
(2015) 09 AHC CK 0002
In the Allahabad High Court
Case No : Writ-B. No. 50132 of 2015

Sohan Lal

APPELLANT

Vs

D.D.C., Bareilly and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Evidence Act, 1872 — Section 13

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

Citation : (2016) 114 ALR 837 : (2015) 129 RD 669

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

Bench : Single Bench

Advocate : Pradeep Saxena, for the Appellant

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Pradeep Saxena, for the petitioner. This writ petition has been filed against the orders of Consolidation Officer dated 23.6.2003, Settlement Officer Consolidation dated 8.4.2011 and Deputy Director of Consolidation dated 12.9.2011, passed in the proceeding under section 9-A of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act). Stamp Reporter has reported delay of 3 years 265 days in filing the writ petition. Delay has not been satisfactorily explained.

2. Dispute is in respect of land of basic consolidation year khatas 20, 50, 51, 115 and 126 of village Barkapur, tahsil and district Bareilly, which was recorded in the name of Jhau son of Dilshukh. Smt. Ramkali (daughter of Jhau) (now represented by respondents-4 to 7) filed an objection under section 9 of the Act, for recording her name over the land in dispute, on the basis of sale deed dated 4.2.1986, allegedly executed by Jhau in her favour. Consolidation Officer, by order dated 19.12.1986 recorded her name over the land in dispute, on the basis of aforesaid sale deed.

3. Smt. Dallo (other daughter of Jhau) filed an application for recall of the

aforesaid order. The recall application was allowed by Consolidation Officer by order dated 31.1.1987. Later on Smt. Dallo filed an application dated 9.6.2003, withdrawing her objection. Consolidation Officer by order dated 23.6.2003, dismissed the objection of Smt. Dallo as withdrawn and reinstated the order dated 19.12.1986.

4. Thereafter, the petitioner filed a time barred appeal (registered as Appeal No. 245 of 2009-10) from the order dated 23.6.2003. It has been stated by the petitioner that his mother Dallo was residing with her father Jhau in village Barkapur as Jhau had no male issue. The petitioner was born at village Barkapur, at the house of his maternal grand father Jhau. After death of his maternal grand mother, his mother was looking after Jhau. Jhau executed a Will dated 22.11.1984, before Public Notary, in respect of his entire movable and immovable properties and handed over it to his mother Smt. Dallo. The petitioner had no knowledge in respect of the Will earlier as he had no talkative terms with his mother for quite long period. Jhau died on 15.5.1985 and never executed the alleged sale deed dated 4.2.1986 in favour of Smt. Ramkali. Smt. Ramkali procured a forged sale deed dated 4.2.1986 through some imposter and on its basis, she contested a case before Consolidation Officer from Smt. Dallo. During pendency of the litigation, Smt. Ramkali executed a sale deed dated 25.5.1999 in favour of her minor children, respondents-4 to 6. Later on his mother, Smt. Dallo withdrew her objection due to enticement of Smt. Ramkali. The consolidation Officer dismissed the objection of Smt. Dallo by order dated 23.6.2003 and mutated the names of respondents-4 to 6 in the revenue records on the basis of sale deed dated 25.5.1999. Respondents-4 to 6 later on executed sale deed in favour of respondents-7 and 8, who sold it to respondents-9 and 10, whose names have also been mutated. Smt. Dallo died on 2.11.2008. During her last days, the petitioner served his mother, ignoring previous differences. On 10.2.2009, due to heavy rain, water entered in box of the mother of the petitioner. Then the box was opened by the petitioner, in which he found the original Will dated 22.11.1984. Then he got inspected the records of previous litigation and came to know about the order dated 23.6.2003. Then the appeal was filed on 6.3.2009. Settlement Officer Consolidation, by order dated 17.12.2009 condoned the delay and allowed the appeal and set aside the order of Consolidation Officer dated 23.6.2003.

5. Praveen Kumar Arora, (respondent-9) filed an application dated 7.8.2010 for recalling the order dated 17.12.2009, on the ground that the order was passed ex-parte without serving any notice upon him, which was allowed by Settlement Officer Consolidation. Thereafter, Settlement Officer Consolidation heard the appeal of the petitioner on merit and by order dated 8.4.2011 held that there was dispute between Smt. Ramkali and Smt. Dallo. Ultimately Smt. Dallo accepted the sale deed dated 4.2.1986, executed by Jhau in favour of Smt. Ramkali and got her objection dismissed on 23.6.2003. If there had been any Will executed by Jhau in favour of the petitioner, then there was no reason for Smt. Dallo, for not disclosing the will, earlier. Jhau himself appeared before the

Court and got his statement recorded on 16.12.1986 and admitted execution of sale deed dated 24.2.1986. On these findings the appeal was dismissed. The petitioner filed a revision (registered as Revision No. 267 of 2011) from the aforesaid order. Deputy Director of Consolidation by order dated 12.11.2011, held that Jhau executed a sale deed dated 4.2.1986, in favour of Smt. Ramkali and also admitted execution of the sale deed in his statement before Consolidation Officer on 16.12.1986. Earlier, the mother of the petitioner challenged the order of Consolidation Officer dated 19.12.1986 directing for mutation of the name of Smt. Ramkali on the basis of sale deed. But later on she gave up her claim and got her objection dismissed as withdrawn. If there had been any will in favour of the petitioner then it would have been produced timely before the Court. It appears that after such a long time, alleged unregistered Will dated 22.11.1984 has been fabricated. It is not proved that Jhau died on 15.5.1985 rather he died on 15.5.1989. False story has been cooked that the Will was locked in the box of the mother. On these findings the revision has been dismissed. Hence this writ petition has been filed.

6. The Counsel for the petitioner submitted that the order of Consolidation Officer dated 23.6.2003 was an ex-parte order. The Will dated 22.11.1984, was neither challenged nor has not been cancelled by any competent Court. Devendra Kumar was born on 5.7.1987 and there was no question of executing sale deed in his favour on 4.2.1986. Certificate issued by Pradhan was not admissible in evidence. Deputy Director has illegally relied upon inadmissible evidence ignoring Pariwar Register. The orders of Consolidation authorities are based upon conjecture and surmises as well as on fabricated sale deed. The orders of consolidation authority are illegal and liable to be set aside.

7. I have considered the arguments of the Counsel for the petitioner and examined the record. The petitioner has not filed copy of the Will before this Court. In the plaint of O.S. No. 103 of 2012, the petitioner has disclosed his age as 60 years, from which his birth comes 1952. According the petitioner, he was born in the house of his maternal grand father Jhau and was residing with him through out his life and cultivating the land in dispute for about 32 years. Thus on the date of Will dated 22.11.1984, his age might be about 32 years and he was cultivating the land in dispute at least from 1980. If Jhau executed the alleged Will dated 22.11.1984, in favour of the petitioner then there would have been no reason for Jhau for not handing over the Will to the petitioner and handing over it to his mother although, the petitioner was residing with him and was looking after his cultivation etc. At least there is reason for him for not giving any information to the petitioner about the will although according to the petitioner, Jhau died on 15.5.1985 thus he survived for about 6 month after execution of the Will. Explanation given by the petitioner, for disclosing the Will for the first time on 6.3.2009 i.e. after about 14 years of the death of Jhau, has been disbelieved by consolidation authorities. The concurrent findings of two Courts below, do not suffer from any illegality.

8. According to the version of the petitioner, he was residing with Jhau from his birth through out during his life time and after his death he remained in possession of entire properties of Jhau, who was residing at Barkapur. In the memorandum of the appeal, at bottom, the petitioner has given his present address as village Manpur, which was his parental house. Smt. Dallo, the mother of the petitioner has challenged the order of Consolidation Officer dated 19.12.1986, recording the name of Smt. Ramkali over the in dispute, on the basis of sale deed dated 4.2.1986. Smt. Dallo also took the same plea as raised by the petitioner that Jhau had not executed the sale deed dated 4.2.1986 nor he got recorded his statement, admitting execution of the sale deed, before Consolidation Officer on 16.12.1986. In case, the sale deed dated 4.2.1986 was procured by Smt. Ramkali from some imposter, after death of Jhau on 15.5.1985, then, even if, the petitioner had no knowledge of the Will dated 22.11.1984, executed in his favour, in order to protect his possession over the land in dispute he would have supported his mother by filing the alleged copy of Pariwar Register in which date of death of Jhau has been mentioned as 15.5.1985. It appears that upto 2003, date of death of Jhau was not recorded in Pariwar Register as 15.5.1985. Smt. Dallo could not prove that Jhau had died on 15.5.1985. Later on when she found that her contest was baseless, then she withdrew her objection. Order of Consolidation Officer dated 23.6.2003 is relevant, relating to conduct of the parties and admissible in evidence under section 13 of Evidence Act, 1872. Deputy Director of Consolidation has not committed any illegality in ignoring Pariwar Register produced by the petitioner.

9. Thus it was proved that at least from 4.2.1986, Smt. Ramkali was in possession of the land in dispute on the basis of sale deed and her right and title has been challenged by the petitioner for the first time on 6.3.2009, on the basis of alleged unregistered Will dated 22.11.1984 although according to the petitioner, Jhau had died on 15.5.1985. Thus the Will is surrounded with suspicious circumstances, for not disclosing it for such a long time.

10. If a Will is surrounded with suspicious circumstances, the propounder is required to remove suspicious circumstance. Supreme Court in *H. Venkatachala Iyengar Vs. B.N. Thimmajamma and Others*, , held that there is one important feature which distinguishes Wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a Court, the testator who has already departed the world cannot say whether it is his Will or not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is proved to be the last Will and testament of the departed testator. Even so in dealing with the proof of Wills the Court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in

support of the Will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated. There may, however, be cases in which the execution of the Will may be surrounded by suspicious circumstances. In such cases the Court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, Courts would be reluctant to treat the document as the last Will of the testator.

11. The consolidation authorities found that due execution of registered sale deed dated 4.2.1986 has been admitted by Jhau in his statement before the Court on 16.12.1986. The findings in this respect do not suffer from any illegality so as to require any interference by this Court in exercise of writ jurisdiction. In view of the aforesaid discussion, the writ petition has no merit, it is dismissed.