
(2015) 05 AHC CK 0255
In the Allahabad High Court
Case No : Writ B. No. 52476 of 2000

Saudagar Singh and Others	Vs	APPELLANT
D.D.C., Ghazipur and Others		RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9

Citation : (2015) 128 RD 801

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

Bench : Single Bench

Advocate : Sankatha Rai, Vinod Kumar Rai and Vijay Kumar Rai, for the Appellant; Diwakar Misra, Swaraj Prakash and Y.K. Saxena, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J—Heard Shri A.K. Singh, learned Counsel for the petitioner and Shri Shyam Dhar Pandey, learned Counsel for the contesting respondents. The writ petition has been filed against the order of Deputy Director of Consolidation dated 9.11.2000 passed in the proceedings under U.P. Consolidation of Holdings Act.

2. The dispute was in respect of land recorded in basic consolidation year Khata No. 62 of Village Damodarpur Uparvar Tappa Karanda Tahsil and District Gazipur. In basic consolidation record, name of Vikrama now represented by the petitioner was recorded. The contesting respondent filed an objection under section 9 of the Act claiming co-tenancy of 1 1/2 share in the land in dispute. It is alleged that the matter was comprised between the parties and the Assistant Consolidation Officer by order dated 10.3.1973 decided the case in terms of the compromise. Thereafter the father of the appellant filed an appeal before the Settlement Officer of Consolidation against the order of Assistant Consolidation Officer. It is alleged in appeal also a compromise was filed on 12.11.1973. Thereafter on the basis of compromise, the Settlement Officer of Consolidation

allowed the appeal and set aside the order of Assistant Consolidation officer by order dated 12.11.1973. Thereafter, a dispute between the parties again arose as the appeal was only in respect of Plot No. 216/2, area 1-3-4 Bigha and compromise was also in respect of disputed plot in the appeal but the entire order of Assistant Consolidation of Officer was set aside. Therefore, Vikrama filed an application for recall of the order dated 12.11.1973. Vikrama also filed an application for amending his memo of appeal. Although the recall application as well as amendment application of Vikrama were dismissed by Settlement Officer of Consolidation by order dated 18.5.1977. Revision filed by Vikrama was allowed by Deputy Director of Consolidation by order dated 19.12.1979 and thereafter the matter was remanded to Settlement Officer of Consolidation to decide the amendment application (1st).

3. After remand, Assistant Settlement Officer of Consolidation by order dated 9.1.1981 rejected the amendment application as well as the recall application filed by Vikrama. However, the order dated 9.1.1981 was set aside by Deputy Director of Consolidation by order dated 13.7.1982 and the matter has been remanded to Consolidation Officer for deciding the dispute between the parties after taking evidence. Thereafter, Smt. Lachiya filed an application on 17.12.1990 for review of the order dated 13.7.1982 which has been allowed. Mahindra also filed an application for review of the order on which the Deputy Director of Consolidation passed the impugned order dated 9.11.2000 and the order dated 13.7.1982 was set aside and revision was also dismissed, hence this writ petition has been filed.

4. The Counsel for the petitioner submits that the Deputy Director of Consolidation has decided the revision on merit after hearing the parties by order dated 13.7.1982. Review application was filed by Musafir was not maintainable as under the provisions of U.P. Consolidation of Holdings Act, 1953, there is no provisions for review. As such the order passed by the Deputy Director of Consolidation dated 9.11.2000 was without jurisdiction and is liable to be set aside.

5. In reply to the aforesaid arguments, the Counsel for the respondents submits that contention of the petitioner is only to harass the contesting parties. The objection claiming the co-tenancy has been filed in the year 1972 and decided in terms of compromise by order dated 10.3.1973. Then the appeal was filed only in respect of one plot namely 216/2. In respect of remaining plots of the Khata, it has been admitted in the memo of appeal that these Khatas were joint ancestral property in which the respondent have also share. Before the appellate Court also a compromise was filed and the appeal was decided in terms of compromise by the order dated 12.11.1973 and thereafter recall application was filed in the year 1976. The father of the petitioner himself was appellant and there was no cause for condoning the inordinate delay in filing the recall application. Accordingly, Settlement Officer of Consolidation has rejected the recall application. He submits that so long as the order dated 12.11.1973 is not

recalled, no application for amendment of memo of appeal was maintainable, nor it could have been maintained. In such circumstances, the Deputy Director of Consolidation has reviewed his order dated 13.7.1982 and passed the order dated 9.11.2000. No interference is required by this Court. The writ petition is required to be dismissed.

6. I have considered the argument of the learned Counsel for the parties.

7. It is not denied that Settlement Officer of Consolidation by order dated 12.11.1973, allowed the appeal of the Vikrama and set aside the order of the Assistant Consolidation Officer dated 10.3.1973. This order was not challenged by the respondent also. Thus dispute remains between the parties as in basic consolidation record, name of Vikrama alone was recorded and the order of Assistant Consolidation Officer by which the respondents were given co tenancy right, has been set aside.

8. In such circumstances, at least the respondent should have either pursue their objection before Consolidation Officer or should have filed the application for clarification of the order of Settlement Officer of Consolidation.

9. In the fact of this case, the allegations that Vikrama was an illiterate person could not understand the real fact noted in the memo of appeal has been accepted by the Deputy Director of Consolidation by order dated 19.12.1979 and that order was not challenged by any party. After remand, this issue cannot be raised.

10. By the order dated 13.7.1982, the matter has been remanded to the Consolidation Officer for trial of the objection of the respondents on merit. Therefore, the respondents have opportunity to contest their case on merit before the Consolidation Officer. In such circumstances, the order dated 9.11.2000 being without jurisdiction as the Deputy Director of Consolidation had no power of review as held by Full Bench of this Court in Smt. Shivraji (Decd.) through L.Rs. and Others Vs. Dy. Director of Consolidation and Others, (1997) AWC 454 Supp : (1997) RD 562 . In view of aforesaid discussion, the writ petition succeeds and is allowed. The order of Deputy Director of Consolidation dated 9.11.2000 is set aside. The Consolidation officer shall proceed with the trial of the case in pursuance of the earlier order dated 13.7.1982 and try to conclude it within a period of six months. No unnecessary adjournment shall be granted to any of the parties. Both the parties 1 agree to cooperate with the trial.