

(1987) 11 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17156 of 1986

Udho Singh

APPELLANT

Vs

District Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 16-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9, 9A(1), 9B(1)

Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 25A

Citation : (1988) 1 AWC 228

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : Triveni Shanker Pandey, for the Appellant; Standing Counsel and A.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Singh, J.—This writ petition arises out of proceedings u/s 9 of the U.P. Consolidation of Holdings Act.

2. The dispute between the parties is about the share in the disputed Khata. The petitioner claims 3/4th share in the disputed Khata whereas he has been given 1/2 share by the consolidation authorities on the basis of a compromise between the contesting parties. Aggrieved by the judgments of the consolidation authorities the petitioner has approached this Court under Article 226 of the Constitution. The petitioner claims 3/4th share in the disputed Khata on the basis of the following pedigree:

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Bux

|

| | Samser Hanuman | _____ | | Hawaldar
Udho | Hari Shankar

3. According to the petitioner the share of Hanuman in the above pedigree would

devolve upon him, therefore, he would be entitled to 3/4th share.

4. It has been stressed before me by the learned Counsel for the petitioner that the compromise relied upon by the consolidation authorities is no compromise in the eye of law because it did not bear the signatures of the petitioner.

5. Second contention raised on behalf of the petitioner is that in the facts and circumstances of the present case burden has been placed on wrong shoulders. According to the learned Counsel for the petitioner it was necessary for the contesting opposite party to have proved the genuineness of the compromise. The bare denial on the part of the petitioner was enough to discard the compromise.

6. The third contention raised on behalf of the petitioner is to the effect that the compromise was not written by the Assistant Consolidation Officer in his own hand, therefore, the compromise was illegal and could not be acted upon.

7. Fourthly, it has been contended that the compromise gives lesser share to the petitioner than he is entitled to in the eye of law, therefore, the compromise should have been ignored and the claims of the parties should have been decided strictly in accordance with the legal share.

8. I have considered the contentions raised on behalf of the petitioner and I think that none of the contentions have force. In the facts and circumstances of the present case the burden was upon the petitioner to prove that the alleged signature on the compromise was really not the signature of the petitioner. The bare denial by the petitioner would not be sufficient in eye of law to discharge the burden. There is a presumption about the correctness of the record of a Court. If a party challenges the correctness of the record it was for that party to prove its allegations. If the signature of the petitioner on the compromise was really not the signature of the petitioner the admitted signature of the petitioner should have been compared with the alleged signature on the compromise and expert should have been examined on behalf of the petitioner to prove that the alleged signature on the compromise was really not his signature. I think that the contention of the learned Counsel for the petitioner to the effect that the burden was placed on wrong shoulder is wholly misconceived and ill-founded.

9. Since the compromise bears the signature of the petitioner and it has not been proved that the signature is a forged one or is not the signature of the petitioner, I think that in the facts and circumstances of the present case, the compromise cannot be termed as illegal because it did not bear the signature of the petitioner. Rather, it is evident that the compromise did bear the signature of the petitioner which has not been established as forged or fabricated signature of the petitioner.

10. As regards the contention of the learned Counsel that the petitioner has got lesser share than he is entitled to in law, it is sufficient to observe that if the parties agree to a lesser share he cannot be permitted to ignore the agreement

which has been accepted by the Assistant Consolidation Officer. It was open to the petitioner not to have agreed to the lesser share but once he agreed, he cannot be permitted to challenge the compromise on the ground that he got lesser share in the eye of law. In a compromise giving and taking by the contesting parties is always involved. Once a party willingly gives to the other party and the compromise is accepted by a Court it would not be proper for this Court to interfere with the order passed by the Court in the exercise of its powers under Article 226 of the Constitution.

11. It is note-worthy that the petitioner has taken a wrong objection to the compromise that it did not bear his signature. The petitioner has utterly failed to establish his objection regarding the forged and fabricated signature, therefore, I think that the petitioner is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution. His conduct in taking a wrong plea to invoke the jurisdiction of this Court under Article 226 of the Constitution disentitles him to the relief claimed in the writ petition. To my mind even if the petitioner has got lesser share through the compromise challenged, he cannot make legitimate grievance to the compromise in the facts and circumstances of the present case.

12. The last contention raised on behalf of the petitioner is to the effect that the compromise is bad in law because it was not recorded by the Assistant Consolidation Officer in his own hand writing. I think that even if the compromise was not recorded by the Assistant Consolidation Officer in his own hand it would be only an irregularity. The illegality would not be of such nature as to entitle the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution. My attention has been drawn to the observation in the impugned judgment at page 48 of the paper book which is as follows:

Samjhauta men ab ek matra vivad aur avshesh rah jata hai ki samjhauta sahayak chakbandi अधिकारी द्वारा नही लिखा जाकर किसी अन्य व्यक्ति द्वारा लिखा गया है। Samjhauta के आदेश और Samjhauta के लेख में अंतर है। प्रथम द्रष्टा रूप से यह स्पष्ट होता है कि Samjhauta का आदेश sahayak chakbandi अधिकारी द्वारा लिखा गया है और Samjhauta किसी अन्य व्यक्ति द्वारा परन्तु मात्रा इतनी ही तकनीक होने के आधार पर Samjhauta किसी अन्य व्यक्ति द्वारा परन्तु तथ्यों को निरास्त नहीं किया जा सकता है। Samjhauta पर sahayak chakbandi अधिकारी ने दो चकबन्दी ने सम्या रूप से किया गया है और उस पर sahayak chakbandi अधिकारी ने सम्या रूप से आदेश पारित किया है।

13. My attention has also been invited to para 1 of Annexure V. at page 31 of the paper book wherein it has been written that the terms of the compromise and the order were written by the Assistant Consolidation Officer himself in his own hand writing. Therefore, it has been contended before me that the terms of the compromise were not written by the Assistant Consolidation Officer in his own hand and a doubt has arisen about the correctness and genuineness of the compromise, therefore, the same should have been ignored by the consolidation authorities and legal share should have been given to the petitioner.

14. Rule 25A of the U.P. Consolidation of Holdings Act reads as below:

25-A (1). The Assistant Consolidation Officer shall, as far as possible, deal with all the objections filed by a tenure-holder with regard to matters referred to in Clause (i) of Sub-section (1) of Section 9-A and Sub-section (1) of Section 9-B in the village itself. In deciding disputes on the basis of conciliation in terms of Sub-section (1) of Section 9-A he shall record the terms of conciliation in the presence of at least two members of the consolidation Committee of the village. These terms shall then be read over to the parties concerned and their signatures or thumb impressions obtained. The members of the Consolidation Committee present shall also sign the terms of conciliation. The Assistant Consolidation Officer shall then pass orders deciding the dispute in terms of conciliation specifying the precise entries to be made in the records. Details of the operative part of the orders passed by the Assistant Consolidation Officer shall be noted in the Misilband register. No ex parte orders or orders in default shall be passed by the Assistant Consolidation Officer.

15. In the present case it has been established that the compromise bore the signatures of the contesting parties and the signature of the members of the Consolidation Committee and that the order accepting the terms of the compromise has been passed by the Assistant Consolidation Officer himself. Therefore, even assuming that the terms of the compromise were not recorded by the Assistant Consolidation Officer in his own hand writing but somebody else wrote the terms of the compromise and that would be only an irregularity and cannot be termed as such an irregularity as to warrant interference with the order passed by the Assistant Consolidation Officer in his own hand accepting the terms of the compromise on the ground of a technical objection. I think that the petitioner's objection regarding not recording the terms of the compromise in his own hand by the Assistant Consolidation Officer is not so weighty as to warrant interference with the order passed by the Assistant Consolidation Officer accepting the terms of the compromise by this Court in the exercise of its powers under Article 226 of the Constitution.

16. Considering the objection of the petitioner that he has not signed the compromise which he has failed to establish in the facts and circumstances of the present case, I think it is not a fit case where interference should be made with the orders passed by the consolidation authorities on a technical objection raised on behalf of the petitioner to the effect that the terms of the compromise were not written by the Assistant Consolidation Officer in his own hand.

17. Thus, all the contentions raised on behalf of the petitioner fail. The writ petition is devoid of merits, therefore, it is accordingly dismissed but I make no order as to costs.