
(2015) 08 AHC CK 0181
In the Allahabad High Court
Case No : Writ B. No. 43505 of 2015

Shivchan

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 7, 9, 9-A, 9-B

Citation : (2015) 129 RD 19

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

Bench : Single Bench

Advocate : Dharendra Singh and J.P. Singh, for the Appellant; R.C. Upadhyay and Sunil Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri J.P. Singh, for the petitioner and Sri Sunil Kumar Singh, for respondents-4 and 6. The writ petition has been filed for quashing the orders of Consolidation Officer dated 23.2.2007, Settlement Officer Consolidation dated 6.12.2007 and Deputy Director of Consolidation, dated 19.6.2015, passed in proceedings under section 9-A, U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute relates to subdivision of plot 222 of village Manajit, pargana Chiraiyakot, district Mau. In last settlement record, total area of 2.832 hectare was recorded of plot 222. In khasra 1378-F, plot 222/1 (area 1.672 hectare) was recorded as user, 222/2 (area 0.560 hectare) was recorded in the name of Smt. Taibunnisa and plot 222/3 (area 0.560 hectare) was recorded as abadi. Although these sub-divisions were recorded in khasra but in the map, there was no sub-division. In 1889-F khasra, an area 0.056 hectare was recorded as abadi, an area of 0.560 hectare was recorded in the name of Smt. Taibunnisa, an area of 0.100 hectare was recorded in the name of Khakhanu, an area of 0.300 hectare was recorded in the name of Shivnath, an area of 0.300 hectare was recorded in the name of Shivchan, an area of 0.300 hectare was recorded in the name of

Durjan, an area of 0.235 hectare was recorded as abadi and an area of 0.239 hectare was recorded as user of plot 222. In 1391-F khasra, plot 222/1 (area 0.560 hectare) was recorded in the name of Smt. Taibunnisa, 222/1 (area 0.056 hectare) was recorded in the name of Khakhanu, plot 222/2 (area of 0.300 hectare) was recorded in the name of Durjan, plot 222/3 (area 0.090 hectare) was recorded in the names of Ramu and others, plot 222/4 (area 0.300 hectare) was recorded in the name of Shivnath, plot 222/5 (area 0.300 hectare) was recorded in the name of Shivchan, plot 222/6 (area 0.600 hectare) was recorded as abadi and an area of 0.616 hectare was recorded as user. In 1398-F khasra, an area of 0.227 hectare was recorded in the name of Smt. Taibunnisa, an area of 0.040 hectare was recorded in the name of Khakhanu, an area of 0.121 hectare was recorded in the name of Durjan, an area of 0.237 hectare was recorded as user, an area of 0.121 hectare was recorded in the name of Shivnath, an area of 0.121 hectare was recorded in the name of Shivchan, an area of 0.243 hectare was recorded as abadi and an area of 0.080 hectare was recorded in the name of Kishun of plot 222.

3. During consolidation, when survey and field to field portal was conducted, according to the provisions of section 7 of the Act, plot 222/1 area 0.060 hectare was recorded in the names of Ramu and others, 222/2 (area 0.300 hectare) was recorded as abadi, in which houses of various persons were found, 222/3 (area 0.035 hectare) was recorded in the name of Smt. Duji, 222/4 (area 0.130 hectare) was recorded parati, 222/5 (area 0.020 hectare) was found as surrounded by boundary wall constructed by Smt. Leelawati, 222/6 (area 0.025 hectare) was recorded in the name of Shivchan, 222/7 (area of 0.025 hectare) was recorded in the name of Durjan, 222/8 (area 0.045 hectare) was recorded in the name of Shivnath and 222/9 (area 0.365 hectare) was recorded as abadi. Accordingly map and annual record were revised.

4. The village was notified under section 9 of the Act, in the year 1998. The Consolidation Officer, by order dated 31.7.2000, passed in Case No. 3135/31, on the basis of survey and revised map directed for recording total area of plot 222 as 1.005 hectare. The petitioner filed an objection (registered as Case No. 806) under section 9-B of the Act, for determining valuation of plot 222 (area 0.81 hectare), which was dismissed by order of Consolidation Officer dated 20.7.2000. The petitioner filed another objection (registered as Case No. 1180) under section 9-B of the Act, for determining valuation plot 222. The Consolidation Officer determined valuation of 0.060 hectare of plot 222, by order dated 15.2.2001 and allotted to the petitioner.

5. Initially none of the tenure holder of the village filed any objection against the various sub-division of plot 222 and its area as recorded on the basis of survey during consolidation. The petitioner filed a time barred objection (registered as Case No. 320) under section 9-A of the Act, for recording an area of 0.121 hectare of plot 222 in his name and locating it in west of plot 222/6 and taking area from plot 222/4 and 222/5. It has been stated by the petitioner that he

was bhumidhar with transferable right of an area of 0.121 hectare of plot 222 and cultivating the land on the spot in west of plot 222/6. During consolidation, plot 222/6 (area 0.025 hectare) and 222/9 (area 0.089 hectare) were recorded in his name. The objection was contested by Hazi Ali Akbar, who has stated that possession of the petitioner is on plots 222/6 and 222/9. Imtiyaz has constructed his boundary wall on plot 222/5, purchasing the land from Taibunnisa. The Consolidation Officer made spot inspection and found that house of the petitioner was constructed in plots 222/6 and 222/9 as such these plots were recorded in his name. During spot inspection, possession of the petitioner was also confirmed by other villagers and family members of the petitioner. On these findings, he dismissed the objection of the petitioner.

6. The petitioner filed an appeal (registered as Appeal No. 2019/2229) from aforesaid order, which was dismissed by Settlement Officer Consolidation by order dated 6.12.2007. The petitioner filed a revision (registered as Revision No. 156/232/2014-15) against the aforesaid order. Deputy Director of Consolidation called for a fresh report from Consolidation Officer, as such a fresh inspection was made and a report has been submitted, on 15.4.2008, in which entry in CH Form-2-A made on the basis of survey has again been confirmed. Thereafter, the revision was heard by Deputy Director of Consolidation, who by order dated 19.6.2015, dismissed the revision. Hence this writ petition has been filed.

7. The Counsel for the petitioners submitted that the petitioner was found in possession over an area of 0.300 hectare and his possession over it was recorded in khasra 1389-F. The area of 0.560 hectare recorded in the name of Taibunnisa was in fact abadi, in which houses of various persons were constructed. From 1389-F to 1392-F, his possession has been recorded over an area of 0.300 hectare of plot 222 and thereafter from 1393-F to 1398-F, his possession was recorded over an area of 0.121 hectare. The petitioner filed a civil suit, in which survey was conducted by Court Amin, in which, western side of house of the petitioner of present plot 222/6, an agricultural area of 0.121 hectare of the petitioner was found. In spot inspection report, house of the petitioner was found on plot 222/6. The petitioner was claiming his agricultural land of an area of 0.121 hectare in west of his house, on plots 222/4 and 222/5, which was proved from Amin's report. The revision of the petitioner was dismissed without advertent to the ground raised by the petitioner and the evidence on record. The orders of Courts below are illegal and liable to be set aside.

8. I have considered the arguments of the Counsel for the parties and examined the records. In the writ petition, the petitioner has not filed Civil Court Amin's report as such no findings can be recorded on its basis. The petitioner relied upon khasra entry of various years. The name of the petitioner was recorded since 1389-F. Initially his possession was recorded over an area of 0.300 hectare in 1389-F, 1390-F, 1391-F and 1392-F of plot 222. From 1393-F to 1398-F, his possession was recorded over an area of 0.121 hectare of plot 222. The petitioner has filed a copy of khatauni 1390 F, in which his name was recorded

over plot 222-m (area 0.300 hectare) and period of commencement of his right was shown since 1383-F but in khasra 1383 to 1388-F, his possession was not recorded. The petitioner has not filed any document nor patta to prove source of title or to prove that what area of plot 222 was allotted to him.

9. Under U.P. Land Revenue Act, 1901, there is no presumption regarding correctness of khasra entry. As noted above khasra entries of various years filed along with writ petition were not consistent and not reliable. Although in plot 222, the petitioner has constructions at two places but in none of khasra, it has been mentioned. The petitioner took the plea that the area of 0.560 hectare recorded in the name of Smt. Taibunnisa was in fact abadi but in khasra 1378-F, plot 222/2 (area 0.560 hectare) was recorded in the name of Smt. Taibunnisa and plot 222/3 (area 0.560 hectare) was recorded as abadi. It has been found by the consolidation authorities although various sub-divisions were made in khasra but there was no sub-division in the map. Paragraphs-A-56 and A-57 of U.P. Land Records Manual cast a duty upon Lekhpal to correct the map and denote sub-division of any plot, if subdivision has been found during inspection tours. Without sub-division in the map, sub-division in khasra has been noted as such authenticity of the khasra was not proved. The petitioner cannot prove that revised consolidation records was incorrect. House of the petitioner was found in plots 222/6 and 222/9, which has not been denied. Constructions and possession of other persons were also found in plot 222 on the spot during survey in field to field partial. The petitioner has been given valuation of an area of 0.060 hectare of plot 222 by order dated 15.2.2001. There is no basis for the petitioner to claim further an area of 0.121 hectare of plot 222. Only on the basis of khasra entry, no title can be given to the petitioner. In view of the aforesaid discussions, the writ petition has no merit and is dismissed.