
(2014) 02 AHC CK 0060
In the Allahabad High Court
Case No : Writ-B No. 2242 of 2014

Smt. Parveen Begum and Another	Vs	APPELLANT
Additional Collector (Admn)/D.D.C. and Others		RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Citation : (2014) 122 RD 714

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

Bench : Single Bench

Advocate : Chandra Shekhar Agnihotri and Vishal Mohan Gupta, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Supplementary-affidavit filed today is taken on record. Heard Sri C.S. Agnihotri and Sri Vishal Mohan Gupta, for the petitioners.

2. The writ petition has been filed against the orders of Settlement Officer Consolidation, dated 6.9.2012 and Deputy Director of Consolidation, dated 16.8.2013, passed in title proceedings under U.P. Consolidation of Holdings Act, 1953, (hereinafter referred to as the "Act").

3. The dispute relates to share of the parties in plot 205 (total area 5-14-1 bigha), village Yakoobpur, pargana Nababganj, district Bareilly. In basic consolidation year, plot 205 was recorded in three khata i.e. an area of 0.481 hectare was recorded in khata 50, in the name of Khem Karan son of Pothi, an area of 0.481 hectare was recorded in khata 131, in the names of Budhsen son of Lalaram and Kalyan Rai son of Hemraj and an area of 0.481 hectare was recorded in khata 224, in the names of Habib Ahmad and Rafeeq Ahmad sons of Kallu. Phool Singh (respondent-3) filed an objection for declaring his share along with his brothers Puran Singh, Ram Singh, Prem Singh and Bhagwan Swarup (respondents-4 to 7) and his father Kalyan Rai as 3/16 bigha. Phool Singh stated that plot 205 (total area 5-14-1 bigha) originally belonged to Ram Bharose son of

Komil, having 1/2 share and Mool Chandra, Budhsen, Inder and Hori Lal sons of Lalaram, having remaining 1/2 share. Ram Bharose executed a sale-deed dated 2.1.1970 in respect of his 1/2 share in favour of Habib Ahmad and Rafeeq Ahmad sons of Kallu, whose names were mutated by the order of Sub-Divisional Officer, dated 18.6.1974. Habib Ahmad sold his share to Kalyan Rai son Hemraj, whose name was mutated by the order of Tahsildar dated 30.3.1988. Rafeeq Ahmad executed a sale-deed dated 9.8.1988 in respect of his 1/4 share in favour of Phool Singh, Puran Singh, Ram Singh, Prem Singh and Bhagwan Swarup sons of Kalyan Rai, whose names were mutated by the order of Tahsildar dated 16.9.1988. In the sale-deed executed by Rafeeq, share of Phool Singh was 3/16 and remaining 1/16 share was of his brothers.

4. Khem Karan contested the aforesaid objection on the ground that in plot 205, Ram Bharose had 1/3 share, Mool Chandra had 1/3 share and Bhudhsen, Inder and Hori Lal jointly had 1/3 share. Mool Chandra executed a sale-deed 18.11.1969 in respect of his 1/3 share in plot 205 to Khem Karan and his name was recorded by the order of Sub-Divisional Officer, which is now recorded in his name in khata 50. Since the date of sale-deed, he had been in possession over 1/3 share of plot No. 205.

5. The case was tried by Consolidation Officer. Phool Singh, apart from documentary evidence examined himself, Balak Ram son of Dalchand and Dayaram son of Lekhraj. Khem Karan, apart from documentary evidence, examined himself and Mewaram son of Pran Sukh. The Consolidation Officer, by his order dated 25.6.2010, found that in khatauni 1375-1377 F, names of Ram Bharose son of Komil, and Mool Chandra, Budhsen, Inder and Hori Lal sons of Lalaram were recorded. Mool Chandra obtained bhumidhari certificate in respect of 1/3 share by depositing 20 times of land revenue and executed a sale-deed dated 18.11.1969 in favour of Khem Karan in respect of his 1/3 share, whose name was mutated in the revenue record by the order of Sub-Divisional Officer dated 24.1.1970. Later on, this land was recorded in the name of Khem Karan in khata 50. Ram Bharose had 1/3 share as such on the basis of sale-seed dated 2.1.1970 executed by Ram Bharose, Habib Ahmad and Rafeeq Ahmad together became owner of 1/3 share of plot 205 and sale-deed in excess of 1/3 share was invalid. On these findings, he found that basic year entries in khata 50, 131 and 224 in respect of area of plot 205 were correct.

6. Phool Singh (respondent-3) filed an appeal (registered as Appeal No. 242/354 of 2010-11) from the aforesaid order. The appeal was heard by Settlement Officer Consolidation, who by his order dated 6.9.2012, held that Mool Chandra obtained bhumidhari certificate in respect of 1/3 share and executed a sale-deed dated 18.11.1969 in respect of 1/3 share in favour of Khem Karan. Later on, Ram Bharose obtained bhumidhari certificate dated 29.1.1970 in respect of 2/3 share and executed a sale-deed dated 2.1.1970 in respect of 1/2 share in favour of Habib Ahmad and Rafeeq Ahmad, whose names were mutated by the order of Sub-Divisional Officer, dated 18.6.1974. Sub-Divisional Officer, by order dated

6.2.1988 held that Ram Bharose had 1/2 share and share of Habib Ahmad and Rafeeq Ahmad in plot 205 was 1/2 on the basis of sale-deed dated 2.1.1970. This order was mutated in khatauni 1378-1380 F. Habib Ahmad sold his 1/4 share to Kalyan Rai and Rafeeq Ahmad sold his 1/4 share to Phool Singh and his brothers. Later on, Inder and Hon Lal also executed a sale-deed in favour of Kalyan son of Hemraj whose name is also recorded in basic consolidation year khata 131 along with the name of Budhsen. From the pedigree, share of Mool Chandra was 1/8 as such sale-deed dated 18.11.1969 executed by Mool Chandra in favour of Khem Karan was valid for 1/8 share only. Share of Budhsen was 1/8 while share of Phool Singh was 23/180 and his bothers were 37/320 each.

7. The petitioners along with Khem Karan filed a revision (registered as Revision No. 22 of 2012-13) from the aforesaid order. The petitioners stated that Mool Chandra obtained bhumidhari certificate and executed a sale-deed dated 18.11.1969 in respect of his 1/3 share in favour of Khem Karan. On the basis of the aforesaid sale-deed name of Khem Karan was mutated in the khatauni on 29.1.1970, which was never challenged by any co-sharer. This land was separately recorded in khata 50 in the name of Khem Karan alone and is continuing as such since last 40 years as such claim of the respondents was barred by estoppel and acquiescence. The revision was heard by Deputy Director of Consolidation, who by order dated 16.8.2013, found that from the pedigree, share of Mool Chandra was 1/8 as such sale-deed dated 18.11.1969 executed by Mool Chandra in favour of Khem Karan was valid for 1/8 share only. Sub-Divisional Officer corrected the share of the parties by order dated 6.2.1988 but due to mistake of the revenue authorities, it was not given effect to in the subsequent khataunies. Finding no illegality in the order of Settlement Officer Consolidation, the revision was dismissed. Hence this writ petition has been filed.

8. The Counsel for the petitioner submits that under family settlement amongst the co-sharers, Ram Bharose was given 1/3 share, Mool Chandra was given 1/3 share and Budhsen, Inder and Hori Lal were jointly given 1/3 share. Mool Chandra obtained bhumidhari certificate in respect of his 1/3 share and executed a sale-deed dated 18.11.1969 in respect of his 1/3 share in favour of Khem Karan. On the basis of the aforesaid sale-deed, name of Khem Karan was mutated in the khatauni on 29.1.1970. The original co-sharers of Mool Chandra never challenged sale-deed dated 18.11.1969. This land was separately recorded in khata 50 in the name of Khem Karan alone and is continuing as such since last 40 years. Phool Chandra, who is transferee, cannot be permitted to challenge the share of Mool Chandra. Sale-deeds allegedly executed by Habib Ahmad and Inder and Hori Lal were neither in pleadings nor filed before the consolidation authorities but Settlement Officer Consolidation and Deputy Director of Consolidation have illegally recorded findings in this respect, which amounts to conjectures and surmises.

9. I have considered the arguments of the Counsel for the petitioners and examined the record. The consolidation is compulsory settlement and records are

required to be corrected by the consolidation authorities. Rule of pleadings have no role in consolidation proceedings. The consolidation authorities are required to frame issue and decide right, title and interest of a tenure holders, on the basis of evidence as provided under Rule 26. Objection of Phool Singh was initially for declaring his 3/16 share on the basis of sale-deed executed by Rafeeq Ahmad, in favour of Phool Singh and his brothers. The Consolidation Officer framed issue relating to shares of all the parties in plot 205 as Khem Karan himself raised plea that Ram Bharose had 1/3 share as such Rafeeq Ahmad had 1/6 share and not 1/4 share as claimed by Phool Singh. Thus the controversy as to whether Ram Bharose had 1/2 share or 1/3 share was himself raised by Khem Karan and well within the knowledge of the parties and they led evidence in this respect. Once dispute relating to share of the parties were raised, it was well within jurisdiction of consolidation authorities to decide share of Mool Chandra also.

10. Admittedly Komil Prasad had two sons namely Ram Bharose and Lala Ram. Lala Ram had four sons Mool Chandra, Budhsen, Inder and Hori Lal. In khatauni 1378-F, names of Ram Bharose son of Komil Prasad, Mool Chandra, Budhsen, Inder and Hori Lal sons of Lala Ram were jointly recorded over the land in dispute along with other plots. According to the pedigree share of Ram Bharose would be 1/2 and Mool Chandra would be 1/8. Khem Karan came with the case that there had been a family settlement amongst the co-sharers, in which Ram Bharose was given 1/3 share, Mool Chandra was given 1/3 share and Budhsen, Inder and Hori Lal were jointly given 1/3 share. Therefore, burden was upon Khem Karan to prove family settlement, which had not been proved at all. Khem Karan could not examine any family member to prove alleged family settlement by which share of Mool Chandra was enhanced to 1/3 from 1/8 and share of his remaining brothers and Ram Bharose were reduced. In the absence of any evidence, theory of family settlement has been rightly disbelieved.

11. Now it has to be examined the effect of sale-deed dated 18.11.1969 executed by Mool Chandra in favour of Khem Karan, by which 1/3 share was sold. Immediately thereafter Ram Bharose obtained bhumidhari certificate of remaining 2/3 share and executed a sale-deed dated 2.1.1970 in respect of his 1/2 share in plot 205 in favour of Habib Ahmad and Rafeeq Ahmad, whose names were mutated by the order of Sub-Divisional Officer dated 18.6.1974 and mutation was incorporated in khatauni 1378 F (filed as Annexure-1). In the sale-deed as well as in the mutation order, 1/2 share has been mentioned. Thus at no point of time, the alleged family settlement was acted upon. Contrary to it, Ram Bharose exercised his right over his 1/2 share in the land in dispute. Thus from the conduct of the parties also, theory of family settlement had been negated. It is incorrect to say that no dispute relating to the share of the parties were raised by the co-sharers. The dispute was raised by the co-sharers in respect of share of the parties, which had been decided by Sub-Divisional Officer by order dated 6.2.1988, who again held that share of Habib Ahmad and Rafeeq Ahmad was 1/2 in plot 205, as noticed in the orders of Settlement Officer Consolidation and Deputy Director of Consolidation. Habib Ahmad and Rafeeq Ahmad, being

transferees of Ram Bharose was entitled to raise dispute relating to share. This order is again incorporated in the khatauni 1395-1400-F (filed as Annexure-3). Thus no question of estoppel arises as the dispute regarding share was raised and decided by competent Court.

12. So far as the arguments that the sale-deeds executed by Habib Ahmad and Inder and Hori Lal were neither in pleadings nor filed before the consolidation authorities but Settlement Officer Consolidation and Deputy Director of Consolidation have illegally recorded findings in this respect, which amounts to conjectures and surmises, are concerned, it has no substance. On the basis of sale-deed executed by Habib Ahmad, name of Kalyan Rai was recorded in basic consolidation year khata 224, by the order of Tahsildar dated 30.3.1988 (filed at page 23 of the writ petition). Similarly name of Kalyan Rai was recorded in basic consolidation year khata 131 along with Budhsen (filed at page 21 of the writ petition). Neither the petitioners nor any one else raised any objection in this respect. As such these entries were rightly relied upon by Settlement Officer Consolidation and Deputy Director of Consolidation and their findings do not amount to conjectures and surmises. There is no inter-se dispute regarding shares amongst the brothers of Phool Singh. Similarly there is no dispute by Habib Ahmad, Inder and Lala Ram, in deleting their names and recording the name of Kalyan Rai. In view of the aforesaid discussions, the orders of respondents-1 and 2 do not suffer from any illegality. The writ petition has no merit and is dismissed.