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(1992) 09 AHC CK 0048

In the Allahabad High Court

Case No : Writ Petition No. 19295 of 1991

Udairaj Kumar and others — APPELLANT

Vs

Board of Revenue, U.P. and others — RESPONDENT

Date of Decision : 14-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 49, 9
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 229

Citation : AIR 1993 All 98 : (1993) 1 AWC 64

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Mr. Yatindra Singh and Mr. Rajiv Joshi and V.K.S. Chaudhary, for the Appellant; S.C. and Sri K.M. Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition is directed against the order dated 3-7-1989 passed by the Addl. Commissioner (Judicial), Moradabad Division, Moradabad and the order dated 24-4-1991 passed by the Board of Revenue in Second Appeal No. 110 of 1988 arising out of the suit filed by the petitioners for declaration and partition under S. 229-B and S. 176 of U.P.Z.A. & L.R. Act (hereinafter referred to as the Act).

2. The admitted pedigree between the parties is as under:--

Puran Prasad | -- | | | Ram Chandra Ram Ballabh Ram Kishan (died issueless Saran | in 1892 | Hari Raj Saran | | | Udairaj Kuamr -------------------------------- | | | | Raghuraj Saran Sheoraj Saran | (Widow | | Chandrawati | | | | | ------------------------------- | | | | | | | Raj Kumar Giriraj Kumar Indra Prakash | | (D4) | | | --- | | | | | | | Chandra Vinod Krishna | | Prakash Kumar Kumar | | (D1) (D2) (D3) | --- | | | | | Hari Kumar Gauri Kumar Arun

Kumar | (D4/1) (D4/2) (D4/3) | --- | | | | | | Shakti Bhagwati Madhusudan Uttam Kumar Ashok Kumar Shravan Kumar Pd. Kumar (P2) (P3) (P4) (P5) (P6) (P7) 3. The petitioners filed suit regarding grove (Khata No. 4) situate in village Thakurdwara. Distt. Moradabad. The case of the petitioners was that the grove was ancestral property. It was situate on their ancestral Sir-Khudkasht land. Pooran Prasad, the ancestors of the parties, was originally recorded as sir-khudkasht holder and after his death his 3 sons namely Ram Chandra, Ram Ballabh Saran and Ram Krishna jointly inherited the property. Ram Chandra died issueless in the year 1892 and his share was succeeded by his two brothers namely Ram Ballabh Saran and Ram Krishna and each of them had 1/2 share in the property in question. The defendants, however, got some forged entry during the consolidation proceedings and when they came to know of it, they filed the suit in the year 1986.

4. The respondents 3 to 11 contested the suit. They pleaded that one of the sons of Ram Chandra (one of the sons of Pooran Prasad) during his life-time and he inherited 1/3rd share of Ram Chandra. It was contended that family settlement took place and under the family settlement the land of village Jamnawala was given to the petitioners and the land in dispute which is situate in village Thakurdwara was given to the respondents and in the consolidation proceedings, the applications were moved and such family settlement was accepted and the chaks were carved out accordingly in the year 1967 and since then the parties are in possession of their respective shares and the plaintiffs have no share in the property in question in village Thakurdwara. They further took the plea that suit was barred by Section 49 of U. P. Consolidation of Holdings Act and was also barred by limitation.

5. The trial Court by judgment dated 10-2-89 partly decreed the suit. He recorded a finding that Ram Chandra had adopted Sheoraj Saran and therefore the plaintiffs had only 1/3rd share in the property. He did not accept the family settlement and the compromise as alleged by the contesting respondents. He held that the entries in the consolidation proceedings were fictitious. He decreed the suit holding that the plaintiffs have 1/3rd share in the property in question. Against the decision of the trial Court, three appeals were filed. One appeal was filed by the plaintiffs challenging the findings of the trial Court regarding adoption. The contesting respondents filed appeal challenging the decree passed by the trial Court and the respondent No. 1 who was a transferee from the contesting respondent No. 2, affirmed the finding of the trial Court regarding adoption. He held that Ram Chandra had adopted Sheoraj Saran. He, further held that the parties had entered into a compromise and the family settlement had taken place and the Asstt. Consolidation Officer accepted the same and the entries were to made accordingly. The entries in the revenue records were genuine and the suit was barred by S. 49 of the U. P. Consolidation of Holding Act. He dismissed the appeal filed by the petitioners and allowed the appeal filed by the petitioners and allowed the appeal filed by the respondents and dismissed

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the suit. The petitioners aggrieved against such judgment filed second appeal before the Board of Revenue and the Board of Revenue dismissed the appeal by judgment dated 22-4-1991. The petitioners have approached this Court against these decisions. The learned counsel for the petitioner challenged the finding regarding the adoption. The trial Court recorded a finding that Ram Chandra had adopted Sheoraj Saran. He took into consideration the oral and various documentary evidence. The said finding was scrutinised by the Additional Commissioner in appeal and he confirmed the judgment of the trial Court and the Board of Revenue has also upheld the finding. The petitioners have failed to point out any legal infirmity in the said findings.

The main contention of the learned counsel for the petitioner is that the findings recorded by the respondents 1 and 2 that family settlement took place between the parties during the consolidation proceedings was not based on any evidence and the revenue entries during the consolidation proceedings were fabricated and forged. The Additional Commissioner, the respondent No. 2 considering in detail the entire oral, and documentary evidence came to the conclusion that the family settlement had taken place during the consolidation proceedings and the applications were moved on such settlement which were given effect to and the parties acted upon it. The Board of Revenue has confirmed the said judgment. The mere fact that Board did not consider in detail, the evidence considered by the Addl. Commissioner does not vitiate its judgment. The arguments were heard at length and the following facts emerged from the evidence on record does not leave any doubt that the family settlement had taken place and the petitioners took advantage of such family settlement and acted upon it. The facts which throw light on the family settlement and conduct of the petitioners may be considered as under:--

(1)The dispute in the Suit was regarding village Thakurdwara. The area of the land in question is 10.7 acre as is clear from the schedule of the plaint. The land was originally recorded in the name of Pooran Prasad and subsequently recorded in the names of sons of Pooran Prasad. There is another village Jamnawala, the disputed area of which is 11.52 acre. It is clear from the averments made in para 13 of the writ petition, which has also not been denied by the petitioners. The land which was situate in village Jamnawala was exclusively recorded in the name of Smt. Chandrawati, w/o Raghuraj Saran. Admittedly in this land the petitioners were not recorded as tenure holders. Smt. Chandrawati was widow of Raghuraj Saran, mother of respondents 9 and 10 and grandmother of respondents 6 to 8. The petitioner could not claim any rights nor did they claim any rights in the said property, as ancestral property. In para 10(g) of the writ petition, it is stated that Udairaj Kumar was cultivating the said land before the date of vesting and Smt. Chandrawati made a statement before the Consolidation Authorities that she had no right over the said plot and on her own statement, her name was struck off from the village Jamnawala. It is thus clear that the land in village Thakurdwara was recorded jointly in the name of the parties and the name of village Jamnawala was exclusively recorded in the name

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of Smt. Chandrawati.

(2) During the consolidation proceedings Udairaj Kumar, the petitioner No. 1 filed an application that his name may be, recorded over the land situate in village Jamnawala. It was registered as case No. 171, Udairaj Kumar v. Smt. Chandrawati. The Asstt. Consolidation Officer allowed the application by order dated 4th February 1967 and struck off the name of Smt. Chandrawati and directed to record the name of Udairaj Kumar. After the aforesaid order was passed Udairaj Kumar, the petitioner No. 1 filed an application before the Asstt. Consolidation Officer on 17-10-1988 stating that in pursuance of the order dated 4-6-1967, his name may be recorded. The said application was allowed and thereafter the entry in C.H. Form 23 was made recording the name of Udairaj Kumar exclusively.

Regarding village Thakurdwara, Raj Kumar, filed an application for striking out the name of Udairaj Kumar, the petitioner No. 1. It was registered as case No. 47. The Asstt. Consolidation Officer allowed the application on 5-2-1967 and the name of Udairaj Kumar was struck off and the revenue entries thereafter indicated about the order passed by the Asstt. Consolidation Officer passed in case No. 47 and the name of Udairaj Kumar was scored out. The learned counsel for the petitioner urged that the entire proceedings before the Asstt. Consolidation Officer regarding the village Thakurdwara was fictitious. He, however, did not challenge the orders passed by the Asstt. Consolidation Officer regarding the village Jamnawala. He cannot blow hot and cold at the same time. It was not the case of the petitioner that the land in village Jamnawala was also ancestral. It was admitted that it belonged to Smt. Chandrawati but the case which has been put forward in the writ petition is that Udairaj Kumar was cultivating the land and therefore he had matured his rights by adverse possession. There was no decision by the Consolidation authorities on this question. It may be noticed that the procedure adopted regarding both the village were the same and the manner of passing the order regarding both the village were also the same. It is admitted that record of both the cases have been weeded out. It cannot be believed that the respondents would have not contested, if any objections have been filed by the petitioners regarding the claim of Udairaj Kumar if any, regarding the village Jamnawala. The petitioners did not file any evidence to show that Udairaj Kumar was ever recorded in possession of any portion of land of village Jamnawala in which Smt. Chandrawati, was recorded as tenure holder. This manifestly and clearly indicates that there was a family settlement by which land of village Jamnawala was given to Udairaj Kumar and the grove in question situate in village Thakurdwara was exclusively given to respondents 3 to 10. The equities were thus settled.

(3) This settlement was also acted upon. The plaintiffs sold the entire land of the village Jamnawala sometime in the year 1983 and after having sold the entire land they filed the present suit in the year 1986 for partition of the land situate in village Thakurdwara. Madhusudan, s/o Udairaj Kumar, the petitioner No. 4

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appeared as a witness in the suit. He admitted that during the consolidation proceedings his father obtained the land in village Jamnawala and that entire land was sold and the money received from such sale was invested in construction of the house. Subsequently, the house was also partitioned between the sons of Udairaj Kumar. It, is clear from his own admission that the land in village Jamnawala was taken during the consolidation proceedings and they have sold this land to others. In the revenue records it was also established that the orders passed by the Consolidation Authorities were given effect to and the entries were made accordingly. The name of Udairaj Kumar was exclusively recorded on the land situate in Village Jamnawala which was earlier recorded in the name of Smt. Chandrawati (Annexure IV to Supplementary Counter Affidavit) in C. H. Form 23. Earlier it was recorded in the name of Smt. Chandrawati which is clear from Khatauni 136F (Annexure II to Supplementary counter affidavit) in the writ petition. Similarly, the name of respondents 3 to 10 were recorded in C.H. Form 45 and the name of Udairaj Kumar was scored out. C.H. Form 23, filed as Annexure 6 to the writ petition indicates that it contains an order of the Asstt. Consolidation Officer in case No. 47 dated 5-2-67 by which the name of Udairaj Kumar was struck off. The entries clearly indicate that the order passed by the Asstt. Consolidation Officer was given effect to in the revenue records.

(4) The suit has been filed in the year 1986. The revenue entries were made in the year 1967. The petitioner never challenged these entries tilt the year 1986. Udairaj Kumar sold the land of village Jamnawala and after having sold the entire land he filed the present suit for partition. This smells foul about the conduct of Udairaj Kumar and his sons. There explanation that they had no knowledge of the revenue entries was not believed by the respondent No. 2. The respondent No. 2 held that the conduct of the petitioner No. 1 was unfair.

6. The respondent No. 1 had already took into consideration the statements of the witnesses produced on behalf of the petitioner and the respondents. He believed the statement of Krishna Kumar, Ashad Ullah Khan and Ratan Lal who were produced on behalf of the respondents to prove the family settlement. Considering the entire oral and documentary evidence and the circumstances their could not have been any two opinion that the parties did settle their dispute by family settlement and in pursuance of the same the applications were filed before the Consolidation Authorities and they were accepted and acted upon.

7. The learned counsel for the petitioner urged that their were suspicious circumstances which indicated that no application was filed by Udairaj Kumar regarding village Thakurdwara and even if such an application had been filed the procedure for giving effect to compromise was not followed. Admittedly the record of the cases of village Jamnawala and Thakurdwara both have been weeded out. There is nothing to show any illegality in the procedure adopted by the Asstt. Consolidation Officer. Even assuming that certain procedures were not followed but it is proved that there was a family settlement between the parties and it was acted upon, the irregularity in the procedure cannot be challenged in a

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suit for declaration filed by the petitioners in the

8. The learned counsel for the petitioner contended that C.H. Form 23 had been prepared and that was confirmed in the year 1966 and after the confirmation of such entry the Asstt. Consolidation Officer had no jurisdiction to change the entry. This argument was considered by the respondent No. 2 and validly rejected on the ground that the parties could move an application under S. 12 of the U.P. Consolidation and Holdings Act and the same could be given effect to by the Consolidation Authorities. The Misil Band register regarding both the villages were examined by the respondent No. 2 and it was found that it was registered as a case u/s 9 of U.P. Consolidation and Holdings Act. The mere fact that a wrong Section is quoted in the application does not vitiate the proceedings. The learned counsel for the petitioner next contended that the finding of the respondents No. 1 and 2 that the suit was barred by Section 49 of U. P. Consolidation and Holdings Act was erroneous in law. The respondent No. 2 in detail considered regarding the entries made in the revenue records. He found that the entries in the revenue records prepared during the consolidation operation, after the alleged family settlement was not fictitious and forged. In view, of this finding, the view of the respondent No. 2 and confirmed by the respondent No. 1 that the suit was barred by Section 49 of U. P. Consolidation and Holdings Act was correct and does not call for interference under Article 226 of the Constitution of India.

9. The last argument of the learned counsel for the petitioner is that Udairaj Kumar may at the most was taken as party to the family settlement but as his sons i.e. petitioners 2 to 7 were not parties to the family settlement and their rights cannot be affected in any ancestral property. It may be noted that from the statement of Madhusudan, the petitioner No. 4 that the land of village Jamnawala was taken by Udairaj Kumar and the said land was sold and the entire consideration received from such sale was invested in the construction of the house and the house which was built was partitioned amongst all the sons of Udairaj Kumar. This clearly indicates that by the said family settlement every member of the family was benefited and now they cannot raise any argument that they were not a party to the family settlement. Secondly in view of the finding that the suit was barred u/s 49 of U.P. Consolidation and Holdings Act, the present suit was not maintainable and was liable to be dismissed. No other point was pressed in the writ petition.

10. The writ petition is dismissed. The parties shall, however, bear their own costs.

11. Petition dismissed.

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