
(2016) 09 AHC CK 0165
In the Allahabad High Court
Case No : Writ B No. 47264 of 2016

Surya Narain

APPELLANT

Vs

Deputy Director of Consolidation, Bhadohi

RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 133 RD 623

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

Bench : Single Bench

Advocate : C.S.C., U.C. Chaturvedi, Advocate, for the Respondent; Om Prakash Yadav and Pradeep Kumar Mishra, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J. - Heard Sri Pradeep Kumar Mishra, for the petitioner, Sri R.P. Mishra along with Sri U.C. Chaturvedi, for respondent-4.

2. The writ petition has been filed against orders of Consolidation Officer dated 20.05.2000, Settlement Officer Consolidation dated 11.06.2001 and Deputy Director of Consolidation dated 14.06.2016, passed in title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

3. The dispute between the parties is in respect of land of Smt. Gomti widow of Matadin of village Kalik Mavaiya, tahsil Gyanpur, district Sant Ravidas Nagar "Bhadohi". The petitioner has given pedigree of family, showing that Jayanti had three sons Prayag, Ayodhya and Bindra. Prayag had one son Mahadev alias Jhunnu, who died issueless. Ayodhya had two sons Nidhi alias Gaja and Bishun. Nidhi alias Gaja had one son Ram Khelawan alias Sukhdev, who died issueless. Bishun had one son Matadin alias Jhuran and Smt. Gomti was widow of Matadin alias Jhuran. Bindra had one son Ram Kumar. Ram Kumar had five sons Satya Narain, Badri Narain, Mata Jatan, Mataphal and Mata Prasad. The petitioner is son of Mataphal, while Gaya Prasad (respondent-4) is son of Satya Narain. It

may be mentioned that although Mata Prasad had filed appeal from order of Consolidation Officer dated 20.05.2000 but at present branches of Badri Narain, Mata Jatan and Mata Prasad are not disputing claim of Gaya Prasad and his sons. Although before Settlement Officer Consolidation and Deputy Director of Consolidation, the petitioner challenged the right of Ram Sagar and Dilip Kumar based on the sale deed dated 03.06.1985 executed by Smt. Gomti but in writ petition they are not impleaded as the respondents.

4. It is admitted to the parties that Matadin died before 1944 and Smt. Gomti died in 1990. According to Gaya Prasad, Smt. Gomti executed a sale deed dated 03.06.1985, in respect of some portion of her land in favour of Ram Sagar and Dilip Kumar, his sons, whose names were mutated over the land in dispute during life time of Smt. Gomti. Smt. Gomti executed a registered will dated 15.03.1990, in respect of her remaining property in favour Gaya Prasad. After death of Smt. Gomti, Gaya Prasad filed an objection under Section 12 of the Act, for mutation of his name. In this proceeding, due execution of registered will dated 15.03.1990 was proved by attesting witness. Mata Prasad son of Ram Kumar was also examined before Consolidation Officer, who had admitted execution of will by Smt. Gomti dated 15.03.1990. Consolidation Officer, by order dated 09.11.1990 mutated the name of Gaya Prasad over remaining land of Smt. Gomti.

5. So far as the petitioner is concerned, he is deriving his right over land of Smt. Gomti, on the basis of a registered agreement dated 10.06.1944 executed by Satya Narain, Badri Narain and Mata Jatan, in which they had agreed that after death of Smt. Gomti, her property would be equally divided between Mata Prasad Mishra and Surya Narain Mishra, in spite of any testament executed by Smt. Gomti contrary to it. The contention of the petitioner is that as Satya Narain, father of Gaya Prasad was signatory of this agreement as such it is binding upon him and he is not entitled to claim property of Smt. Gomti on the basis of will dated 15.03.1990, executed in his favour. He also states that since 10.06.1944, he was given possession of ? share of the land of Smt. Gomti i.e. plot 15 and since then he was in continuous possession of it. So far as delay is concerned, he is saying that in connection with his employment, he was residing in Kolkata as such he could not know about consolidation proceeding in the village nor could file any objection within time immediately after death of Smt. Gomti. He came from Kolkata on 16.05.2000, then he came to know about the proceeding before Consolidation Officer, in which 17.05.2000 was the date fixed . The petitioner filed an application before Consolidation Officer for allowing him opportunity of hearing and evidence but his application was rejected and the case was decided finally on 20.05.2000.

6. Before Consolidation Officer, proceeding in respect of land of basic consolidation year khata 45 and 235 was going on for correction of entries and partition. In these khata Ram Padarath had ? share and Jayanti had ? share. On the basis of sale deed ? share in these khata came to be recorded in the name

of Smt. Gomti and ? share came to be recorded in the name of branch of Bindra Prasad. Gomti executed sale deed dated 03.06.1985 in respect of some portion of land of her share in favour of Ram Sagar and Dilip Kumar, whose names were mutated. Thereafter she executed a registered will dated 15.03.1990, in favour of Gaya Prasad in respect of her remaining land, whose name was also mutated on 09.11.1990. Some of the co-shahers have also executed sale deeds in favour of Ram Sagar, Dilip Kumar and Gaya Prasad. Consolidation Officer, taking notice of aforesaid transactions directed to correct entries and decided share of various co-sharers by order dated 20.5.2000.

7. The petitioner filed an appeal (registered as Appeal No. 1821). Mata Prasad and others filed another appeal (registered as Appeal No. 1824) from aforesaid order. Both the appeals were consolidated and heard by Assistant Settlement Officer Consolidation, who by order dated 11.06.2001, dismissed the appeals. The petitioner filed a revision (registered as Revision No. 52 of 2015-16) against aforesaid order. The revision was heard by Deputy Director of Consolidation, who by order dated 14.06.2016 dismissed the revision. Hence this writ petition has been filed.

8. I have considered the arguments of the counsel for the parties and examined record. So far as agreement dated 10.06.1944 is concerned, Smt. Gomti was not party to this agreement as such it is not binding upon her. Gaya Prasad is not deriving his right through his father Satya Narain as such this agreement is not binding upon Gaya Prasad also. This agreement will not operate as estoppel against Smt. Gomti and Gaya Prasad.

9. So far as possession of the petitioner is concerned, admittedly Smt. Gomti was recorded co-sharer as such possession of the petitioner is immaterial. Otherwise also the petitioner could not file any evidence to prove his possession. On the other hand, the petitioners according to his own allegation was not residing in village from long time therefore he could not set up his claim although Smt. Gomti had died in 1990. On the other hand Smt. Gomti and Gaya Prasad were residing in the village. As such it cannot be said that they were not in possession of disputed land, which otherwise of the share of Smt. Gomti. It has also come in the order of Consolidation Officer that during consolidation, separate chak in the name of Smt. Gomti was carved out. Thus, there is absolutely no evidence to show exclusive possession of the petitioner over the land of Smt. Gomti.

10. In view of aforesaid discussion, the writ petition has no merit and is dismissed.