
(2010) 05 AHC CK 0004
In the Allahabad High Court
Case No : C.M.W.P. No. 42235 of 2004

Udit	Vs	APPELLANT
D.D.C. and Others		RESPONDENT

Date of Decision : 07-05-2010

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2010) 4 AWC 3730

Hon'ble Judges : Poonam Srivastav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Poonam Srivastav, J.—Heard learned Counsel for the parties.

2. Counter and rejoinder- affidavits have been exchanged. The writ petition is listed for admission. As agreed between learned Counsel for the parties, I proceed to decide the writ petition finally.

3. The orders challenged in the writ petition are dated 16.3.2004 passed by the Settlement Officer. Consolidation, Mirzapur in Appeal No. 381 of 1998 and 6.9.2004, passed by the Deputy Director of Consolidation, Mirzapur in Revision No. 637 of 2004.

4. In the year 1986 consolidation proceedings were initiated in village Kalwari Khurd, Tehsil Marihan, Pargana Kantit, Tappa 84, District Mirzapur. The petitioner filed his objection on 15.1.1986 before the Consolidation Officer vide Case No. 25 of 1986, Udit Narayan v. Lal Chand and Ors. The objection filed by the petitioner was allowed by the Consolidation Officer vide order dated 27.6.1995 which is Annexure-2 to the writ petition. The respondent Nos. 4 to 6 preferred an appeal before the Settlement Officer, Consolidation on 22.7.1998 challenging the order of the Consolidation Officer dated 27.6.1995. They also filed a number of documents as additional evidence which was taken on record and the Settlement

Officer, Consolidation after adjudicating on the basis of additional documents and without giving any notice to the petitioner entertained, more than three years belated appeal of the contesting respondents. The appeal was allowed on 16.3.2004 and contention of the learned Counsel is that though delay was not condoned yet a final order was passed. Therefore, order of remand is absolutely illegal. The matter was remanded before the Consolidation Officer for afresh decision. The petitioner being aggrieved on account of the reason that highly belated appeal was entertained and allowed on the basis of certain additional evidence which was not filed before the Consolidation Officer and the petitioner was never given any opportunity to rebut the same. A revision u/s 48 of the U. P.C.H. Act (hereinafter referred to as the Act) was preferred which was dismissed vide order dated 6.9.2004.

5. Learned Counsel for the petitioner submits that the revisional court had also taken into consideration the additional evidence which was filed at a subsequent stage without affording any opportunity to the petitioner to rebut the said additional evidence and, therefore, aggrieved by two orders he has challenged the same.

6. Learned Counsel appearing on behalf of the contesting respondents has filed counter-affidavit and has emphatically come up with a case that the contesting respondents had moved an application u/s 5 of the Indian Limitation Act and also that the Deputy Director of Consolidation has recorded a detailed findings in accordance with law which does not call for any interference. He has also disputed that no opportunity was given to the petitioner to rebut the additional evidence brought at the appellate stage by the contesting respondents.

7. After hearing the respective counsel at length and going through the record, I am of the considered view that the Deputy Director of Consolidation should not have entertained the revision against the remand order. It is besides the findings given on merits after taking into consideration the additional evidence filed by the contesting respondents. The revisional court should have declined to entertain the revision since the Settlement Officer, Consolidation after accepting additional evidence had remanded the entire dispute before the Consolidation Officer to decide afresh. It would be appropriate in the circumstances of the case that the matter should have been looked into at the very inception after affording an opportunity to file evidence in rebuttal. So far the objection of the petitioner's counsel regarding condonation of delay by the Settlement Officer, Consolidation is concerned, it is true that after lapse of limitation a valid right accrued to the other party. In the instant case, the delay is almost more than three years and, therefore, the Settlement Officer, Consolidation could not have allowed the application u/s 5 of the Indian Limitation Act in short cut manner as it has been done in the instant case. Nevertheless since an application for condonation of delay was moved to which there was no objection. It is evident that delay was condoned and the remand order was passed to decide the dispute. Considerable time has lapsed and I do not intend to reopen the controversy of delay. It will be

appropriate in the circumstances that if the entire matter is sent back to the Consolidation Officer for afresh decision so that a proper adjudication be done after the parties are afforded opportunity to lead evidence and heard.

8. Learned Counsel for the contesting respondents has placed a decision of this Court in the case of Prem Pal and Anr. v. Deputy Director of Consolidation, Bulandshahr and Ors. 2005 (99) RD 439, in support of his argument that this Court was of the view that in spite of remanding the matter to the Consolidation Officer which entails harassment to both sides besides dragging the parties into unending period of litigation and, therefore, came to a conclusion that the remand order could be very well looked into by the Deputy Director of Consolidation which he did while rejecting the revision of the petitioner.

9. I am in agreement with the aforesaid principles but in the instant case it is apparent that the petitioner was deprived of an appropriate opportunity of filing evidence in rebuttal. Certain documents have been brought to my notice by means of specific assertion in this writ petition and, therefore, I am of the considered view that it is one of those cases which must be sent back for afresh decision where the dispute was initiated.

10. In view of what has been stated above, the instant writ petition is allowed and orders dated 16.3.2004, passed by the Settlement Officer, Consolidation, Mirzapur and 6.9.2004, passed by the Deputy Director of Consolidation, Mirzapur are set at naught. The parties are permitted to lead evidence whatsoever if they so desire. The documents filed by the contesting respondents at the stage of appeal can be looked into by the Consolidation Officer after affording an appropriate opportunity to the petitioner to rebut the same.