
(2011) 02 AHC CK 0090
In the Allahabad High Court
Case No : Writ B No. 25197 of 2008

Tulai

APPELLANT

Vs

Rameshwar Dayal and Others

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

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

Citation : (2011) 02 AHC CK 0090

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the parties.

2. Smt. Bilasu (wife of Nanhe) the recorded tenure holder executed sale-deed of the agricultural land in dispute (Plot No. 85, area 3 bighas and 10 biswas) in favour of Kanhai, predecessor in interest of the Respondents on 26.03.1973. She was sirdar of the agricultural land in dispute till then, however she had deposited 20 times of the land revenue on the same date on which the sale deed was executed which was necessary requirement at that time for obtaining bhumidhari sanad in case of sirdari tenure. Sirdari could not be transferred, however bhumidhari could be transferred. The Petitioner who is nephew of late Smt. Bilashu first challenged the grant of bhumidhari sanad, however those proceedings, before they could be finalised, stood abated as meanwhile consolidation proceedings had been initiated in the area in question.

Thereafter, Petitioner filed objections u/s 9-A(ii) of U.P. Consolidation of Holdings Act before Consolidation Officer. Consolidation Officer (II), Subhash Nagar, Bareilly where the case had been registered as Case No. 357 of 2006-07, Tulai and Ors. v. Rameshwar Dayal and others relating to Village Sarkara Pargana and Tehsil Nawab Ganj, District Bareilly decided the matter in favour of the Petitioner through order dated 20.08.2007, copy of which is Annexure-IV to the writ

petition. The C.O. held that Smt.

3. Bilashu was ill for a long time and died either on 26th (March, 1973) the day of which sale deed was executed or on the next day and the witnesses, which were produced by the purchaser were of different village and all these factors rendered execution of the sale deed doubtful. C.O. further held that on the date of sale deed i.e. 26.03.1973 bhumidhari rights had not been 2 obtained by Smt. Bilashu, i.e. order of the competent authority had not been passed. Against the said judgment of the C.O. Respondents filed Appeal No. 174 of 2007-08, which was allowed by S.O.C. Bareilly through judgment and order dated 20.12.2007, copy of which is Annexure-V to the writ petition. Petitioner filed revision against the said judgment of S.O.C. in the form of Revision No. 63 of 2007-08, Tulai v. Rameshwar Dayal and others. D.D.C. Bareilly dismissed the revision on 23.04.2008, hence this writ petition.

4. S.O.C. as well as D.D.C. held that Smt. Bilashu had herself executed the sale deed and she died after the execution of the sale deed and not before that as asserted by the Petitioner. Both these authorities also held that the order passed by C.O. had been passed only on the basis of pure conjectures and surmises. It was also held by S.O.C. and D.D.C. that even though the order granting bhumidhari sanad was passed subsequently, however as 20 times land revenue had 3 been deposited on 26.03.1973, hence the grant related back to the said date. For this proposition reliance was placed upon several authorities of this Court.

5. I do not find least error in the judgment and order passed by S.O.C. and D.D.C. Firstly, the findings recorded by them are findings of fact. Secondly, the said findings do not suffer from any error. Thirdly, C.O. had not recorded any categorical finding that Smt. Bilashu had not executed the sale deed. On mere conjectures and surmises that she was old, she died either on the same date on which sale deed was executed or on the next date etc. sale deed could not be cancelled or held to be void on the ground that it was not executed by Smt. Bilasu. Sale deed could be cancelled or declared void only if a categorical finding was recorded that Smt. Bilashu did not execute the sale deed. The legal position of relating back of bhumidhari sanad to the date of deposit is also in accordance with the Supreme Court authority on which reliance has been 4 placed by the courts below, i.e. Deo Nandan and Another Vs. Ram Saran and Others,

6. Accordingly, there is no merit in the writ petition, hence it is dismissed.