
(2015) 07 AHC CK 0136
In the Allahabad High Court
Case No : Writ B. No. 4254 of 1981

Saraswati

APPELLANT

Vs

Joint Director of Consolidation

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9-A(2)

Citation : (2015) 128 RD 513

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : V.B.L. Srivastava, B.S. Pandey and Madhur Prakash, for the Appellant; A.K. Singh and R.S. Dwivedi, S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J—Heard Sri Madhur Prakash learned Counsel for the petitioner and Sri A.K. Singh for the respondents. This writ petition arises out of an objection under section 9-A(2) of the U.P. Consolidation of Holdings Act and is directed against the orders passed by the Joint Director of Consolidation, Allahabad, Camp at Deoria, Assistant Settlement Officer Consolidation, Hata at Kasya, Deoria and the Consolidation Officer, Deoria.

2. The dispute in the writ petition pertains to land of Khatas No. 55 and 195 of Village Satbharia, District Deoria. In the basic year record the land in question was recorded in the names of Sripat, Hiramam, Sitaram, Harvansh and Asarfa namely respondents No. 3, 6, to 12 in the writ petition. Insofar as respondents 5 and 12 are concerned, their names have ordered to be deleted from the array of parties by an order passed earlier.

3. On the start of consolidation operations two objections were filed. Both the petitioner and Smt. Gulabi, respondent No. 5 filed objections claiming co-tenancy in the khatas in question. The following pedigree is relevant to understand the controversy involved between the parties:

4. The petitioner claimed co-tenancy on the ground that she was the daughter of Saukhi one of three sons of Jagroop. Gulabi claimed as widow of Maniraj.

5. The dispute of the objectors was primarily with the respondent No. 4, Asarfa who was admittedly the widow of Muneshwar.

6. As per the pedigree given above Maniraj and Saukhi were brothers, being the sons of Jagroop. The objections filed under section 9-A(2) were contested by Asarfa. She denied that Gulabi was widow of Maniraj. Her case was that Gulabi, the actual widow of Maniraj was dead and that objector was an im-poster. Asarfa however, admitted the claim of the petitioner.

7. The Consolidation Officer by his order dated 24.6.1976 rejected both the objections. Both objectors preferred appeals. The Settlement Officer Consolidation by his order dated 9.9.1997 dismissed the appeals. The two resulting revisions have been dismissed by the Joint Director of Consolidation by the order dated 23.1.1981. It appears that it is only the petitioner who has come before this Court by means of the instant writ petition.

8. It has been submitted by learned counsel for the petitioner that that statement of witnesses available on record have not been considered while passing the impugned order which is therefore, perverse and liable to be set aside.

9. The second submission made by learned counsel for the petitioner is that there was an identical dispute between the parties as regards Khata No. 38 of Village Nanhoo Mudera. Objections were filed as regards this village also. These objections were decided on the basis of a compromise where under the name of the petitioner was ordered to be recorded as a co-tenant. It is therefore, contended that in view of the compromise as regards of the Village Nanhoo Mudera, the case of the petitioner being identical as regards the land of Village Satbharia, the consolidation authorities have committed manifest illegality in not allowing the objection and granting co-tenancy to the petitioner.

10. I have considered the submissions made by learned Counsel for the petitioner and have perused the record.

11. The point for consideration which therefore arises in the instant writ petition is as to whether the petitioner is the daughter of Saukhi and as to the date of which Saukhi died, which in turn would determine as to whether the petitioner has inherited any right, title or interest in the land in dispute on the death of Saukhi.

12. The contention of the petitioner is that Maniraj died issueless. His share therefore, devolved upon his brothers namely Saukhi and Muneshwar and therefore, it is claimed that the petitioner and Asarfa, the widow of Muneshwar have half share each in the land of Jagroop.

13. It appears that a compromise was entered into on 1.8.1976 between Asarfa

and Saraswati before the Settlement Officer Consolidation. It is relevant to note that this compromise was not verified and has not been considered by the Settlement Officer Consolidation. Insofar as this compromise is concerned, the Deputy Director of Consolidation has held that it amounts to a transfer and therefore the same is not worthy of credence in the absence of registration of the compromise itself. I see no illegality in this finding.

14. In case, it is established on record that the petitioner was entitled to be recorded as co-tenure holder in the khatas in question she would be entitled to this right irrespective of the alleged compromise. In case, it is held that the petitioner does not have a right in the land in dispute, the compromise necessarily would amount to a transfer and it being a transfer of immovable property, the same would necessarily require registration.

15. In the aforesaid context it is relevant to examine as to whether the petitioner acquired any right, title or interest in the property in question on the death of Saukhi. It would be relevant to note that Asarfa the contesting respondent has not denied the fact that the petitioner is the daughter of Saukhi.

16. Under the circumstances, therefore, what requires examination is the date of death of Jagroop himself and his sons namely Maniraj, Saukhi and Muneshwar. In this regard various documents are available on record, namely Kutumb Register extract, Ration Card, Death Register extract, Irrigation Passbook etc.

17. From a perusal of the record it emerges that there is a family register extract available on record, according to which Saukhi died on 30.12.1961. It is also clear from the evidence on record that Jagroop died on 21.12.1947. Maniraj his son pre-deceased him having died on 21.12.1945. Muneshwar is said to have died on 15.1.1957. Additionally, Khatauni 1362 Fasli was available on record before the Settlement Officer Consolidation. On its basis, the Settlement Officer Consolidation has come to the conclusion that Maniraj, Saukhi and Jagroop were dead prior to 1362 Fasli, as the name of Smt. Asarfa is to be found in this khatauni. It is therefore, clear that the khatauni is of a date prior to 1955.

18. There is also evidence in the form of another death register extract which shows the date of death of Saukhi to be 1957. The Deputy Director of Consolidation, in view of the conflicting documentary evidence as regards the death of various persons, has co-related the same with the oral evidence available on record, especially the fact that Smt. Gulabi had stated that Saukhi, predeceased Jagroop his father. He has therefore, held that a daughter had no inheritable right, on the death of her father, prior to the abolition of zamindari. This fact coupled with the long standing revenue entries as also the fact that Saukhi pre-deceased his father, he has rejected the claim of the petitioner. Moreover, from the dates noted above it is clear that both Maniraj and Saukhi died during the life time of their father. The share of Jagroop therefore, devolved upon his sole surviving son namely Muneshwar and on his death the same devolved upon the respondent Asarfa.

19. In the aforesaid circumstances, the petitioner would not inherit any right title or interest in the land in dispute and therefore, the orders impugned cannot be faulted with. Even otherwise, the submission of learned Counsel for the petitioner that the oral testimony available on record has not been considered by the consolidation authorities also cannot be accepted because the aforementioned findings have been recorded after discussing the oral evidence available on record.

20. Perusal of the impugned orders specially the order passed by the Deputy Director of Consolidation reveals that the oral testimony has been duly considered. Besides, there is nothing available on record of the writ petition to indicate as to what and whose oral testimony was not taken into consideration. The contention of learned Counsel for the petitioner therefore, is liable to be rejected.

21. Accordingly and for the reasons given above I find no merit in the submissions made by learned counsel for the petitioner.

22. The writ petition is devoid of merits and is accordingly dismissed. No order as to costs.