
(2017) 01 AHC CK 0268

In the Allahabad High Court

Case No : Writ B No. 39597 of 2016 Connected with Writ - B No. - 39599 of 2016

Shamimunnisha

APPELLANT

Vs

Addl. Distt. Magistrate(Finance And Revenue)/D.D.C.

RESPONDENT

Date of Decision : 23-01-2017

Acts Referred:

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

Citation : (2017) 134 RD 741

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Awadhesh Kumar Singh and Sachichida Nand Singh, Advocates, for the Petitioner; C.S.C., Govind Krishna and Shiv Naresh Singh, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

Anjani Kumar Mishra, J.— Heard learned counsel for the petitioner and Shri Govind Krishna, learned counsel for the respondents No. 3 and 4.

2. The writ petition arises out of an objection under Section 9- A (2) of the UP Consolidation of Holdings Act, filed by one Taibunnisha and her son Mohinuddin, claiming co-tenancy to the extent of one-half in the disputed land, which, in the basic year, was recorded in the name of respondents No. 3 and 4.

3. It is submitted that upon the objection been referred to the Consolidation Officer, for decision, the court concerned, on 18.1.1972, framed issues and fixed 6.12.1972 for the evidence of the objector.

4. On the date fixed for evidence, respondent Nos. 3 and 4 appeared and admitted the claim of the objector and on that very same date, the Consolidation Officer allowed the objection of Mohinuddin. However, no order was passed in favour of his mother, Taibunnisa.

5. On the basis of this order, a chak was allegedly carved out in favour of the

Mohinuddin and it was also duly confirmed.

6. Subsequently, two appeals were filed against the order passed by the Consolidation Officer, one each by respondents No. 3 and 4, respectively.

7. It is alleged that the appeals proceeded ex parte against Mohinuddin, the opposite party therein. The appeals were allowed vide order dated 25.7.1973, the order passed in favour of the Mohinuddin was set aside and the matter was remanded back to the Consolidation Officer to decide the same after permitting the parties to adduce their evidence.

8. It is alleged that this order was passed without any notice or information by Mohinuddin.

9. The Consolidation Officer thereafter, vide his order dated 18.1.1974, rejected the objection of Mohinuddin in view of the findings returned in the appellate order of remand.

10. It appears that despite the objection having been dismissed and since a chak had been carved out in favour of the Mohinuddin, he executed its sale-deed on 10.6.1985 in favour of the petitioner.

11. When the petitioner tried to take possession over the property in pursuance of the sale-deed, it was resisted by respondents.

12. Mohinuddin, therefor, filed a restoration application against the order dated 18.1.1974, on the ground that he had no knowledge of either the appeal or the subsequent proceedings before the Consolidation Officer in pursuance of the order of remand passed by the appellate court.

13. The Consolidation Officer vide order dated 24.8.1992, allowed the restoration application filed by Mohinuddin. The respondents thereafter preferred an Appeal No. 27 of 1996 before Settlement Officer Consolidation.

14. The Settlement Officer Consolidation, by his order dated 25.11.2005, allowed the appeal, set aside the order passed by the Consolidation Officer and remanded the matter back for reconsideration of the restoration application filed by Mohinuddin.

15. This order appears to have been passed on the reasoning that the Consolidation Officer had allowed the restoration application without hearing the appellants, the respondents in this writ petition.

16. The consequential revision, filed by the petitioner challenging the appellate order of remand, has been dismissed and hence this writ petition.

17. I have considered the submissions made by learned counsel for the parties and have perused the record.

18. It is contended that no specific order was passed, condoning the delay of 11 years for filing the restoration application and, therefore, no order could not have

been passed by the Consolidation Officer on the merits of the restoration application.

19. The parties are at issue as to whether the delay in filing the restoration application was rightly condoned.

20. However, since the order passed by the Consolidation Officer, has been set aside in appeal and the matter has been remitted back for a fresh consideration of the restoration application and this order has been confirmed at the revisional stage, there appears no justification of any interference as the parties still have every opportunity of raising all pleas before the Consolidation Officer.

21. It is however provided that after the evidence is adduced, the Consolidation Officer shall consider the question of condonation of delay in filing the restoration application and in case he condones the delay, he shall pass orders on the merits of the case directing that the delay condonation application be considered and decided first and only thereafter the merits be considered. This will in all likelihood lead to another round of litigation only on the question of delay alone, which must necessarily be avoided, looking at the age of the case, itself.

22. In view of the order above, passed in Writ Petition (B) No. 39597 of 2016, no order is required to be passed in Writ Petition (B) No. 39599 of 2016, which is directed against the order passed in proceedings under Section 109 A of the Act, except that the orders impugned herein shall necessarily abide by the order to be passed by the Consolidation Officer on the restoration in pursuance of the above order in Writ Petition (B) No. 39597 of 2016.

23. Subject to the above, this writ petition is disposed of.