
(2001) 07 AHC CK 0087

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12932 of 1987

Sona Devi

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 09-07-2001

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2001) 07 AHC CK 0087

Hon'ble Judges : S.K.Singh, J

Final Decision : Allowed

Judgement

S.K. Singh, J.—By means of this writ petition the petitioner has challenged the orders passed by the Deputy Director of Consolidation dated 2261987 and 631987, Annexures 4 and 3 respectively to the writ petition and the order of the Settlement Officer Consolidation dated 2111985, Annexure2 to the writ petition.

2. In the proceeding under Section 12 of the U.P. Consolidation of Holdings Act the petitioner laid her claim on the basis of Will, in support of which she has adduced the evidence of attesting witnesses and other witnesses besides filing the registered Will. The Consolidation Officer vide its judgment dated 10101983 accepted the petitioner's claim and directed Mutation of the name. Against the order of the Consolidation Officer dated 10101983 a time barred appeal was preferred by the Respondent No. 4 on 17121984. The Settlement Officer Consolidation without disposing the application under Section 5 of the Limitation Act and without condoning the delay, allowed the appeal by its judgment dated 3111985. Against the judgment of the Settlement Officer Consolidation the petitioner filed revision before the Deputy Director of Consolidation through Sri Suraj Pal Singh Advocate. The revision filed by the petitioner was dismissed by the Deputy Director of Consolidation vide its judgment dated 631987, against which a restoration application was also filed which too was dismissed on 2261987.

3. I have heard the arguments as has been advanced by Sri Prakash Chandra

learned counsel for the petitioner and Sri Madhur Prakash who appeared on behalf of the respondents.

4. It was argued by the learned counsel for the petitioner that the judgment of the Deputy Director of Consolidation besides being illegal, is in gross violation of the Principles of Natural Justice as the revisionist has not been afforded opportunity of hearing in the matter. According to the learned counsel, the revisionist could not get opportunity of hearing as his counsel Sri Suraj Pal Singh, Advocate who was engaged on her behalf had died before 631987, and she never engaged Shri Shiv Mangal Singh Tomer, Advocate who is alleged to have appeared on her behalf. Categorical statement has been made in paragraphs 7 and 8 of the writ petition that she never executed any Vakalatnama in favour of Sri Shiv Mangal Singh Tomer, Advocate and the order of the revisional Court dated 631987 was an exparte order and the restoration application was wrongly rejected by the respondent No. 1.

5. On behalf of the respondents in the counteraffidavit it was stated that the petitioner might have engaged Sri Shiv Mangal Singh Tomer, Advocate on her behalf,

6. It appears that when the matter was taken up by this Court on 26111999, learned counsel for the respondents, by a detailed order, was granted time to file Supplementary counteraffidavit annexing credible evidence (Vakalatnama), if any, was executed in favour of Sri Shiv Mangal Singh Tomer, Advocate. In pursuance of the direction as was given by this Court, on 26111999 a Supplementary Affidavit was filed by the learned counsel who appeared on behalf of the respondent, annexing copy of the Vakalatnama as was executed by the revisionist before the Revisional Court. The Vakalatnama of the revisionist as has been brought before this Court did not indicate that she has engaged Sri Shiv Mangal Singh Tomer, Advocate. The Vakalatnama only shows the signature of Sri Suraj Pal Singh Advocate who was to appear on behalf of the petitioner.

7. In view of the aforesaid facts it is clearly established that the petitioner has never engaged Sri Shiv Mangal Singh Tomer, Advocate in the revision and in view of the averments as has been made in paragraph 7 of the writ petition it is clear that Sri Suraj Pal Singh Advocate was engaged by the revisionist who expired before 6th March, 1987 when hearing took place in the revision and decision was given by the Revisional Court. Thus the petitioner was never heard by the Revisional Court and it appears that narration of the facts in the judgment of the Deputy Director of Consolidation that counsel for both the parties have been heard appears to be routine observation. The Revisional Court while rejecting the restoration application as was filed by the petitioner has not properly examined this aspect and by making incorrect observation rejected the restoration application.

8. Learned counsel for the respondents in the last, submitted that in the event the matter if is remanded for reconsideration, as the proceedings before the

Consolidation Officer has been held up on account of the interim order as was granted by this Court, the same may be directed to be decided within some reasonable time.

9. In view of the aforesaid discussions, it is clear that the petitioner was not afforded opportunity of hearing before the Revisional Court and therefore, the order passed by the respondent No. 1 dated 2271987 and 631987, Annexures 4 and 3 to the writ petition being in violation of the Principle of Natural Justice are hereby quashed and the matter is remanded back to the Deputy Director of Consolidation to rehear the revision and decide the same in accordance with law after giving opportunity of hearing to both the parties, within a period of three months from the date of production of a certified copy of this order before him.

10. The writ petition is accordingly allowed without any order as to costs.