 216

Hon'ble Judges : K.N. Misra, J

Bench : Single Bench

Advocate : Hargur Charan, for the Appellant; Umesh Chandra, Krishna Chandra, Ram Kishore and A.S. Chaudhary, for the Respondent

Final Decision : Allowed

Judgement

K.N. Misra, J.—In the present writ petition the dispute relates to grove plot No. 6B area 2 biogas, situate in village Ghatampur, Pargana Pashchi-marath Tahsil Bikapur, District Faizabad. It was recorded in the basic year khatauni in the name of Petitioner Sant Bux Singh son of Para Singh along with Ghirau son of Jagesar Pasi and Ram Pher son of Matai. The Petitioner filed an objection asserting that he is the sole grove-holder and in possession over the grove in dispute and that the names of Ram Pher and Ghirau are wrongly recorded and the same be expunged. The case was contested by Ram Pher and Ghirau, who asserted that they are co-grove holders/Bhumidhars along with the Petitioner. Certain other claimants, namely Nand Lai father of opposite parties No. 7 to 9 and Ors. Opposite parties No. 10 to 18, filed objection claiming to be co-grove holders along with Ghirau. The claim of Nand Lal and others was also contested by the Petitioner Sant Bux Singh and he asserted that he is the sole grove-holder/ Bhumidhar of the grove in dispute.

2. After taking evidence of the parties, the Consolidation Officer vide order dated 27.07.1967, Annexure No. 1, upheld the claim of the Petitioner and held him to be sole grove holder/Bhumidhar. He, however, ordered that the area of plot No. 6-

B be recorded as 1 bight 8 bitwise instead of 2 bights as was found on the spot. Both the parties filed appeal. The Petitioner claimed that the area of the aforesaid grove plot be not reduced while the opposite parties claimed that they be recorded as co-grove holders/ Bhumidhars of the grove in dispute along with the Petitioner. Both the appeals were heard and dismissed by the Assistant Settlement Officer, Consolidation and the order passed by the Consolidation Officer was maintained. Against that order revisions were filed which were allowed by the Deputy Director of Consolidation vide order dated 22.05.1970 and the case was remanded back to the Assistant Settlement Officer, Consolidation for deciding the case afresh. This order has been annexed as Annexure C2 to the Counter affidavit which indicates that the Deputy Director of Consolidation had directed the Assistant Settlement Officer, Consolidation to look into the case of the parties and the evidence on record and decide it afresh on merits. After remand of the case the Assistant Settlement Officer, Consolidation vide order dated 28.10.1972 dismissed the appeals filed by the Petitioner as well as by the opposite parties and he maintained order dated 27.07.1967 passed by the Consolidation Officer by giving detailed order considering the claim of the parties and evidence on record. Against this order the opposite parties preferred revisions, which were heard and allowed by the Joint Director of Consolidation vide order 29.04.1978. He held opposite parties No. 3 to 18 to be co-grove holders/Bhumidhars of the grove in dispute along with the Petitioner. This order has been challenged by the Petitioner in this writ petition.

3. Learned Counsel for the Petitioner Sri Hargur Charan urged that plot No. 6B in grove Malikan and it was recorded as such in the revenue records upto 1344 Fasli. In the year 1345 Fasli, the names of Ram Pher and Ghirau were also added as co-grove holders along with the Petitioner Sant Bux Singh. Learned Counsel urged that the entry in the III Settlement Record of the year 1345 Fasli was wrongly made as Ram Pher and Ghirau were neither Zamindars in the Mohal nor they had held any proprietary interest in the grove land in dispute. It was further urged that Ram Pher and Ghirau are Pasi by caste and are not to the members of the Petitioner''s family, who is Thakur by caste. Therefore, there is no question of their being co-grove-holders along with the Petitioner in a proprietary grove in question. Petitioner Sant Bux Singh was proprietor of the Mohal wherein the proprietary grove is situate and it was also recorded prior to 1345 Fasli as proprietary grove of the Petitioner. Learned Counsel further contended that the Joint Director of Consolidation has granted co-grove holders rights to the said persons merely on the basis of the aforesaid entry of 1345 Fasli, which was wrongly made and stands rebutted and shown to be wrongly made. It was contended by the learned Counsel that the entries in the revenue records no doubt carried with them the presumption of correctness but the same were reputable and could be shown to be erroneous and wrongly made. In support of his contention learned Counsel has cited a number of decisions of the Board of Revenue, High Court and the Hon''ble Supreme Court wherein it has been held that the revenue record entries and also the settlement entries are reputable and

could be shown to be wrong and unreliable.

4. In reply learned Counsel for the opposite parties urged that although this grove was recorded as Bagh Malikan prior to 1345 Fasli, but the names of Ram Pher and Ghirau were recorded in the Settlement record of 1345 Fasli. He urged that the entry in the name of these persons is continuing ever since then and no objection was raised by the Petitioner while the Settlement Records were prepared nor he filed any objection for correction of the entries disputing the title of the said persons. Learned Counsel urged that the long standing entries would carry presumption of accuracy and cannot be brushed aside. It was further contended by the learned Counsel that in the Khasra of 1301 Fasli, although in the column of proprietors name of Nagesar Singh is mentioned, but in the remarks column Jageshar, who according to the opposite parties was the predecessor of the opposite parties, was recorded to be in possession over 7 Mango, 1 Bargad, 1 Mahua and 2 Jamun trees while on 17 mango trees, one Salig Tewari was recorded to be in possession and on certain trees names of some other persons are recorded. Referring to these entries learned Counsel urged that said entries of 1301 Fasli go to show that Jageshar, predecessor of the opposite parties, was in possession over certain trees situate on this plot. He was, thus, rightly recorded as co-grove holder along with the Petitioner in 1345 Fasli and this entry continues over since then. It was also contended by learned Counsel that since Petitioner Sant Bux Singh had not challenged the right, title and the recorded interest of the opposite parties ever since 1345 Fasli, and, as such, he is stopped from challenging the grove holder rights of opposite parties in the present proceedings and they are, therefore, deemed to have acquired co-grove holders right by acquiescence and estoppels. Learned Counsel, thus, contended that Ram Pher and Ghirau were recorded as co- grove holder at the preparation and attestation of records during Settlement in the year 1345 Fasli and, therefore, they will be presumed to have been recognized as co-grove holders by the Petitioner Sant Bux Singh, who was the proprietor of the grove land in suit. He, therefore, cannot deny the title of the opposite parties.

5. I have carefully considered the arguments advanced by the learned Counsel for the parties and I have perused the impugned order, which, in my opinion, cannot be sustained.

6. In the present case learned Joint Director of Consolidation has based his findings mainly upon the Settlement entries of the year 1345 Fasli wherein for the first time the name of Ram Pher and Ghirau were recorded as co-grove holders along with the Petitioner Sant Bux Singh. Section 57 of the U.P. Land Revenue Act has been cited by the learned Counsel for the opposite parties which provides that all entries in the record of rights prepared in accordance with the provisions of the Act shall be presumed to be true until the contrary is proved. There is, no doubt, a presumption of correctness of entries made in the record of rights prepared during Settlement and Record Operations, but the correctness of the entries can be challenged whenever and wherever it is sought to be relied

upon. It can be shown to be erroneous and incorrect entry. The entry made during Settlement and Record Operations would be strong piece of evidence to be relied upon if it is shown to have been made on the basis of some preexisting subsisting title based on material in respect of it. If during Settlement and Record Operations a entry has been made for the first time recording a person as co-tenure holder while he had held no interest in the land, then such entry alone cannot form basis for upholding the claim of such person as co-tenure holder nor such an entry can be sustained on being shown that it was incorrectly made without any basis for recording such entry.

7. It was urged that the older the entry, the more creditable it is as a general rule, but mere age is no guarantee against mistakes. The revenue record entries ought to be accepted after testing like any other evidence. There is no presumption attaching to postwar paper entries not based on settlement entries regarding their accuracy. Whether postwar entries not based on settlement entries should be accepted or not has to be decided in each case separately on the merits o'' evidence and no general rule can be laid down on the basis of their age Where a revenue record entry is based on entry made in the Record-of-Rights. prepared during the settlement or revision or records, it will be presumed to be true until the contrary is shown as provided in Second 57 of the Land Revenue Act. But this presumption would be reputable and if challenged it has got to be tested like any other evidence. Where a tenancy or co-tenancy is denied, a mere settlement entry does not obviate the necesssity of proof of the tenancy The settlement entry itself must be based on some evidence and it must be produced. In my opinion, the Settlement entry can be rebutted even by oral evidence. In Vishwa Vijay Bharati v. Fakhrul Hasan 1976 (3) SCC C42 Hon''ble Supreme Court has observed:

The entries in the revenue records ought, generally, to be accepted at their face value and courts, should not embark upon appellate inquiry into their correctness. But the presumption of correctness can apply to genuine not forged or fraudulent entries. Tire distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states, but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot count a claim of possessor title.

8. The above dictum, in my opinion, would equally apply to a case where the Settlement entry and the entries continuing on its basis were made without any basis for such an entry to be recorded during Settlement and Record Operations. The presumption of correctness of the Settlement entry can, thus, be rebutted by showing that the entry was fraudulently and surreptitiously made or that it was made without any basis oi title in favor of the person whose name is recorded as a tenure holder or a co -tenure holder during Settlement and Record-operations. If it would be found that there was no basis for such an entry to be made in favor of a person as a tenure holder or a co-tenure holder, the same

would stand rebutted by itself on that ground and no reliance can be placed on such entry because the normal presumption of correctness attached to the entry in the revenue records would be displaced by proof of the fact that the entry was made without any basis whatsoever.

9. In the instant case it is, therefore, to be considered whether the entry in the names of Ram Pher and Ghirau in the year 1345 fasli as co-grove holder along with the Petitioner Sant Bux Singh was made on the basis of some existing title or not. The learned Joint Director of Consolidation has accepted the claim of the opposite parties to be co-grove holder along with the Petitioner Sant Bux Singh on the basis of aforesaid entry in 1345 Fasli without adverting on the aforesaid crucial question. In the present case it is not disputed that the land in dispute is grove land and it was a proprietary grove. It has neither been asserted by the opposite parties nor there exists any evidence on record to indicate that the opposite parties or their predecessors were co-proprietor along with Sant Bux Singh in the disputed land It is well settled that in a proprietary grove all the proprietors of the grove land would be holders of the proprietary grove except where it was planted by any one of them and treated as his exclusive grove by express or implied consent of the proprietors of the land. Since Ram Pher and Sriram were admittedly not the co-proprietors in the land, they could not be co-grove holders in the pro prietary grove in question nor their names could be recorded as co-grove holders with Sant Bux Singh in the records in the aforesaid Settlement Records of 1345 Fails.

10. It has not been the case of the opposite parties that the said proprietary grove ceased to be such and it was let out to tenants and assumed the character of a tenant''s grove at any point of time, and, as such it cannot be accepted that Ram Pher and Ghirau became co-grove holders along with Sant Bux Singh who was admittedly the proprietor of the grove land in dispute. Since the grove in dispute was not a tenant''s grove nor it can be treated as a tenant''s grove by any stretch of imagination and reasoning, and, as such, it cannot be urged that it assumed such character because of the inclusion of the names of Ram Pher and Ghirau in the revenue records of 1345 Fasli.

11. It was suggested by the learned Counsel for the opposite parties that Settlement Parchas were issued wherein Ram Pher and Ghirau were sho "n to be co-grove holders along with Sant Bux Singh and since no obiection was filed by Sant Bux 6ingh as such the names of those persons would be taken to have been correctly recorded over the land in dispute along with Sant Bux Singh in the year 1345 Fails. It has neither been pleaded nor proved that Sant bux Singh had, during the aforesaid Record Operations, given any consent for recording the names of Ram Pner and Ghirau as co-grove holders along with him over the grove in dispute, which is a proprietary grove. If such an entry was made behind the back of Sant Bux Singh during record operations, he cannot be said to be bound by it nor he would be stopped from challenging the entry made in the Settlement Records of 1345 Fails. The rule of estoppels and acquiescence would,

therefore, not apply in the present case in the absence of any consent accorded by Sant Bux Singh for recording the names of Ram Pher and Ghirau as co-grove holders along with him.

12. Learned Counsel for the opposite parties had laid such stress upon the Khasra entry of 1301 Fails where in on certain tress situate on the plot in question the names of Jagesar, which can also be read as Nageshar, is recorded in the remarks column The present area of plot No. 6B is 2 bighas and on the spot it was found to be 1 bigha 8 biswas. In the year 1301 Fasli the area of this plot is recorded as 8 bighas 3 biswas. It, therefore, cannot be said that the entries regarding possession of certain persons over certain trees in the remarks column relate to this very portion of the grove land in dispute,

13. It was further pointed out by learned Counsel for the Petitioner that certain trees were shown to be in possession of one Jagesar. Learned Counsel had urged that Nagesar Singh was the proprietor and the entry relates to possession of Nagesar and not Jageshar over the trees in question. Learned Counsel for the opposite parties had, however, urged that Nagesar or Jageshar is none else but Jageshar Pasi. Thus, the entry in the name of Nageshar or Jageshar relates to Jageshar Pasi, who is the predecessor of the opposite parties. The word ''Pasi'' is not recorded against the name of Nageshar, which can also be read as Jageshar. Thus, without adding something to the entry, we cannot safely construe this entry to relate to the predecessor of the opposite parties. Apart from it just below this entry it is mentioned as "Mashkooq", that is "doubtful". This entry therefore, cannot be relied upon being of doubtful nature.

14. Apart from it, the question whether possessor title over certain trees situate on the grove plot would create or confer grove-holder rights or not has also not been correctly understood by the learned Joint Director of Consolidation while recording a finding in favor of the opposite parties holding them to be co-grove holders along with the Petitioner Sant Bux Singh. To me it appears that the said entry regarding ownership of trees, apart from being doubtful (Mashkooq) in nature, is also apparently unauthorized as the Land Record Manual does not contemplate entries regarding ownership of individual trees, as the landlords are concerned with those who own or hold the land either as a proprietor or as a tenure-holder Learned Counsel while making the aforesaid argument also overlooked the fact that the ownership of certain trees in a grove is not synonymous with the rights of the grove holder in the land in which the trees stand. It also appears to be fairly well settled that the proprietary grove would not cease to be such unless it ceases to be grove on becoming bereft of trees and the proprietor omits or chooses not to plant grove thereon and lets out the land either for cultivation or for planting grove thereon. The land, thus, ceasing to be grove may subsequently become tenant''s grove in case it is let out by the landlord to a tenant for the purpose of planting grove or the tenant to whom land is let out even for cultivation, plants grove thereon with the written permission of the landlord. An implied permission may, however, be construed where the

landlord had raised no objection to the tenant''s planting a grove on the land under his tenancy prior to the enforcement of the U.P. Tenancy Act and the land assumed character of grove in due course of time.

15. In the instant Case it has not been the case of the opposite parties that the proprietary grove on the plot in question had ceased to be grove and thereafter the land was let out to the predecessors of the opposite parties for planting grove There was, thus, no basis for recording the names of Ram Phar and Ghirau as co-grove holders with the proprietor Sant Bux Singh in the Settlement Record of 1345 Fails. This entry was, therefore, wrong and fictitiously made and no reliance can be placed on it.

16. So far as the question of possession over the grove in dispute is concerned, it was urged by the learned Counsel for the Petitioner that the learned Joint Director of Consolidation has not considered the entire evidence on record, which establishes possession of the Petitioner over the grove in dispute. That may be so, but in my opinion the question of possession is not of much relevance in the case because the opposite parties had not claimed to have perfected rights by adverse possession over the grove in dispute against the Petitioner nor the grove holders rights can legally accrue on the basis of adverse possession over any grove.

17. In the present case the opposite parties had claimed to be co-grove holders along with the Petitioner on the basis of aforesaid entry and asserted to be in possession along with Sant Bux Singh as co-grove holders. I have carefully considered the matter and in view of what has been said above, I find that the claim of the opposite parties to be co grove holders, bhumiahars of the grove land in dispute cannot be sustained. The learned joint Director of Consolidation has committed a manifest error apparent on the lace of the record in upholding their claim. The orders passed by the subordinate Consolidation authorities upholding the claim of the Petitioner to be sole grove-holder/bhumidhar of the land in dispute could not be interfered and deserve to be maintained.

18. In the result, the writ petition succeeds and is hereby allowed and the impugned order dated 29.04.1978 passed by the Joint Director of Consolidation is hereby quashed and the order dated 28.10.1972 passed by the Assistant Settlement Officer, Consolidation is hereby maintained. No order as to costs.

