
(2010) 09 AHC CK 0393
In the Allahabad High Court
Case No : Writ-B No. 53423 of 2010

Shanti Devi

APPELLANT

Vs

Dy. Director of Consolidation, Chitrakoot and others

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 48, 9A(2)

Citation : (2010) 09 AHC CK 0393

Hon'ble Judges : Vikram Nath, J

Final Decision : Disposed Of

Judgement

Vikram Nath, J.—Respondent Nos. 4 to 8 filed objections under section 9A(2) of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act)" claiming that their names may be recorded over the plots in dispute on the basis of sale deed said to have been executed by Onkar Nath (husband of the petitioner). It was registered as Case No. 316 in the Court of Consolidation Officer, Tahsil Mau, District Chitrakoot. Objections were filed by Smt. Shanti Devi, the petitioner alleging that the sale deed had not been executed by her husband Onkar Nath and that the alleged sale deed was a forged document. The Consolidation Officer framed 9 issues. One of the issues was as to whether the sale deed alleged to have been executed was a forged document, whether Onkar Nath who was an illiterate person, executed the sale deed with the thumb impressions and not by putting his signatures. Evidence was led by the parties. The Consolidation Officer by the judgment and order dated 3.12.2004 held that the objectors (respondent Nos. 4 to 8) had failed to establish valid execution of the sale deed in their favour and accordingly rejected their objections and directed that the entries as recorded in P.A. 11 in the name of Petitioner, Shanti Devi be maintained. It appears that thereafter the respondents 4 to 8 filed an application dated 18.12.2004 for recall of the order dated 3.12.2004 passed by the Consolidation Officer. The said application was allowed by the Consolidation Officer by order dated 23.12.2004. The petitioner filed an appeal on the ground that the order passed by the Consolidation Officer was without jurisdiction as he

had no power to review his earlier order passed on merits; the order was ex parte against the petitioner as no opportunity of evidence and hearing was given to the petitioner on the recall application. On the above grounds the Settlement Officer, Consolidation by order dated 23.4.2005 decided the appeal and directed that after expunging the names of the petitioner the name of the objector Sanjay Kumar be recorded over the plot in dispute. The revision filed by the petitioner has been allowed by the Deputy Director of Consolidation by order dated 1.5.2009 and the matter has been remanded to the Settlement Officer, Consolidation for a fresh decision of the appeal in the light of the observations contained therein. Against the order of the remand writ petition was filed by respondent Nos. 4 to 8 being Writ Petition No. 48444 of 2009. The said writ petition was disposed of by order dated 16.5.2009 with the direction to the Settlement Officer, Consolidation to decide the appeal uninfluenced by the observation and the findings recorded by the Deputy Director of Consolidation in his order. Pursuant to the said order, the Settlement Officer, Consolidation by order dated 5.12.2009 dismissed the appeal of the petitioner and thereafter revision filed by the petitioner was also dismissed by the Deputy Director of Consolidation by the impugned order dated 19.8.2010. It is against these orders that the present writ petition has been filed.

2. I have heard Sri Manish Kumar Nigarn, learned Counsel for the petitioner and Sri H.N. Singh, Advocate who has put in appearance on behalf of the respondent Nos. 4 to 8. As all the parties are represented, with the consent of the learned Counsel for the parties this petition is being finally heard.

3. Sri Manish Kumar Nigam, learned Counsel for the petitioner has primarily raised two grounds. Firstly, when the Consolidation Officer had decided the objections on merits by the order dated 3.12.2004, there was no justification for reviewing the said order. The argument is that the power of review cannot be derived inherently but may be specifically provided and conferred by the statute. In case any authority constituted under any Act is not provided with the power of review, he cannot exercise such power. According to him, the only remedy open to the respondents was to file an appeal against the order dated 3.12.2004.

4. Sri Nigam has further submitted that the Consolidation Officer did not afford any opportunity of hearing or of leading any evidence on the recall application, which was decided in less than two weeks and the matter was completely reviewed and the objections of the respondent Nos. 4 to 8 which earlier stood dismissed, were allowed by the subsequent order dated 23.12.2004. Thus, the Settlement Officer, Consolidation and the Deputy Director of Consolidation committed an error of law in not allowing the appeal or the revision and affirming the order of the Consolidation Officer dated 23.12.2004 which was without jurisdiction.

5. He has further submitted that the Settlement Officer, Consolidation and the Deputy Director of Consolidation have nonsuited the claim of the petitioner only on the ground that the petitioner has not instituted any suit before the Civil

Court for cancellation of the saledeed. According to Sri Nigam there was no need to institute a suit for cancellation of the saledeed inasmuch as once the petitioner had alleged that the saledeed was void and was a forged document, the Consolidation Courts were competent to ignore the saledeed. According to him, the appellate and the revisional authorities committed an error of law in nonsuiting the claim of the petitioner on the said ground.

6. On the other hand Sri H.N. Singh, learned Counsel for the respondent Nos. 4 to 8 has submitted that the saledeed as alleged by the petitioner, was not void but was a voidable document and therefore, its cancellation was essential and the Consolidation Courts admittedly could not have entertained the claim with regard to a voidable document.

7. Sri H.N. Singh has further tried to justify the order of the Consolidation Officer on the ground that the Consolidation Officer was right in passing the order on the basis of the saledeed and even if it had passed an order in violation of the principles of natural justice, but nevertheless as justice between the parties had been done and the order was otherwise lawful as such this Court may not entertain this petition even if some illegality is found.

8. Having considered the submissions advanced on behalf of the learned Counsels for the parties, without going into the question as to whether the document of transfer is void or voidable document, as the said issue is left to be adjudicated by the Courts below, I am convinced that the order passed by the Consolidation Officer reviewing the earlier order passed on merit, was without jurisdiction for the following reasons. Firstly as he had no power of review and secondly even if the application was on the ground that the opportunity had not been given to the respondents, a final order passed on merit could not have been recalled or reviewed without due notice or opportunity of evidence and hearing to the other side, which was lacking in the present case. The appellate and the revisional authorities have not examined this aspect of the matter but have gone on the other issues which deserve adjudication by the Consolidation Officer, based upon the evidence which may be led by the parties.

9. Accordingly writ petition succeeds and is allowed. All the orders passed by the Consolidation Courts are hereby quashed and the matter is remitted back to the Consolidation Officer to decide the objections afresh on merits after affording due opportunity of hearing to the parties concerned and in the light of the observations made above. The Consolidation Officer shall make an endeavour to decide the objections within a period of six months from the date of production of certified copy of this order.