
(2016) 10 AHC CK 0156
In the Allahabad High Court
Case No : Writ-B No. 24235 of 2016

Shiv Ratan

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, Section 48, Section 9

Citation : (2017) 134 RD 280

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

Bench : Single Bench

Advocate : C.S.C, Gulab Chandra and Vinod Kumar Srivastava, Advocates, for the Respondents; M.N. Singh and Mahesh Narain Singh, Advocates, for the Petitioners

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J. - Heard Sri M.N. Singh, for the petitioner and Sri Gulab Chandra along with Sri Vinod Kumar Srivastava, for respondents-3 to 6.

2. The writ petition has been filed against the orders of Consolidation Officer dated 07.12.2015 and Deputy Director of Consolidation dated 11.02.2016, passed in title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

3. The dispute related to the land of basic consolidation year khata 54 [consisting plots 88/2 (area 0.63 acre), 248 (area 0.49 acre), 250 (area 0.61 acre) and 254 (area 0.71 acre)] of village Ramduttipur, pargana Shivpur, district Varanasi, which was recorded in the name of M/S Ford and Mac Donald Company Pvt. Ltd. (petitioner-3). Lalta, Aliyar and Sumiran (now represented by respondents-3 to 6) filed a time barred objection dated 29.03.1997 under Section 9 of the Act, for recording their names over plot 88/2 (area 0.79 acre). Mithai and others filed another objection for recording their names over plots 248 (area 0.49 acre), 250 (area 0.61 acre) and 254 (area 0.71 acre) aforementioned. Both the objections

were consolidated and decided together. Consolidation Officer, by ex parte order dated 15.05.2008, allowed both the objections.

4. M/S Ford and Mac Donald Company Pvt. Ltd. (petitioner-3) filed an application dated 20.10.2012, for setting aside ex parte order dated 15.05.2008, along with delay condonation application. Consolidation Officer, by order dated 01.12.2012, allowed recall application, set aside order dated 15.05.2008 and restored the cases to original number. Director of respondent-3 executed two sale deeds dated 23.03.2013 in favour of petitioners-1 and 2 of some portion of plot 88. Petitioners-1 and 2 filed an application dated 15.02.2014 for their impleadment in the objections, which was directed to be put up along with record.

5. Badri Prasad and Smt. Ganga Jali (respondents-3 and 4) filed an application dated 26.04.2014 for recall of order dated 01.12.2012, along with delay condonation application. Consolidation Officer, by order dated 07.12.2015, condoned delay, allowed recall application, recalled order dated 01.12.2012 and restored order dated 15.05.2008. The petitioners filed a revision (registered as Revision No. 1428) against aforesaid order. It is alleged that District Deputy Director of Consolidation heard arguments on stay application, but by order dated 11.02.2016, he rejected stay application and dismissed the revision. Hence this writ petition has been filed.

6. The counsel for the petitioner submitted that M/S Ford and Mac Donald Company Pvt. Ltd. (petitioner-3) purchased plot 88 (area 0.63 acre) through registered sale deed dated 24.09.1955 executed by Smt. Budhiya widow of Aliyar as guardian of her minor sons Lalta and Salta and Smt. Bechani widow of Ballar as guardian of her minor son Kamta, plots 248 (area 0.49 acre) and 250 (area 0.61 acre) through registered sale deed dated 23.09.1955, executed by Roop Narain, Dev Narain and Jaggan sons of Jogi and plot 254 (area 0.71 acre) through registered sale deed dated 24.09.1955 executed by Smt. Jagni widow of Jogi. Since then petitioner-3 was in possession of the disputed land. The name of petitioner-3 was mutated in revenue record on the basis of aforesaid sale deeds in 1956. In basic consolidation year, name of petitioner-3 was recorded over the land in dispute. Consolidation Officer, by an ex parte order dated 15.05.2008 allowed the objections of Lalta and Sumiran, for plot 88 and Mithai and others, for plots 248, 250 and 254. Petitioner-3 filed an application for recall of the aforesaid order. Consolidation Officer, by his order dated 01.12.2012, found that order dated 15.05.2008 was an ex parte order, therefore he recalled the order. Badri and Smt. Ganga Jali (heirs of Sumiran) alone filed an application for recall of the aforesaid order. At the most Consolidation Officer could have allowed the application and recalled the order dated 01.12.2012 but he was not justified in reinstating ex parte order dated 15.05.2008. The claim of Badri and Smt. Ganga Jali was limited to ? share in plot 88. The order dated 15.05.1988 was a composite order for plots 88, 248, 250 and 254, and other persons have not challenged order dated 01.12.2012. Consolidation Officer and Deputy Director of Consolidation have illegally failed to notice that only sale deed dated 24.05.1955,

which was in respect of plot 88, was executed by guardians of the minor sons, while remaining two sale deeds in respect of plots 248, 250 and 254 were not executed by guardian but these sale deeds were also held as void. Smt. Budhiya and Smt. Bechani were karta of their family and natural guardians of their minor children. Sale deed executed by them were not void. In any case, possession over bhumidhari land was transferred to petitioner-3 on 24.09.1955. The minors never filed any suit for recovery of possession within time as such petitioner-3 had perfected his title under Section 210 of U.P. No. 1 of 1951. All these issues between the parties have to be decided after giving opportunity of hearing and evidence to the parties, Consolidation Officer and Deputy Director of Consolidation have illegally failed to notice that order dated 15.05.2008 was ex parte order and they have illegally affirmed that order. The orders of respondents-1 and 2 are illegal and liable to be set aside.

7. In reply to the aforesaid arguments, the counsel for the respondents submitted that sale deed dated 24.09.1955, executed by Smt. Budhiya widow of Aliyar as guardian of her minor sons Lalta and Salta and Smt. Bechani widow of Ballar as guardian of her minor son Kamta of plot 88 in favour of petitioner-3, without obtaining any permission from District Judge, was void. The sale deed dated 24.09.1955 was obtained by committing fraud, during minority of Kamta, Lalta and Salta. They through out remained in possession over the disputed land. On coming to know about fraudulent entry of the order dated 12.04.1956, deleting their names from disputed land, they filed objection during consolidation. In spite of service of notice, petitioner-3 did not contest the case as such the objection was rightly allowed by order dated 15.05.2008. Petitioner-3 had no right to execute sale deeds dated 23.03.2013 in favour of petitioners-1 and 2 and these sale deeds are void. The orders of Consolidation Officer and Deputy Director of Consolidation respect do not suffer from any illegality.

8. I have considered the arguments of the counsel for the parties and examined the record. A perusal of the order dated 15.05.2008 shows that it was an ex parte order as well as it was a composite order passed in two objections relating to plots 88, 248, 250 and 254. Consolidation Officer, in his order dated 01.12.2012, has recorded a categorical findings that after remand from the court of Deputy Director of Consolidation, by order dated 01.08.2000, a transfer application was filed, therefore, no proceeding was held before him from July 2002 to 06.05.2008. Thereafter, without issuing any notice to petitioner-3, the objections were allowed on 15.05.2008. Thus there was absolutely no trail between the parties. Basic consolidation year entry, in favour of petitioner-3, was expunged without giving proper opportunity of hearing. Consolidation Officer in his subsequent order dated 07.12.2015 and Deputy Director of Consolidation in his order dated 11.02.2016 has not adverted to the aforesaid findings and mechanically reinstated ex parte order dated 15.05.2008, although order dated 01.12.2012 was not challenged by several persons particularly in respect of plots 248, 250 and 254.

9. Further, Consolidation Officer and Deputy Director of Consolidation have illegally failed to notice that only sale deed dated 24.05.1955, which was in respect of plot 88, was executed by guardian of the minor sons, while remaining two sale deeds in respect of plots 248, 250 and 254 were not executed by guardian but these sale deeds were also held as void. Badri and Smt. Ganga Jali (heirs of Sumiran) alone filed an application for recall of order dated 01.12.2012. At the most Consolidation Officer could have allowed the application and recalled the order dated 01.12.2012 but he was not justified in reinstating ex parte order dated 15.05.2008, although the claim of Badri and Smt. Ganga Jali was limited to ? share in plot 88, while order dated 15.05.1988 was a composite order for plots 88, 248, 250 and 254, and other persons have not challenged the order dated 01.12.2012.

10. In the facts of the case, no useful purpose will be served in directing Consolidation Officer to hear recall application dated 28.04.2014 of Badri and Smt. Ganga Jali afresh as order dated 15.05.2008 was also an ex parte order.

11. In view of the aforesaid discussions, the writ petition succeeds and is allowed. Orders of Consolidation Officer dated 07.12.2015 and Deputy Director of Consolidation dated 11.02.2016 are set aside. Consolidation Officer is directed to try the case on merit, in pursuance of his order dated 01.12.2012 and decide all the issues between the parties after giving opportunity of evidence and hearing to all interested persons. Since the matter is lingering from a long time, he shall try to conclude trial within a period of one year from the date of producing certified copy of the order before him.