

(2014) 09 AHC CK 0153
In the Allahabad High Court
Case No : Writ-B No. 1198 of 2004

Siya Sharan Yadav

APPELLANT

Vs

D.D.C.

RESPONDENT

Date of Decision : 22-09-2014

Acts Referred:

Registration of Births and Deaths Act, 1969 — Section 31
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 45A(2), 45A(2),
5(1)(c)(ii), 9
Uttar Pradesh Land Revenue Act, 1901 — Section 34

Citation : (2014) 125 RD 463

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Sankatha Rai, Vinod Kumar Rai, Pradeep Kumar Rai and Vijay Kumar Rai, Advocate for the Appellant; Anuj Kumar, M.D. Singh Shekhar, P.N. Kushwaha, R.D. Tiwari, S.K. Srivastava and Suresh Kushwaha, Advocate for the Respondent

Judgement

@DELETEUPPERDATA

Anjani Kumar Mishra, J.—Heard Shri Pradeep Kumar Rai, learned Counsel for the petitioner and Shri M.D. Shekhar, learned Senior Advocate, who has appeared for respondent No. 5, the sole contesting respondent in this writ petition. This writ petition arises out of an objection under section 12 of the U.P. Consolidation of Holdings Act filed by the petitioners claiming on the basis of sale deeds executed in their favour by Ram Singari. The sale deeds were executed on 17.6.1978 and 2.5.1980. Several other mutation applications were also filed. However those mutation applications are not the subject-matter of this writ petition and, therefore, their details being irrelevant are not adverted to.

2. In the basic year record chak No. 51 was recorded in the name of Ram Singari.

3. It is the case of the petitioner that Ram Singari obtained permission from the Assistant Settlement Officer, Consolidation on 30.5.1978 and sold her first chak

consisting of plot No. 805 in favour of the petitioners 5 to 9 on 17.6.1978. A second permission is alleged to have been obtained on 31.3.1980 and in pursuance thereof a sale deed was executed regarding plot No. 739 of chak No. 51 on 9.8.1980 in favour of the petitioners 1 to 4 and 10 to 13.

4. The other objection under section 9 which is relevant for the purposes of this writ petition is the objection filed by the contesting respondent, claiming on the basis of a will dated 7.6.1977, said to have been executed by Ram Singari in his favour.

5. The objection filed by the petitioners" was rejected by the Consolidation Officer (the CO) which order has been affirmed by the Deputy Director of Consolidation (the DDC). Hence this writ petition.

6. Learned Counsel for the petitioner has submitted that Ram Singari was eighty years old, suffering from various illness and was therefore, admitted in the hospital on 24.9.1980. She was discharged therefrom on 3.10.1980 and thereafter died on 5.10.1980. Relevant documentary proof of these dates is on record including a death certificate issued by the Pradhan in this regard. The CO has wrongly rejected the petitioners" objection relying upon the Kutumb Register entry of 25.9.1995 which records the date of death of Ram Singari as 30.4.1978. This entry was wrongly and illegally held be final by the CO.

7. Shri P.K. Rai has submitted that this entry recording the date of death as 30.4.1978 was made on the basis of an order passed by the SDO, who was not the Competent Authority and, therefore, this entry is without jurisdiction having been made without following the procedure prescribed for it. He has also relied upon section 31 of the Registration of Birth & Death Act, 1969 in support of his contention.

8. The second contention raised is that the various documentary evidence filed by the petitioner in support of his contention that Ram Singari died on 5.10.1980, has not been considered by the subordinate authorities.

9. It is lastly contended that Ram Singari had appeared in proceedings under section 34 of the U.P. Land Revenue Act and her statement has been recorded in December, 1978. Ram Singari was therefore, alive on the date the sale deeds were executed in favour of the petitioner and in holding to the contrary, the Courts below have committed manifest illegality.

10. It is, therefore, clear that the dispute involved in the writ petition is as regards the date of death of Ram Singari and it assails the findings in the impugned orders that Ram Singari died on 30.4.1978.

11. Learned Counsel for the petitioners has submitted lengthy and detailed arguments referring to the Registration of Births & Death Act, 1969, as also the provisions of the U.P. Panchayat Raj Act, (Maintenance of Family Registers) Rules, 1970. The submission is that under the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970, it is the Secretary of the Gaon Sabha who is

authorised to make entries in the register and such entries can be corrected by the Assistant Development Officer (the ADO) Panchayat, on an application filed before him. Orders passed on such application by the ADO Panchayat are to be incorporated by the Secretary. Rules 6 and 6A of the Rules, provides for an appeal to the Sub-Divisional Officer (SDO) whose orders are final. The entry relied upon by the CO had been made under the orders of the SDO straight away and was, therefore, without jurisdiction. An application for recall of the order had been filed by the petitioners but the same was dismissed. It is, therefore submitted that since this order was wholly without jurisdiction, therefore, the same could be challenged in collateral proceedings. This entry was challenged in the proceedings before the CO, who wrongly held the same was to be final. As per this entry, Ram Singari died on 30.4.1978.

12. Learned Counsel for the petitioner further contended that there was material on record to show that Ram Singari died on 5.10.1980 and such entry had been made by the CMO, Ballia in pursuance of the provision of the Registration of Birth & Death Act, 1969.

13. In rebuttal Shri M.D. Singh Shekhar, contended that the Registration of Births and Death Act, 1969 and the U.P. Panchayat Raj Act, (Maintenance of Family Registers) Rules, 1970, operate in entirely different fields. Admittedly Ram Singari was a resident of Ghazipur while her date of death is sought to be shown as 5.10.1980 on the basis of certificate issued from District Ballia. He submits that this was not permissible because the death of a person could be recorded in the district of her residence and not in another district.

14. It is the further contention of the learned Counsel for the respondent that on his application, an enquiry was ordered by SDO as regards the date of death of Ram Singari. This enquiry was conducted by the ADO who thereafter forwarded the report to the SDO. Since under the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970, the ADO was the Competent Authority to record the date of death and he was also the enquiry officer, who submitted the report which was forwarded to the SDO who, whereupon, passed the order directing that the date of death be recorded as 30.4.1978. Under the circumstances, there is no illegality in such entry and the same cannot be said to be without jurisdiction.

15. He submitted that the recall application filed by the petitioners before the SDO for recalling this order, was rejected. He has further pointed out that a revision was also filed by the petitioners before the Commissioner consequent to the dismissal of their restoration application by the SDO which was also dismissed and this fact has been concealed by the petitioner in the writ petition. Thereafter, no further proceedings was drawn and therefore, the findings of the Courts below that the order of the SDO and the date of death recorded in pursuance thereof become final, is justified.

16. Apart from the above, the second submission made by Shri M.D. Singh

Shekhar is with regard to the question of grant of permission by the Settlement Officer Consolidation for execution of the sale deeds in favour of the petitioner. He has referred to paragraphs 24, 25 and 26 of the counter affidavit wherein it has been stated that the permission dated 20.8.1978 is alleged to have been obtained through Case No. 1935, Ram Singari v. State and the permission dated 30.3.1980 was obtained through the Case No. 687 Ram Singari v. State. An enquiry was made in this regard by the father of the contesting respondent from the office of the Assistant Settlement Officer, Consolidation, Ghazipur whereupon a report was furnished, that no such permission had been granted on the aforesaid two dates namely 30.5.1978 and 31.3.1980 through case Nos. 1935 and 687 respectively nor any files of such Case Nos. 1935 or 687 are available.

17. This information was received in the form of questionnaires, copies whereof are filed as Annexures CA-11 and CA-12 respectively, to the counter affidavit. It is, therefore, his contention that the alleged permissions annexed to writ petition are forged and fictitious. The documents which have been annexed as Annexures (CA-11 and CA-12) were also on the record of the proceedings before the CO and they find a mention in the judgments.

18. The reply to the assertions made in paragraphs 25 and 26 of the counter affidavit are to be found in paragraph 22 of the rejoinder affidavit which is quoted below:

"22. That, the contents of paragraphs Nos. 23, 24, 25, 26 and 27 of the counter affidavit are not admitted. It is submitted that Smt. Ram Singari had rightly executed the two sale-deeds in favour of the petitioners after obtaining due permission for the same. The sale-deeds are most genuine and proved by evidence on record. The respondent has wrongly and illegally stated that the aforesaid sale-deeds were farji and fictitious. The respondent has filed wholly inadequate, collusive, incorrect and irrelevant inquiry report along with the counter affidavit. It is totally false to say that permission was not obtained by Smt. Ram Singari and the sale-deeds were not executed by her. The entire judgments of the respondents Nos. 1 and 2 are perverse and against the material evidence on record and are liable to be quashed."

19. It is clear from the averment made in paragraph 22 of the rejoinder affidavit that there is no specific or categorical denial of the assertions in the counter affidavit. There is only a general and vague denial of the documents referred to in paras 25 and 26 of the counter affidavit. The averment is that these documents are totally incorrect and irrelevant. Nothing further has been mentioned to the rejoinder affidavit as to how these documents are stated to be either inadequate collusive, incorrect or irrelevant.

20. At the relevant time, when the alleged sale deeds are said to have been executed in favour of the petitioner, and which sale deeds are the sole basis of their claim, it was incumbent for a tenure holder to obtain the permission of the Settlement Officer, Consolidation prior to executing any sale deed of agricultural

land situated within the consolidation area and such provision was contained in section 5(1)(c)(ii) and this provision was a mandatory provision and no right or title in land would pass to the vendee through a sale deed executed without permission, in view of section 45-A(2) of the Act which reads as follows:

"(2). A transfer made in contravention of the provisions of section 5(1)(c)(ii) shall not be valid or recognized, anything contained in any law for the time being in force to the contrary notwithstanding."

21. Since the petitioners claim on the basis of sale deeds executed in their favour during the currency of consolidation operations, it was mandatory to have obtained permission from the SOC, prior to execution of the sale deeds. The categorical assertion in the counter affidavit, based upon the questionnaires are that, in fact no permission was obtained or granted and further that no cases bearing the case numbers as alleged by the petitioners, were registered. Such assertions have not been adequately controverted in the rejoinder affidavit.

22. In case, the sale deeds which are the basis of the claim of the petitioners are found to have been executed without prior permission of the SOC, the sale deeds will be void and no further issue needs to be decided. In such circumstances, it will be irrelevant to record any finding as regards the date of death of Ram Singari. Even if it is accepted that Ram Singari died in the year 1980, as alleged by the petitioners, this fact will not cure the defect, if any, in the sale deeds in favour of the petitioners, if they are found to have been executed without prior permission of the SOC.

23. Confronted with this situation, learned Counsel for the petitioner has submitted in rejoinder that even though the questionnaires (Annexures CA-11 and CA-12) were filed before the CO, the same were never proved in accordance with law. The burden of proving their genuineness was upon the respondent. The persons who had issued these questionnaires were never produced. Neither the relevant register from the office to the SOC, Ghazipur was produced to prove the questionnaires themselves. The onus of such proof was upon the respondent which burden he has failed to discharge and, therefore, these documents cannot be relied upon and in any case, the host of other documentary and oral evidence adduced by the petitioners had not been averted to by the subordinate consolidation authorities and, therefore, it is a fit case for remanding the matter for a fresh consideration and for orders being passed after appreciating and considering the entire evidence on record. He has lastly submitted that in any case, the lack of permission prior to the execution of the sale deed would not render the sale deeds void and the sale deeds would, at best, be voidable. Since such voidable documents had not been cancelled, the Consolidation Authorities are bound to give effect to the same. In support of his contention, learned Counsel for the petitioner has relied upon two judgments.

24. The first judgment relied upon is Deo Saran Rai Vs. Maha Narain Misra and Another, .

25. In my considered opinion, this authority does not help the petitioners in any way and in fact holds against them. The documents namely, the questionnaires were produced by the contesting respondent in the Court below. These documents state that the cases wherein the permission is alleged to have been obtained for the execution of the sale deed in favour of the petitioners, were never registered and in fact no permission was ever given. It is the petitioners who dispute this statement in the document in question. In view of the authority cited, it was the duty of the petitioners to have adduced evidence to show that the statement made in these questionnaires was incorrect and, therefore, the submissions made by the learned Counsel for the petitioner in this regard cannot be accepted. Moreover, these documents were filed by the respondents to rebut the claim of the petitioners who had filed copies of orders evidencing grant of permission for execution the sale deeds, which is the basis of the claim of the petitioners. Once the questionnaires were filed, it was the duty of the petitioners to prove by cogent evidence that these questionnaires were incorrect and that permission, as alleged, was in fact, granted to Ram Singari by the Settlement Officer Consolidation.

26. The second judgment relied upon by the learned Counsel for the petitioner is Ram Manorath, Ram Khelawan and Raj Kumar Vs. Surya Pal and Others, .

27. In this case the question involved was as to whether permission was required prior to execution of a sale deed of land which was not within the consolidation scheme and it was held that no prior permission was required for selling such land. The instant case deals with property which was admittedly agricultural land and was included in the consolidation scheme and therefore the case cited has no application in the facts and circumstances of the instant case.

28. It, therefore, emerges that no permission of the SOC was obtained prior to the execution of the sale deeds, which are the basis of the petitioners' claim. Categorical assertions made in this regard in the counter affidavit, on the basis of cogent documentary evidence, have not been adequately controverted in the rejoinder affidavit filed by the petitioner. This Court is, therefore, constrained to hold that the sale deeds in favour of the petitioners were executed without prior permission of the SOC. It is, further held that such a sale deed in the absence of mandatory prior permission of the SOC cannot be given effect to nor can pass a valid title in favour of the petitioners in view of section 45A(2) of the Act.

29. In view of such findings, the very basis of the petitioners' claim, vanishes. The petitioners cannot get any benefit of sale deeds which have been executed in their favour without prior permission of the SOC.

30. The writ petition therefore, is liable to be dismissed and the impugned orders are liable to be affirmed. Moreover, there appears no necessity to adjudicate upon or to consider the various submissions made by the learned Counsel regarding the date of death of Ram Singari and the entries in that regard, as this question is rendered redundant by the finding recorded above. Accordingly, the

writ petition is dismissed. There will however be no order as to costs.