
(2000) 02 AHC CK 0147
In the Allahabad High Court
Case No : C.M.W.P. No. 1572 of 1978

Vishwanath and another

APPELLANT

Vs

Assistant Director of Consolidation and others

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Agra Tenancy Act, 1926 — Section 24
Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5, 9

Citation : (2000) 2 AWC 1228 : (2000) 91 RD 281

Hon'ble Judges : Shitla Prasad Srivastava, J

Bench : Single Bench

Advocate : U.K. Mishra and A.K. Mishra, for the Appellant; S.C., Faujdar Rai, V.N. Singh and Chandra Kumar Rai, for the Respondent

Final Decision : Disposed Of

Judgement

Shitla Prasad Srivastava, J.—This petition under Article 226 of the Constitution of India has been filed by the petitioners for quashing the orders dated 22.4.1977/23.9.1977, 18.12.1976 and 16.8.1976.

2. The brief facts, as stated in the petition are that Khata No. 106 of village Shahpur. Tahsil Ghosi. district Azamgarh became subject-matter of dispute in Consolidation proceeding u/s 9 of the U. P. Consolidation of Holdings Act. There were about 28 plots, which were recorded, in the basic year khatauni in the name of Ramraj father of the petitioners. Toofani, Chillar and Budhram contesting respondent. As father of the petitioners died immediately after the start of the consolidation, the names of the petitioners were shown in C.H. Form 5. The shares of the respondents Toofani and Chillar were shown as 1/6 each. Budhram was shown as 1/3 share and the petitioners were jointly shown 1/3 share.

3. Objections were filed on behalf of Toofani and Chitlar the contesting respondents on the ground, inter alia, that Budhram and Ramraj had 1/4 share

and Toofani and Chillar had 1/4 share each.

4. The petitioners contested the claim of the respondents Toofani and Chillar. The Consolidation Officer allowed the objection on 16.8.1976 and it was held that Toofani and Chillar were entitled to 1/4 share. Budhram will get 1/4 share and the petitioners were entitled to 1/4 share. Aggrieved by the aforesaid order, an appeal was preferred by the petitioners before the Settlement Officer, Consolidation. The Settlement Officer, Consolidation dismissed the appeal filed by the petitioners. Aggrieved by the aforesaid order of the Settlement Officer Consolidation, petitioners preferred a revision before the Deputy Director of Consolidation. Budhram also filed revision against the order of the Settlement Officer, Consolidation. Both the revisions were heard together and were dismissed by the Deputy Director of Consolidation by his order dated 24.4.1977. Against the aforesaid order of the Deputy Director of Consolidation dated 24.4.1977, the petitioners alone have filed the present writ petition and Budhram has been arrayed as respondent No. 6 in the petition.

5. Counter-affidavit on behalf of respondents Toofani and Chillar, who are the main contesting respondents, was filed. Learned counsel for the petitioners Sri U. K. Misra has vehemently urged that the finding recorded by the Deputy Director of Consolidation in paragraph 7 of the judgment is not correct finding. His contention is that the share of Nandlal, who died issueless will devolve in equal shares of other two branches of his brother's family. Therefore, the finding recorded by the Deputy Director of Consolidation may be set aside.

6. Sri Faujdar Rai, learned counsel for the respondents has submitted that as Budhram had joined hand with the present petitioners and now he is not aggrieved by the order in question and others arrayed as respondents in the case, therefore, the petitioners cannot get any benefit of Budhram. His further submission is that the finding recorded by the consolidation authorities is based on oral evidence as well as on the basis of the revenue entries and it has been held that Dasu was not the grand son of Nand Lal, therefore he will not inherit his share.

7. Sri U. K. Misra has further submitted that though there was two separate pedigrees at the initial stage, but now it is admitted to the parties that Budhram was not of the branch of Nandlal, therefore, Budhram is also entitled to have share in the property left by Nandlal.

8. After hearing learned counsel for the parties, I am of the view that the question involved in the case is that when the parties have admitted that Nand Lal died issueless and his share will devolve upon his heirs, then the question will be who will be the heirs of Nandlal on the date of his death. It is admitted to the parties that there is no death certificate on record of Nandlal. It is also clear from the record that no finding has been recorded about actual date of death of Nandlal. The authorities below have only placed reliance either on the oral evidence or on the revenue extract. Three revenue extracts were on record. One

was khatauni of 1308 Jasli in which Nandlal was recorded and the other was khatauni of 1333 fasli where the name of Nandlal was not recorded but the petitioners' name of other two branches of his brothers' family were recorded. The consolidation authorities have presumed that as Nandlal was recorded in khatauni 1308 fasli, therefore, he was alive in that fasli year and since he was not recorded in khatauni 1333 fasli, therefore, his collaterals, who were to succeed were entered in the revenue record.

9. As I have said above that devolution of the tenancy will start from the date of death of the tenant under the relevant tenancy law. To understand the case of the parties. It is necessary to give the pedigree which is admitted to the parties. This pedigree is as under :

Jhingpur | _____
 | | | Nandlal Hansraj Phallu | | | Chatradhari Jagesar Satiram | | |
 _____ Ramraj | | | Dasu Chillar Hardeo | | | Toofani
 _____ | | Tirathraj Vishwanath

10. This pedigree is mentioned in the judgment of the Deputy Director of Consolidation also and nobody has challenged the aforesaid pedigree. The question is only with regard to the inheritance of the share of Nandlal and the respective shares of the parties of the present case. The Consolidation Officer has taken the help of extract of khatauni of 1308 fasli in which Nandlal, Phallu and Hansraj shown in the above pedigree have been recorded in the extract of khatauni of 1333 fasli, which has also been considered by the Consolidation Officer and has recorded the names of Dasu, Satiram and Jagesar. The Consolidation Officer came to the conclusion that there is no direct evidence regarding the date of death of Nandlal, Hansraj and Phallu rather the evidence which has come is hearsay evidence. He has held that in between 1308 and 1333 fasli. all the above named three persons (Nandlal, Hansraj and Phallu) had died. He has placed reliance on the report of the Commissioner and held that in Suit No. 56 of 1969, which was fought between Toofani and others and Jangli and others, the shares of 1/2 was admitted, therefore, though the appeal has abated, this admission: shall play a role so as it relates to the share of the parties. He accordingly held that the share of the petitioners is 1/4 and that of Budhiram 1/4 and 1/2 belongs to Toofani and Chillar. The appellate court also placed reliance on the same entry and considered the statement of Budhiram in Suit No. 56 of 1969. which was recorded on 12.5.1972 where he admitted that Nandlal's share came to Phallu and held that this statement of Budhiram is binding on him. He also considered Commissioner's report and the map prepared by him on the spot in which it was mentioned that some plots were divided in three sub-divisions and some were divided in two parts. Ultimately, he came to the conclusion that since 1333 fasli, the names of Jagesar, Satiram and Dasu were found it is proved that Chatradhari had died earlier and. therefore, the share of Nandlal will devolve upon Satiram and Jagesar in equal share. The Deputy Director of Consolidation in paragraph 7 of the judgment held, on the basis of some revenue entries, that

from a perusal of the khatauni of 1333 Jasli. it is apparent that Chatradharl and Satiram were alive. therefore, Nandlal's 1/3 share will come to Jagesar and Satiram as they were brother's son of Nandlal and were the nearest relatives. He. accordingly, held that Jagesar will get 1/3 share plus 1/6 share equal to half share. Satiram will get $1/6 + 1/6 = 1/3$ and Budhiram will get 1/6 share and affirmed the finding of the authorities below.

11. Apart from the points urged by the learned counsel for the parties, as stated above, one of the point was also urged by the learned counsel for the parties regarding the effect of the admission made in the civil suit by Budhiram, Sri Faujdar Rat has submitted that Budhiram cannot go against the admission made by him regarding the share, therefore, this admission is binding on him though, the suit stood abated u/s 5 of the Consolidation of Holdings Act. For that purpose, he has placed reliance on a case in Ram Prasad (dead) by LR's. and others Vs. Assistant Director of Consolidation and others, . He has further submitted that as Budhiram has Joined hand with the present petitioners in filing ; the objection, the Deputy Director of Consolidation has no option but to affirm the finding recorded by the subordinate authorities. For that purpose, he has placed reliance in a case in J. K. Pandey v. Deputy Director of Consolidation 1985 RD 388. He has further submitted that review was rightly dismissed, as it was not maintainable.

12. Sri U. K. Misra, learned counsel for the petitioners in reply to the argument of Sri Faujdar Rai has submitted that the admission regarding the share is a question of law and there cannot be any estoppel in the statute. Therefore, the admission made by Budhiram in civil suit, subsequently abated, has no relevance as admission regarding the share was not in consonance with law. For that purpose he has placed reliance in a case In Chandrashekhar and Others Vs. State, .

13. After hearing learned counsel for the parties at length and after perusing of the Judgment and other documents available on record, I am of the view that the petition can be disposed of on short point as to what was the relevant law of devolution regarding the share of Nandlal shown In the pedigree. As stated above, the devolution starts from the date of death, therefore, death of the deceased tenant Nandlal was an Important factor to play role in devolution of tenancy. No finding has been recorded regarding actual date of death and no law has also been applied by the three authorities In devolution of tenancy, rather, they have assumed that Nandlal died In between; 1308 fasli to 1333 fasli, 1308 fasli is equivalent to some where 1901 AD 1333 fasli is equivalent to somewhere in 1926. In between these two periods, there were two tenancy laws prevailing in State of Uttar Pradesh. One The North-Western Provinces Tenancy Act, 1901, which came Into force on the first day of January, 1902 and remained In force till it was repealed by Agra Tenancy Act, 1926. Agra Tenancy Act. 1926. received the assent of the Governor on August 19, 1926 and was published u/s 81 of the Government of India Act on September 6, 1926. It came into force on September

7. 1926. It came into force on September 7, 1926 by notification No. 6155/I-A-487, 1908, dated September 7, 1926. Section 22 of the North-Western Provinces Tenancy Act, 1901, deal with succession to tenancies, which is quoted herein below :

"22. Succession to tenancies.--When an ex-proprietary tenant, an occupancy tenant, or a non-occupancy tenant (other than a thekadar) dies, his interest in the holding shall devolve as follows :

(a) On his male lineal descendants in the main line of descent ;

(b) Failing such descendants, on his widow till her death or remarriage ;

(c) Failing such descendants and widow, or his brother, being a son of the same father as the deceased :

and failing any such heirs as above mentioned ;

(d) on his daughter's son : and

(e) failing such daughter's son, the nearest collateral male relative in the male line of descent :

Provided that no such daughter's son or collateral relative shall be entitled to inherit who did not share in the cultivation of the holding : at the time of the tenant's death."

14. In Agra Tenancy Act, 1926, the relevant section is Section 24, which Is quoted herein below :

"24. Succession of male tenants.--When a male ex-proprietary tenant, occupancy tenant, statutory tenants or non-occupancy tenant dies, his interest in the holding shall devolve in accordance with the order of succession given below :

Order of Succession

Class 1

-Male lineal descendants in the male line of descent ;

Class 11

-Widow till her death or re-marriage :

Class III

-Father :

Class IV

-Mother, being a widow :

Class V

-Brother being a son of the same father as the deceased ;

Class VI

-Daughter's son ;

Class VII

-The nearest collateral male relative in the male line of descent :

Provided that no such daughter's son of shall be entitled to inherit, who did not share in the holding ; at the time of the tenant's death."

15. Under sub-clause (c) of Section 22 of the North-Western Provinces Tenancy Act, 1901, the brother being son of the same father as the deceased is to succeed if there is no major descendant or widow and sub-clause (e) of the aforesaid Act provides that if none of the persons mentioned in clauses (a) to (d) are alive, then the nearest collateral male relative in the male line of descent shall inherit but there is proviso that no collateral relative shall be entitled to inherit, who did not share in the cultivation of the holding at the time of death. u/s 24 of the Agra Tenancy Act in class V. brother being son of the same father as deceased is to inherit in the absence of the persons mentioned in Class II, III and IV and in Class VII, the nearest collateral relative in male line of the descendants is to inherit but the same proviso is there that the collateral shall not inherit at the time of tenant's death. Therefore, the question to be decided in this case was as to who was the preferential heir to inherit the property. If the brothers are preferential heirs then the collateral will not come into picture but if the collaterals are to be considered, then the co-sharing in cultivation with the deceased tenant is must in both Acts.

16. Fasli years start from first of July of the calendar year and ends on thirtieth June. Therefore. 1308 fasli shall start from first of July of the calendar year and will come to an end on June 30.

17. It is admitted to the learned counsel for the parties that 1308 fasli will be equivalent to 1901 A.D. and 1333 fasli will be equivalent to 1926. Therefore, devolution will be governed by the provisions of these two Acts. There is no evidence on record regarding the actual date of death of Nandlal and there appears to be no evidence also on record with regard to the co-sharing of the cultivation with Nandlal. Thus, collaterals are the necessary elements to consider the devolution. The date of death is based on hearsay evidence. Therefore, such evidence is not cogent evidence to arrive at a conclusion as to which law was applicable on the death of Nandlal. The Deputy Director of Consolidation has, no doubt, observed in his judgment that the North Western Provinces Tenancy Act, 1901 and Agra Tenancy Act, 1926 are to govern the devolution but as the date of death has not been ascertained nor there is finding with regard to co-sharing by the collateral. I am of the view that the finding is vitiated in law. There cannot be any dispute with regard to the entry of 1333 fasli nor it will have any effect on the share of the parties. But the entry of 1333 fasli has importance. In 1333 fasli, Jagesar was entered who was brother's son and Satiram was mentioned

who was also brother's son. Dasu was entered, who was deceased's son's son. u/s 22 of the North-Western Provinces Tenancy Act. brother's son has not been shown to be the heir of the deceased. Rather collateral in the main line of the descent has been shown but under the proviso, they must share in the cultivation at the time of death of the tenant. Therefore in 1901 Act, neither Jagesar nor Satiram nor Dasu will be the heir of the deceased Nandlal unless they had co-shared in the cultivation with the deceased at the time of his death. Similarly, in Agra Tenancy Act, Section 24 also shows that brother's brother's son will not inherit, only nearest collateral will inherit in the male line of the descent. There also co-sharing in the cultivation was necessary. Therefore, in the two Tenancy Act, none of the persons, namely. Jagesar. Satiram and Dasu were entitled to inherit unless they have proved their co-sharing with Nandlal. As oral evidence has not been filed, the consolidation authorities have presumed that Jagesar and Satiram were nearest collateral being brother's son. they will inherit the property. The point of co-sharing, though raised, has been decided by the Deputy Director of Consolidation that it gets no importance as khata in question was Joint property. It is well-settled law that admission is a valuable piece of evidence and binding on the person who made it unless it is explained or proved to be erroneous. And the admission on the question of fact may be binding but so far as the question of law is concerned, admission can be said to be erroneous in the eyes of law if it is contrary to the law. As stated by Sri U. K. Misra learned counsel for the petitioner, the question of share is a question of law appears to be correct because the share will be determined only according to the relevant law and not on the basis of admission, therefore, admission made by Budhiram in the civil suit which was against the Statute cannot be said to be binding on him nor the share of the parties can be determined on such erroneous admission. Therefore, I am not convinced from the argument of Sri Faujdar Rai and the decision which has been cited by him stands on different footing.

18. It is true that parties are bound by the pleading and statements though the suit has abated and the share, if any, determined by any Court prior to the abatement will not be binding if that share was determined on the basis of erroneous admission. Therefore, the judgment cited by Sri Misra that if any suit is abated finding arrived at by the trial court is not acceptable. Considering the facts and circumstances, as there is no evidence on record regarding the actual date of death of Nandlal nor there appears to be any evidence regarding co-sharing by the collaterals, I think it is a fit case which should be sent back to the Consolidation Officer to be decided afresh after setting aside the three judgments as oral evidence or other evidence on these two points will be required.

19. I therefore, set aside all the three judgments and remand the case back to the Consolidation Officer to decide the case afresh keeping in view the observations made by me in the body of the judgment and if necessary to give opportunity to the parties to lead evidence. There will be no orders as to costs.