
(1984) 07 AHC CK 0021
In the Allahabad High Court
Case No : Writ Petition No. 1412 of 1971

Sushila Devi & Others

APPELLANT

Vs

Deputy Director of Consolidation & Others

RESPONDENT

Date of Decision : 26-07-1984

Acts Referred:

Limitation Act, 1963 — Section 18
Transfer of Property Act, 1882 — Section 60

Citation : (1984) 07 AHC CK 0021

Hon'ble Judges : S.C.Mathur, J

Final Decision : Allowed

Judgement

S.C. Mathur, J.—This petition arises from proceedings for determination of title under the provisions of U.P. Consolidation of Holdings Act. The dispute in the petition pertains to plots nos. 249 and 251 of village Akampur, pargana Behar of District Unnao.

2. In the basic year the aforesaid plots were recorded in the names of opposite parties 3 to 7. However, the possession of the petitioners or their predecessors and opposite party no. 8 was also noted. Against this recorded entry the petitioners and Kashi Prasad, opposite party no. 8, (who will hereinafter be collectively referred as the "petitioners") filed objections. In these objections they pleaded that they had been in possession since long¹ and a suit filed by opposite parties 3 to 7 against them had already been dismissed.? On this basis they claimed title to the plots in dispute. From these pleadings it would appear that the petitioners claimed sirdari rights on the basis of possession. However, from the issues framed by the Consolidation Officer it appears that it was also pleaded on behalf of the petitioners that they were bhumidhars of the plots in dispute.

3. The objections of the petitioners were resisted by opposite parties 3 to 7 who pleaded that they were mortgagors of the land and the petitioners were mortgagees and as mortgagees they could not claim title by adverse possession.

On the basis of the pleading raised by the parties, the Consolidation Officer framed the following issues:

1. Whether the land in dispute was mortgaged by Jugraj Singh common ancestor of Debi Din etc., Opposite parties?
2. Whether the entry in the names of the opposite parties is fictitious?
- 3 Whether the objectors are Bhumidhars by virtue of being in possession through mortgage?
4. Whether the objectors are sirdars by way of adverse possession?
5. Whether the decision of Civil suit bars the claim of opposite parties?

4. It appears that the petitioners filed before the Consolidation Officer mortgage deed dated 12.6.1874 executed by Jawahar Singh in favour of Bhagwan Deen, the great grandfather of the petitioners. The original mortgage deed has been riled in this court also as annexure 6 to the rejoinder affidavit together with a copy thereof. Extracts from second and third settlement were also filed before the Consolidation Officer. The mortgage deed dated 12.6.1874 indicates that earlier Jawahar Singh had borrowed a sum of Rs. 100 from Bhagwan Deen on a simple mortgage. The possession, thus, of the mortgaged property remained with Jawahar Singh, the mortgagor. On 12.6.1874 the sum of Rs. 18850 paise was due under the mortgage dated 11.1.1876 and for repayment of this sum the mortgage deed dated 12.6.1874 was executed. The second settlement extract shows that Smt. Parsanna Kunwar was recorded as Malik and Jugraj Singh s/o Mohan Singh was recorded as Kastkar. Sheetal s/o Bhagwan Deen was recorded as the mortgagee. At the time of third settlement it appears that a mutation dispute arose. Jugraj Singh s/o Jagat Pal Singh, the father of original opposite party no. 3 Debi Deen Singh, claimed mutation as Malik. It appears that the name of Jugraj Singh was recorded as Malik.

5. From the documentary evidence on record, which was available before the consolidation authorities also, it is amply clear that Jawahar Singh was the zamindar and he mortgaged the land of the plots in dispute together with the grove standing thereupon in favour of Sri Bhagwan Deen. The petitioners are descendants of Bhagwan Deen. The mortgagor or his descendants had sixty years" period to redeem the mortgage. This period of sixty years expired in the year 1934 but before the expiry of this period no suit for redemption was filed. The consequence of the failure to file suit for redemption was that the mortgagor or his descendants lost right to recover possession of the land in dispute. The further consequence of this was that the mortgagee in possession became the owner of the land in dispute. It was so held by this court in AIR 1969 Alld. 31 (Vidya Datta v. Jagmandar Das and others) and AIR 1955 NUC 1763 (Nabbu and another v. Shamshad All and others)

6. The Deputy Director of Consolidation, however, held that at the time of third settlement the petitioners disputed the title of Jugraj Singh and therein they

admitted the mortgage deed and since at this stage the period of limitation had not expired, there was acknowledgment of the mortgage and thereby the period of limitation for redemption was extended. Learned counsel for the petitioners has submitted that an acknowledgment u/s 18 of the Indian Limitation Act has to be in writing and no such acknowledgment was placed on record by the opposite parties and therefore the Deputy Director of Consolidation committed manifest error in applying the provisions of section 18 for extending the limitation for redemption. Section 18 provides as follows:

“(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.”

The above provision specifically provides that the acknowledgment must be in writing. In the present case no written acknowledgment was placed on record by the opposite parties and the petitioners did not admit having made any such acknowledgment. It further appears that the petitioner's case was that the opposite parties were not the legal representatives of the mortgagor and, therefore, they could not claim any interest in the property in dispute. The consolidation officer upheld this claim of the petitioners and two authorities above him have not superseded this finding. The result, therefore, is that the petitioners became owners of the property in dispute on the expiry of the period of sixty years in the year 1934 and the opposite parties have no interest in the property in dispute.

7. The learned counsel for the opposite parties placed reliance upon the mutation effected in favour of Jugraj Singh in the third settlement. In my opinion, on the basis of the mere mutation entry in third settlement, the right accruing in favour of the petitioners on facts which stand proved by documentary evidence, cannot be defeated.

8. On the basis of the entries contained in the extract of second settlement, the learned counsel for the opposite parties tried to submit that the grove in Question was tenant's grove and in such a grove the petitioners could not acquire any interest in the land on the basis of the mortgage deed. I am unable to accept this submission of the learned counsel, for two reasons. Firstly, it was nowhere pleaded by the opposite parties, nor proved, that they or their ancestors had taken the land in dispute from the zamindar and thereafter planted the grove in question and secondly, the mortgage deed indicates that it was a proprietary grove. In the mortgage deed the mortgagor Jawahar has stated that he was mortgaging the land as well as the grove.

9. The learned counsel for the petitioners has rightly pointed out that the title of the petitioners had not matured into ownership at the time the second and third

settlements took place" and, therefore, there was no occasion for them to claim title to the property in dispute at that time. The third settlement had taken place some time in the year 1922²⁴. The period of sixty years from the date on which the mortgage deed was executed expired in the year 1934. As such, the petitioners could not claim proprietary interest in the land in dispute at that time. Thus, the opposite parties cannot defeat the title of the petitioners on the basis of the said settlement entries.

10. In view of the above, the petition is allowed and the order of the Deputy Director of Consolidation dated 19.6.1971, annexure 2, is hereby quashed. The petitioners are held to be the bhumidhars of the plots in dispute. The opposite parties 3 to 7 shall bear the cost of the petitioners,

(Petition allowed)