
(2013) 12 AHC CK 0144
In the Allahabad High Court
Case No : Writ B No. 65983 of 2013

Smt. Indrawati Devi

APPELLANT

Vs

D.D.C., Gorakhpur and Others

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 102 ALR 808 : (2014) 122 RD 61

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

Bench : Single Bench

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri P.K. Singh, Counsel for the petitioner and Sri A.P. Tewari, Counsel for the respondents. The writ petition has been filed against the order of the Consolidation Officer dated 2.1.2010 and the Deputy Director of Consolidation dated 26.8.2013 by which the application for recall of the order of the Consolidation Officer dated 31.5.1996 has been allowed and the revision filed by the petitioner has been dismissed.

2. A pedigree has been given in the recall application filed by Anichchha Devi at page 51 which shows that Smt. Khusali Devi was the mother of Smt. Jankai Devi, Smt. Anichchha Devi and Smt. Indrawati Devi. On the basis of sale-deed executed by Smt. Khusali Devi, Indrawati, petitioner filed an objection u/s 9 of U.P. Consolidation of Holdings Act, 1953 for mutating her name over the land in dispute. In this objection the Consolidation Officer issued notice fixing 12.6.1996. However, Indrawati Devi moved an application for postpone the date on which 28.5.1996 was fixed and it is alleged that on 28.5.1996 notices have been issued, service of the notice was made by affixation and on the same day a compromise allegedly signed by Anichchha Devi, Janki Devi and the petitioner has been filed before the Consolidation Officer. A copy of the compromise has been filed as Annexure-2 to the writ petition. A perusal of the compromise shows that thumb impression of Janki was identified by the advocate but the signature of the petitioner and thumb impression of Anichchha Devi were not identified. Further, it does not appear that the compromise was verified by the

Consolidation Officer. However, the Consolidation Officer by order dated 31.5.1996 directed for mutation of the name of the petitioner over the land in dispute. The order of the Consolidation Officer has been challenged by Kedar and others in appeal which was dismissed by order dated 18.6.2003. Thereafter Kedar and others filed a revision against the order dated 18.6.2003 as well as the order of the Consolidation Officer dated 31.5.1996. On coming to know about the order of the appeal and filing of the revision by Kedar, Anichchha Devi also filed a revision i.e., Revision No. 1228. Both the revisions were consolidated and decided by the Deputy Director of Consolidation by order dated 26.9.2007. The Deputy Director of Consolidation held that as Anichchha Devi did not file any appeal against the order dated 31.5.1996, her revision was not maintainable and it was not believable that she had no knowledge of the order dated 31.5.1996. On these findings, the revision of Anichchha Devi was dismissed.

3. Thereafter Anichchha Devi filed an application for recall of the order dated 31.9.1996 before the Consolidation Officer on 16.10.2007 alongwith an application for condonation of delay. The recall application was contested by the petitioner. The Consolidation Officer by order dated 2.1.2010 found that notice on the applicant was not served. The compromise as alleged to have been filed on 28.5.1996 but there is nothing on the record to show that these persons appeared before the Consolidation Officer on that day. In the compromise thumb impression of Anichchha Devi as well as Janki Devi were affixed in different inks. The entire proceeding of issue of notice, service by affixation and filing of compromise were alleged to be done on 28.5.1996 itself. In this compromise the land which was transferred to Anichchha Devi through sale-deed has also been given to Indrawati Devi which appears to be highly suspicious. For these reasons it has been held that the compromise dated 25.5.1996 was forged document and the order dated 31.5.1996 was recalled and a date was fixed for trial on merit on the objection filed by the petitioner. The revision filed by the petitioner was dismissed by the order dated 26.8.2013 confirming the findings of the Consolidation Officer.

4. The Counsel for the petitioner submits that Smt. Anichchha Devi had already challenged the order dated 31.5.1996 in revision which was dismissed by order dated 26.9.2007 as such recall application filed by her was not maintainable. He submits that the order dated 26.9.2007 operates as res judicata between the parties. He further submits that on the compromise thumb impression of Anichchha Devi was identified by Jata Shanker Yadav, Advocate and this point has been specifically raised by the petitioner before the Consolidation Officer but the Consolidation Officer has not recorded any finding in this respect. Anichchha Devi could not dare to adduce expert report showing that her thumb impression on the compromise was not her real thumb impression. In such circumstances, the findings recorded by the Consolidation Officer on the recall application are liable to be set aside.

5. I have considered the arguments of the Counsel for the petitioner and

examined the record.

6. A perusal of the compromise, filed as Annexure-2 to the writ petition/shows that thumb impression of Anichchha Devi was not identified by any advocate. The compromise is required to be verified by the Court before passing any order on it but there is nothing on record to show that the Consolidation Officer verified the Compromise. The Consolidation Officer has categorically held that after proponing the date to 28.5.1996 notices were issued on the same day, service was effected by affixation on the same date and the compromise was also alleged to have been executed on the same day. Although the compromise was filed before the Consolidation Officer but their signature and thumb impression have not been taken on the order sheet which shows that they had never appeared before the Consolidation Officer. In such circumstances, the finding of fact recorded by the Consolidation Officer holding the compromise as forged document does not suffer from any illegality. In any case the petitioner has a remedy for contesting her objection before the Consolidation Officer as such no interference is required by this Court. The writ petition has no merit and it is dismissed.