
(2004) 09 AHC CK 0018
In the Allahabad High Court
Case No : C.M.W.P. No. 1711 of 1976

Smt. Manraji

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (2005) 1 AWC 704 : (2004) 97 RD 594

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : R.K. Singh and M.K. Srivastava, for the Appellant; S.L. Yadav, S.C., for the Respondent

Final Decision : Dismissed

Judgement

Krishna Murari, J.—By means of this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the order dated 30.4.1976, passed by the Deputy Director of Consolidation, Basti and to modify the order of the Assistant Settlement Officer, Consolidation to the extent that share of the petitioner may be declared 1/3rd in the property in dispute.

2. I have heard Sri Manish Kumar Srivastava, learned counsel for the petitioner and Sri S. L. Yadav, learned counsel for the contesting respondents.

3. The dispute relates to khata Nos. 35, 83, 85, 30, 89 and 59 of village Khojaon and khata Nos. 9, 10 and 65 of village Ram Deia.

4. In basic year khatauni the name of the petitioner was recorded over khata Nos. 36, 85 and 83 situate in village Khojaon and khata No. 9 of Ram Deia. The petitioner filed objections u/s 9A (ii) of the U. P. Consolidation of Holdings Act (hereinafter referred to as "the Act") alleging that her name was recorded over all the khatas of two villages but it was wrongly left out from some of the khatas.

She claimed 1/3rd share in all the khatas on the ground that land in dispute was an ancestral property. The claim of the petitioner was contested by the respondents on the ground that a suit No. 34 of 1963 u/s 176 of U.P.Z.A. and L.R. Act was filed by the petitioner, for partition of the property. During the pendency of the suit the parties settled the dispute amicably by entering into a family arrangement. A compromise was filed in the suit on the basis of said family arrangement and the suit was decreed accordingly. A subsequent application filed by the petitioner for setting aside the compromise decree was rejected. Thereafter, a Regular Suit No. 216D of 1966 filed by her for setting aside the compromise decree was abated. In view of the compromise decree, she is only entitled to the land allotted in her share as per the said decree dated 17.6.1963. The Consolidation Officer vide order dated 22.12.1972 allowed the objection and held that the petitioner had 1/3rd share in the khatas. He however, did not pass any order with regard to khata No. 9 of village Ram Deia on the ground that the same was out of consolidation. In appeal filed by the contesting respondents, the Assistant Settlement Officer, Consolidation accepted the final decree prepared on the basis of the compromise in the partition suit. He however, held that the petitioner will have 1/5th share and respondents will have 2/5th share in disputed khatas. Against the appellate order two revisions were filed ; one by the petitioner claiming that she was entitled to 1/3rd share in all the khatas and other was filed by the contesting respondents challenging the determination of the shares of the parties in specific khatas by the Settlement Officer, Consolidation on the ground that since a final decree was prepared in the partition suit and accordingly "kurras" were allotted in the share of the of parties hence, it was not open to the Settlement Officer, Consolidation to redetermine the share of parties in the khatas in dispute. The Deputy Director of Consolidation allowed the revision filed by the contesting respondents while the revision filed by the petitioner was dismissed.

5. It has been urged by the learned counsel for the petitioner that compromise decree passed in partition suit is in variance with the share to which the petitioner is entitled under law as such the same is not binding. It has further been urged that the Consolidation Officer rightly did not place any reliance on the compromise decree and determined her share to be 1/3rd and the Assistant Settlement Officer, Consolidation and the Deputy Director of Consolidation have wrongly rejected her claim placing reliance on the compromise decree which is not binding.

6. I have gone through the record of the case and the orders passed by the consolidation authorities: A Suit No. 34 of 1963 u/s 176 of the U.P.Z.A. and L.R. Act was filed by the petitioner herself which ended in a compromise. On the basis of the said compromise between the parties, a final decree was prepared and separate "kurras" were allotted. Thus, by the said decree not only the share of the parties was determined but the khatas were also partitioned and the parties were put in possession accordingly. The Consolidation Officer has ignored the said compromise decree only on the ground that the same was in variance with

the legal share of the parties to which they were entitled under law, hence not binding.

7. The object of compromise in a suit for partition of ancestral property is to settle existing or future disputes between the members of the family. The consideration for such a settlement is the hope and expectation that it will result in establishing or ensuring amity and goodwill amongst the family members. Such a compromise or settlement is binding on all the parties to it.

8. The Apex Court in the case of Ram Charan Das Vs. Girjanandini Devi and Others, , while considering the concept of family settlement held that in a family settlement each party takes a share in the property by virtue of independent title which is admitted to that extent by other party. The transaction of a family settlement entered into by the parties who are members of a family is to put to an end the dispute amongst themselves. Thus, in the case of a family settlement or compromise, it is always open for one member of the family to relinquish his/her share in part or in full in favour of the other member, i.e., one may settle for a lesser share than what he/she may otherwise be legally entitled to. The Supreme Court in the case of Sahu Madho Das and Others Vs. Mukand Ram and Another, , observed as follows :

"It is well-settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognizing the right of the others, as they had previously asserted it, to the portions allotted to them respectively."

9. There is another aspect of the matter. The parties to a compromise are bound by estoppel as well. The principle of estoppel prevents the parties to resile from the compromise or to revoke it after having taken advantage of the same. This principle has been approved by the Apex Court in number of decisions. In Dhiyan Singh and Another Vs. Jugal Kishore and Another, . While discussing the Doctrine of Estoppel, the Apex Court ruled that even if an award made is invalid, the persons who were parties to it are estopped from challenging the validity of the award or from going behind the award in a subsequent litigation.

10. In the case of Subbu Chetty's Family Charities v. Ganghaka Mudaliap AIR 1961 SC 797, the Hon''ble Apex Court has held that if a person having full knowledge of his rights, as a possible reversioner enters into a transaction which settles his claim as well as of the opponent at the relevant time, he cannot be permitted to go back on that arrangement. He cannot be permitted to resile from the compromise and claim a right inconsistent with the one embodied in the compromise. In Kale and Others Vs. Deputy Director of Consolidation and Others, , the Apex Court while reiterating the applicability of doctrine of estoppel in matters of family arrangement has observed as follows :

"Assuming however the said document was compulsorily registrable the Courts

have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it."

11. In the present case compromise took place between the parties in 1940 on the basis of which specific "kurras" were allotted in their respective shares, and they are in possession thereof. In view of the aforesaid principle enunciated by the Supreme Court the petitioner is estopped from resiling from the compromise on the ground that it is in variance of her lawful share. Thus, once the petitioner abandoned her claim in pursuance to a compromise or settlement it is not open for her to reassert the said right in any subsequent proceeding. It is well-settled that between the parties to a compromise, the title of each party prior to compromise cannot be set up to defeat a title acquired under the compromise.

12. Viewed in the backdrop of the aforesaid legal position, it was not open to the petitioner to claim anything more, during consolidation proceedings, than what she got under the compromise decree passed by revenue court in the suit for partition. Equally, it was not open to her to challenge the compromise decree on the ground that it was in variance with the share to which she was legally entitled to.

13. Even otherwise, the consolidation authorities are bound by the decree passed by constituted regular courts whether they are civil court or revenue court and cannot go behind the same. Thus, the Consolidation Officer could not have gone behind the decree passed by the revenue courts in suit u/s 176 of the U.P.Z.A. and L.R. Act.

14. The Consolidation Officer illegally ignored the compromise decree passed by the revenue court on the ground that it was in variance with the lawful share of the petitioner. The Settlement Officer, Consolidation though accepted the compromise decree but committed a mistake by determining the share of the parties in each khata in dispute afresh inasmuch as a final decree was prepared by the revenue court on the basis of the compromise between the parties and "kurras" were allotted accordingly. The Deputy Director of Consolidation rightly set aside the judgment of the Settlement Officer. Consolidation to that extent and allowed the revision filed by the answering respondents and the same does not call for any interference by this Court.

15. In view of the aforesaid discussion, the writ petition fails and is dismissed.

16. In the circumstances, there shall be no order as to costs.