
(2011) 08 AHC CK 0267

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 898 of 1976

Saraswati Devi and Another

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) Act, 1949 — Section 6

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 6, 9A

Uttar Pradesh Tenancy Act, 1939 — Section 33, 33(2), 59

Citation : (2011) 114 RD 89

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—This is second round of litigation in this Court. The matter reached to this Court earlier in Writ Petition No. 889 of 1971, which was allowed on 22.01.1976 and the matter was restored back to the Deputy Director of Consolidation (the D.D.C.) for decision afresh. After remand, the impugned order dated 04.03.1976 has been passed. The land measuring 4 Bigha out of 10 Bigha 2 Biswa of Khata No. 21 situate in village Chak Karim alias Khamipur, Pargana Jhunsi, District Allahabad is the subject matter of the present writ petition.

2. On commencement of consolidation operation in the village, the said khata was recorded jointly in the names of Mahadeo Singh, his wife Smt. Saraswati Devi (the Petitioner), Kalika, brother of Mahadeo, Respondent No. 7 (since deceased), Jagroop who is represented by Respondents No. 3, 4 and 5 and Brij Mohan Respondent No. 6 (since deceased).

3. The dispute in the present writ petition basically is between the Petitioners and the sons of Jagroop i.e. Respondents No. 3, 4 and 5. For the sake of convenience, Respondents No. 3 to 5 are described hereinafter as contesting Respondents. The present Petitioners filed an objection u/s 9-A of the U.P.C.H.

Act for expunging the names of the contesting Respondents from revenue record on the allegations that their names have been wrongly recorded as co-tenants. These persons according to the Petitioners have No. right, title or interest in the disputed land. The said objections were allowed by the Consolidation Officer by the order dated 25th May, 1970, which was set aside in appeal preferred by the contesting Respondents. The order of the first Appellate authority was set aside in revision preferred by the Petitioners by the order dated 5th December, 1970 and the said order has been set aside by this Court in the writ petition referred above.

4. The facts of the case as unfolded in the pleadings of the parties relate back to the year 1949. Lala Manmohan Das was tenant of land comprising in Khata No. 21. A suit registered as Case No. 281 u/s 59 of the U.P. Tenancy Act was preferred by the present Petitioners along with Kalika against Lala Manmohan Das and the then Zamindar. In the said suit, the Defendants therein accepted the claim of the Plaintiffs (the Petitioners and Kalika Respondent No. 7) and the suit was decreed accordingly by the judgment and decree dated 19th August, 1949 by providing that:

Suit decreed on admission. No. costs Amaldramad to be done accordingly.

5. In the suit, the present Defendants were not parties admittedly. It appears that on coming to know of the decree obtained by the Plaintiffs therein, the contesting Respondents raised a dispute. The said dispute with the intervention of villagers was settled and the settlement was culminated into a registered agreement dated 29th November, 1949. The parties agreed that the contesting Respondents herein are owners and in possession of 4 Bigha land shall continue to be as such and the remaining land of the said khata belongs to the present Petitioners and Kalika. The names of the contesting Respondents on the basis of the aforesaid registered deed dated 29th November, 1949 were recorded on 28th September, 1955. The names of Jagroop and Brij Mohan recorded continuously in the revenue record. As mentioned herein above, their names were recorded in the basic year in the revenue record, which was prepared on the commencement of the consolidation operation in the village.

6. On commencement of the consolidation operation, the present Petitioners raised a dispute by filing objection that the names of the contesting Respondents were wrongly included in the revenue record as co-tenancy cannot be acquired by co-option and at any rate, in the light of the provisions as contained in the U.P. Tenancy Act, the registered deed dated 29th November, 1949 will not confer any right as the Zamindar was not a party to it. The names of the contesting Respondents were wrongly included in revenue correction proceedings and in such proceedings, it could not have been done legally.

7. The case of the contesting Respondents was that the registered agreement dated 29th November, 1949 is binding on the parties. Their possession and ownership in respect of 4 bigha of land is admitted therein. The Petitioners have

admitted the ownership and possession of the contesting Respondents, now they are estopped to take a different stand. The objections of the Petitioners have been rejected finally by the D.D.C. The learned Counsel for the Petitioners reiterates the stand taken by them before the authorities below. It was also argued that the registered agreement dated 29th November, 1949 was not given affect to and the Petitioners on 28th October, 1950 obtained bhumidhari sanad in respect of disputed land and as such the contesting Respondents have No. share in the disputed khata.

8. The following points on the basis of the pleading of the parties and the arguments fall for determination:

(1) The legal effect of the registered deed dated 29th November, 1949 on the rights of the parties, as also admitted fact that bhumidhari sanad was acquired by the Petitioners in their names, subsequently.

(2) Whether the question of legality and validity of the recording of the names of the contesting Respondents as co-tenants passed by the authority concerned on 28th September, 1955 can be gone into in these proceedings or not?

9. Shri P.K. Rai, learned Counsel for the Petitioners vehemently argued that the registered deed dated 29th November, 1949 will not confer any right on the contesting Respondents as the then Zamindar (land holder) is not a party to it.

10. Shri R.S. Maurya, learned Counsel for the contesting Respondents, on the other hand, submits that in the said document, the ownership and possession of the contesting Respondents have been accepted, the Petitioners are bound by their admission and they are estopped to take a different stand at the subsequent stage.

11. The facts of the case relating to filing of Suit No. 281 of 1949, execution of registered deed dated 29th November, 1949, obtaining bhumidhari sanad of the land in dispute by the Petitioners and recording the names of the contesting Respondents with effect from 28th September, 1955 and continuing the names of the contesting Respondents as co-tenants thereafter in the revenue record, are not in dispute. Reference was also made to extract of khatauni of agricultural year 1356 fasli to show that tenancy of original tenant Lala Manmohan Das was occupancy tenancy.

12. The Court was taken through the registered document dated 29th November, 1949 by the learned Counsel for the parties, a copy whereof has been filed as annexure-22 to the writ petition. The Petitioners along with Kalika are the first party and contesting Respondents namely Jagroop is the second party and Brij Mohan is the third party. The document recites that the dispute amongst the parties has arisen because of the fact that the first party has obtained a declaration exclusively in their names in a suit filed u/s 59 of U.P. Act No. 17 of 1939 although out of the total land, Jagroop (second party) is in occupation of 3 bigha land and Brij Mohan over 1 bigha. The terms of the settlement of the

dispute are that the areas of land described in schedule-A shall exclusively belong to first party with which neither second nor third party has any concern. The plot described in schedule-B shall exclusively belongs to second party with which first and third party will not have any concern and similarly the property described in schedule-C exclusively belongs to third party to the exclusion of others.

13. Noticeably, the execution of the said deed is not in issue. It was not the case of the Petitioners at any stage that the said document was not executed by them or was executed under some duress. The execution of the document is admitted to all the parties. Contention that the co-tenancy can be acquired only with the consent of Zamindar is not of much relevance for reasons more than one. Firstly, No. provision of law or principle of law was shown to the Court to show that even for agreement, the consent of Zamindar is required. Learned Counsel for the Petitioners laid much emphasis that co-tenancy right can be acquired only by family member. The said argument proceeds on the footing that by co-option the right is created in favour of co-optive for the first time, which is not so here. In the registered deed, the possession and title of the contesting Respondents have been clearly recited and admitted by the Petitioners. The point which, I am trying to bring home is that through the said document already existing right of the contesting Respondents was recognized and their possession was admitted and was accepted by the Petitioners herein. Therefore, the said principle even it is so, has No. application. Reliance was placed upon Chidda and Anr. v. Joint Director of Consolidation, U.P. Camp Agra and Ors., 1968 RD 205, wherein it has been laid down that when there are more than one Zamindars, the consent of all the Zamindars is necessary and in the absence of the consent from all the Zamindars, a person's co-option as a co-tenant at the hands of the tenant would be illegal and he would not be regarded as a co-tenant in the eye of law. This judgment has been overruled specifically by the Division Bench in Bharit and Ors. v. Board of Revenue, U.P. at Allahabad and Ors. 1973 ALJ 29. It has been held by the Division Bench that a person in possession under an invalid grant acquires title by adverse possession. The decision given in the case of Chidda and Anr. (supra) has been overruled.

14. Applying the above ratio, even accepting the argument of the learned Counsel for the Petitioners, the possession of the contesting Respondents to that extent would be adverse possession and in view of the law as then stood, there was only three years period of limitation under the U.P. Zamindari Abolition Act to take action for eviction. Admittedly, No. such suit was filed by the Petitioners against the contesting Respondents.

15. The points as to whether the consent of land holder is required necessarily for creation of co-tenancy right under the provision of U.P. Tenancy Act has been subject matter for consideration of this Court from time to time. Reference can be made to Dudh Nath Kori and Anr. v. Smt. Dhamrajja and Anr. 1964 R.D. 324 wherein it has been held that a co-tenancy under Act III of 1926 or under Act

XVII of 1939 can come into existence on account of the operation of the doctrine of estoppel. The same principle has been reiterated in *Deo Narain Singh and Another Vs. Aditya Prasad and Others*, . The relevant paragraph is reproduced below:

Under Section 33 of the U.P. Tenancy Act, a person could be admitted as a co-tenant provided that he was a co-tenant from the commencement of the tenancy and provided he was recognized as such in writing by the landlord. It is true that besides the above provision, a co-tenant could also be admitted by acquiescence and estoppel.

16. In *Gokul v. Board of Revenue, U.P. at Allahabad and Ors.* 1999 (90) R.D. 63, it has been held that even assuming that there was No. written consent of the land holder, still co-tenancy rights can be acquired by a person other than the mode prescribed under the proviso to Sub-section (2) of Section 33 of U.P. Tenancy Act, 1939. The proviso provides two conditions whereby co-tenancy rights can accrue in favour of a person firstly, the person who has been admitted as co-tenant from the commencement of the tenancy or secondly, where the Land holder recognizes such right in writing. This provision is not exhaustive and there are other modes by which co-tenancy rights can come into existence e.g., the adverse possession, estoppel and acquiescence. This aspect has been considered in detail in *Dudh Nath Kori (Supra)*. Para-11 of the said judgment is reproduced below:

11. Even assuming that there was No. written consent of the land holder, still co-tenancy rights can be acquired by a person other than the mode prescribed under the proviso to Sub-section (2) of Section 33 of U.P. Tenancy Act, 1939. The proviso provides two conditions whereby co-tenancy rights can accrue in favour of a person firstly, the person who has been admitted as co-tenant from the commencement of the tenancy or secondly, where the Land holder recognizes such right in writing. This provision is not exhaustive and there are other modes by which co-tenancy rights can come into existence e.g., the adverse possession, estoppel and acquiescence. This aspect has been considered in detail in *Dudh Nath Kori (Supra)*.

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It was further observed that the estoppel operates against the conduct of the tenant who has permitted a person to occupy the land as co-tenant but it will not be effective against the land-holders. The doctrine of estoppel will be applicable as against the tenant who by his conduct permitted the other person to cultivate and occupy the land as a co-tenant and it is open to the land-holder to take appropriate action against the tenant or the person who has been admitted as co-tenant unless the land-holder also likewise estopped from doing so. In case the

land-holder has not given any consent in writing to admit a person as co-tenant for such land as provided under the proviso to Sub-section (2) of Section 33 of the U.P. Tenancy Act, it is open to him to take appropriate action against the tenant or the person so admitted as co-tenant but the tenant cannot take the plea that as the land-holder had not given the consent the person so admitted as co-tenant has No. right of co-tenancy over such land.

17. In view of the above discussion, the argument of the Petitioners that as the land-holder/Zamindar was not made party to the registered document and as such co-tenancy right was not created in favour of the contesting Respondents, is liable to be rejected and is hereby rejected.

18. The other argument of the Petitioners is that they obtained the bhumidhari sanad by depositing 10 times rent under U.P. Agricultural Tenant (Acquisition of Privileges) Act, 1949 and have thus become exclusively bhumidhar is of No. substance. Reference can be made to *Ramayan Singh v. Balbhadra Chaubey*, 1966 R.D. 416, wherein it has been held that the grant of a declaration u/s 6 of the Act, or the issue of the bhumidhari sanad, does not finally and conclusively determine the rights of the person granted the declaration or the bhumidhari sanad. The grant of the declaration u/s 6 does not determine the right and title of the person, nor is such declaration final and conclusive in the sense that his right or title cannot be challenged before the courts of law. A true copy of the bhumidhari sanad has been filed as annexure-15 to the writ petition and it recites that on the commencement of U.P. Zamindari Abolition Act, they will become bhumidhar. The said bhumidhari sanad will enure for all the tenure-holders.

19. It was urged that the Tehsildar wrongly ordered the inclusion of contesting Respondents' name in the revenue record on 28th September, 1955 in exercise of his power relating to correction of revenue entries and as such the said order is liable to be set aside. It has been rightly said by the D.D.C. in the impugned order that the legality and validity of the said order cannot be challenged in the present proceedings. The Petitioners should have raised their grievances immediately after the said order before an appropriate forum. It is not their case that they were not aware about the said order. The Petitioners were fully aware of the inclusion of the contesting Respondents' name as co-tenants in the revenue record and it will amount acquiescence and existence for their non action for all the subsequent years till the commencement of consolidation operation in the village.

20. It was urged that long standing entry in the revenue record will not confer any right if the entry is wrong. In view of the finding that the names of the contesting Respondent were not wrongly recorded and it was based on the registered deed, is not necessary to consider the said plea. The possession and tenancy of the contesting Respondents have been admitted through the registered document dated 29th November, 1949.

21. In view of the above, the argument of the Petitioners that the order recording the name of contesting Respondents in the revenue record is illegal is liable to be rejected. It will not be out of place to mention here that the learned Counsel for the contesting Respondents with the help of Sections 32, 34, 35 and 44 of the Land Revenue Act, tried to justify the action of the Tehsildar ordering the recording the name of the contesting Respondents in the revenue record.

22. In view of the above discussion, it is held that the contesting Respondents were the co-tenants as is evident from the registered document dated 29th November, 1949 and they continued to be so even after the abolition of zamindari and their names were rightly recorded in the revenue record in basic year. There is No. error in the impugned order of the D.D.C. There is No. merit in the present writ petition.

23. The writ petition is dismissed with cost of Rs. 5000/-payable by the Petitioners to the contesting Respondents.