
(2012) 11 AHC CK 0178
In the Allahabad High Court
Case No : C.M.W.P. No. 50576 of 2000

Triloki Singh Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49, 9
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 19,
229B, 3, 3(2A)

Citation : (2013) 6 ADJ 668 : (2013) 3 AWC 3051

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Siddhartha Verma and Anupam Anand, for the Appellant; Ajay Shankar, Anuj Kumar and Triveni Shanker, for the Respondent

Final Decision : Dismissed

Judgement

B. Amit Sthalekar, J.—This writ petition has been filed by the petitioners challenging the order dated 3.8.2000 passed by the Additional Commissioner and the order dated 30.7.1996 passed by the Up Zila Adhikari, Ghazipur. The facts of the case, in brief, are that one Shiv Nath, the father of the petitioners filed a suit u/s 229B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred as the "Act") for declaration of bhumidhari rights in respect of plots No. 1115, 1121 and 1136 of village Andhaun, Pargana, Tehsil and District Ghazipur, Shiv Nath, plaintiff died during the pendency of the suit and was substituted by the present petitioners as his heirs. The plaint case was that the plots in dispute were original properties of one Gangajali alias Gangia, mother-in-law of Shiv Nath and there were trees existing over the plots in question, which numbered more than 100. When consolidation proceedings were initiated in the village where the plots were situate the plots in question should have been omitted from the consolidation proceedings and treated as a grove. However, in the consolidation proceedings the plots were treated as new parti and declared to be banjar land and the name of gaon sabha was entered in the revenue records

in respect of the land in question by the Up Zila Adhikari by the impugned order dated 30.7.1996.

2. Aggrieved the petitioner filed a Revision No. 25/30 of 1998. The Revisional Authority/Additional Commissioner, Varanasi Division. Varanasi also dismissed the said revision by his order dated 3.8.2000 on the ground that the suit filed u/s 229B of the Act was barred by the provisions of Section 49 of the U.P. Consolidation of Holdings Act, 1953.

3. I have heard Sri Siddharth Verma, learned counsel for the petitioners and Sri Triveni Shanker, learned counsel for the respondent Nos. 5 to 8 and the learned standing counsel appearing for the respondent Nos. 1 to 4.

4. The submission of Sri Siddharth Verma is that since on the land in question there were more than 100 trees planted by Gangajali, mother-in-law of Shiv Nath, father of the present petitioners, the said land ought to have been treated as a grove and ignored from the consolidation proceedings but the authorities committed a grave error in treating the land as new parti (banjar) land and Up Zila Adhikari. Ghazipur by his order dated 30.7.1996 mutated the name of the gaon sabha in the revenue records.

5. Learned counsel for the petitioner further submitted that the trial court has committed an error in holding that no objections were filed by the plaintiffs during the consolidation proceedings u/s 49 of the U.P. Consolidation of Holdings Act, 1953, inasmuch as if the land itself could not have been brought under consolidation, there was no obligation in law on the petitioners to file objections under Section- 49 of the U.P. Consolidation of Holdings Act.

6. Further submission of Sri Verma is that since the trees were planted during the time of Gangajali, mother-in-law of Shiv Nath, the original plaintiff and she was the owner of the trees, therefore, she also became the bhumidhari of the plots in question and the land could not have been treated as new parti allotted to the gaon sabha treating it to be banjar land. Sri Verma further submitted that before the Up Zila Adhikari, Ghazipur no objections were filed by the gaon sabha and, therefore, it should be taken to be an admission on the part of the gaon sabha that since the trees had been planted by Gangajali or existed prior to coming into force of U.P. Zamindari Abolition and Land Reforms Act, 1950, Sri Shiv Nath as the heir and successor of Gangajali automatically be treated as bhumidhari of the land in question.

7. Opposing the submission of learned counsel for the petitioner Sri Triveni Shanker, learned counsel for the respondent Nos. 5 to 8 submitted that there was nothing in the records to show that the name of Gangajali alias Gangia, mother-in-law of Shiv Nath, plaintiff was ever recorded as bhumidhari of the plots in question. After the death of Gangajali, the name of Shiv Nath was also not recorded as bhumidhar or grove holder in possession, over the disputed land.

8. Sri Triveni Shanker further submitted that since the land in dispute was vacant

land, which was allotted in favour of the respondent Nos. 5 to 8 it was recorded as naveen parti (banjar) land during the consolidation proceedings and the plaintiffs-petitioners also never filed any objections during the consolidation proceedings in respect of the land in question. He further submitted that even otherwise the suit filed by Shiv Nath u/s 229B of the Act, 1950 was not maintainable in view of the specific bar u/s 49 of the U.P. Consolidation of Holdings Act since the village in which the disputed land was situate had already come under consolidation operations.

9. Sri Triveni Shanker further submitted that merely because some persons had planted trees over the land in question he would not become the owner of the land and the land was rightly allotted to the goan sabha as new parti (banjar) land thereafter allotted in favour of respondent Nos. 5 to 8.

10. On behalf of the petitioners reliance has been placed on the following decisions:

1. Shriram Surajmal Vs. Shriram Jhunjhunwalla, .
2. Sakina Bee Vs. Mohamed Ameer Saheb and Others, .
3. Badat and Co. Vs. East India Trading Co., .
4. Smt. Sawarni Vs. Smt. Inder Kaur and Others, .
5. Asha Ram Singh v. Board of Revenue and others, C.M.W.P. No. 33560 of 1991.

11. In essence, the above case laws have been cited by the learned counsel for the petitioners on the allegation that if specific pleadings are in respect to objections filed by the defendant opposing the pleas taken by the plaintiff, the undisputed pleas in the plaint or application should be taken to be admitted.

12. A reference has also been made to the decision of the Supreme Court in Smt. Sawarni Vs. Smt. Inder Kaur and Others, , wherein the Supreme Court in para 7 has held that "Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question....."

13. There is absolutely no quarrel so far as the legal position laid down by the Supreme Court is concerned. The rights and title of the property have ultimately to be decided in appropriate suit proceedings. In the present case the question is entirely different. Even assuming that the land in question ought not to have been included in consolidation, but once consolidation proceedings had commenced in the said village a right had accrued to the plaintiffs-petitioners to have filed their objections u/s 49 of the U.P. Consolidation of Holdings Act, 1953. The plaintiff-petitioners for reasons best known to them did not file any objections. Instead a suit u/s 229B of the U.P.Z.A. and L.R. Act for declaration of bhumidhari rights over the land in question, was filed. This declaratory suit was barred by the specific provisions of Section 49 of the U.P. Consolidation of

Holdings Act once the village came under consolidation operation. This Court in C.M.W.P. No. 33560 of 1991, Asha Ram Singh and another Vs. Board of Revenue, U.P. and others, , has held as follows:

4. "Consolidation area" as defined in Section 3(2A) means the area, in respect of which a notification u/s 4, has been issued, except such portions thereof to which the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950, do not apply. "Consolidation Scheme" according to Section 3(3B) means the scheme of consolidation in a unit. Section 3(4C) defines "holding" as parcel or parcels of land held under the tenure by a tenure-holder. Singly or jointly with other tenure-holders. "Land" as defined in Clause (5) of Section 3 means land" held or occupied for purposes connected with agriculture, horticulture and animal husbandry including pisciculture and poultry farming and includes, (1) the site, being part of a holding, of a house or other similar structure, and (ii) trees, wells and other improvements existing on the plots forming the holdings. These expressions and the scheme of the Act, make it abundantly clear that the provisions of the Act are attracted in respect of the "land" falling within the "Consolidation Area" irrespective of the fact whether or not such land is actually included in the scheme for purposes of allotment of chaks. Sections 7 to 8A of the Act provide for revision of village map, field book and the current annual register and thereafter preparation of statement of principles in the manner indicated therein. Section 9 of the Act provides for publication of statement of principles. The provisional consolidation scheme for a unit is prepared in the manner indicated in Section 19 of the Act. It is evident from the various provisions of the Act that plot which is included in the consolidation scheme for purposes of allotment of chaks, is given a certain exchange ratio of valuation, whereas a plot which is kept out of the scheme is not allocated any exchange ratio of valuation, but the disputes with regard to title of every plot of land situated in a consolidation area, have to be resolved in the manner indicated in Sections 9 and 9A of the Act read with related rules. In the Instant case, the plot in dispute was not included in the scheme for purposes of allotment of chaks but that does not mean that the petitioners were absolved of the necessity to get their title if any, adjudicated upon under the provisions of the Act. That having not been done, in the instant case the revenue courts have committed no error in invoking the provisions of Section 49 of the Act which puts a complete bar to the jurisdiction of civil or revenue courts in respect of the declaration/adjudication of rights of tenure holders pertaining to land lying in an area for which a notification has been issued under sub-section (2) of Section 4 or adjudication of any other rights arising out of consolidation proceedings and in regard to which proceeding could or ought to have taken under the Act.

14. The Supreme Court in the case in Narender Singh and Others Vs. Jai Bhagwan and Others, , has held as follows:

8. It is not in dispute that the suit lands were recorded exclusively in the name of the deceased-defendant who was the father. The sons, even after becoming

major and fully aware of the execution of the agreement of sale, did not make any attempt to get their names jointly recorded in the Revenue papers by appropriate proceedings u/s 49 of the Act of 1953. The present appellants have been brought on record of the suit only as legal representatives after death of the original defendant. Section 49 of the 1953 Act bars jurisdiction of civil court to adjudicate upon dispute of rights and title relating to lands included in Consolidation Proceedings. The jurisdiction to decide dispute of rights and title of the lands in Consolidation Proceedings has been conferred by the Act exclusively on the authorities under the said Act.

Section 49 of the Act of 1953 reads thus:

Section 49. Bar to civil court jurisdiction-Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land by the lying in an area, for which a notification has been issued [under sub-section (2) or Section 4], or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no civil or revenue court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought, to have been taken under this Act:

Provided that nothing in this section shall preclude that Assistant Collector from initiating proceedings u/s 122B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in respect of any land, possession over which has been delivered or deemed to be delivered to a gaon sabha under or in accordance with the provisions of this Act.

(Emphasis supplied)

9. The learned counsel for the respondents is right in his reply that the lands being exclusively recorded in the name of the father the sons who claim joint ownership in the lands could and ought to have approached the authorities under the Act for getting them jointly recorded in the Revenue Papers. Such proceedings for recording them as joint owners having not been initiated under the Act of 1953, the High Court was right in invoking bar against such plea in the suit in accordance with Section 49 of the Act. We find that the contention advanced and accepted by the High Court gets full support from the following observations of this Court in the case of Sri Ram (supra):

13. In the instant case respondent 1 was claiming an interest in the land lying in the area covered by notification issued u/s 4(2) on the basis that he is the son of Chhota, brother of Nanha and that the lands were recorded in the name of Nanha in a representative capacity on behalf of himself and his other brothers. This claim which fell within the ambit of Section 5(2) had to be adjudicated by the consolidation authorities. Since it was a matter falling within the scope of adjudicatory functions assigned to the consolidation authorities under the Act the

jurisdiction of the civil court to entertain the suit in respect of the said matter was expressly barred by Section 49 of the Act and the suit of the appellant was rightly dismissed on that ground.

15. In view of the above proposition of law laid down by the Supreme Court and the fact that the plaintiff-petitioners had not filed any objections u/s 9 of the U.P. Consolidation of Holdings Act, 1953 no illegality or infirmity can be attached to the impugned orders in rejecting the name of the plaintiff-petitioners invoking the bar of Section 49 of the U.P. Consolidation of Holdings Act, 1953. In the aforesaid circumstances, the present writ petition, therefore, lacks merit and is accordingly dismissed. There shall be no order as to costs.