
(2011) 12 AHC CK 0173

Allahabad High Court

Case No: Writ - B No. - 71394 of 2011

Ram Giri And Others

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision: Dec. 12, 2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 9A(2)

Citation: (2011) 12 AHC CK 0173

Hon'ble Judges: Amreshwar Pratap Sahi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hon"ble Amreshwar Pratap Sahi, J.

Heard Learned Counsel for the petitioners.

2. One Ram Jiyawan was the recorded tenure holder of the land in dispute. It is alleged that he executed a registered will on 11.12.1974 in favor

of his daughter Sumitra. In the meantime the petitioners claim to have obtained an agreement to sell dated 12.2.1976. Ram Jiyawan died on 7th

January, 1978. The petitioners claim themselves to be the nephews of late Ram Jiyawan.

3. When the consolidation operations set-in in the village, objections were filed u/s 9-A(2) of U.P.C.H. Act. The daughter respondent no. 4

claimed succession on the basis of the will.

4. The petitioners had also filed a civil suit on the basis of the said agreement to sell which was decreed ex-parte on 10.2.1987. The respondents

appears to have filed a recall application which was ultimately allowed on 10.11.1995. A revision is said to have filed but no orders appears to have been passed thereon.

5. In the aforesaid background the consolidation authorities have rejected the claim of the petitioners holding that the petitioners have no right, title

or interest over the land in dispute and accordingly they have no claim over the tenancy.

6. Sri Giri submits that there is an agreement to sell in favor of the petitioners. The consolidation authorities ought to have taken notice of the same

and during the pendency of the suit for specific performance the consolidation operations could not have proceeded to touch on the title of the

matter as the same is subject matter of the suit.

7. Having heard Sri Giri the arguments cannot be accepted, inasmuch as, once there is a notification of the village then so far as succession to

tenancy is concerned the same shall be subject to the consolidation proceedings alone.

The dispute relating to title therefore has to be established in

a consolidation court.

8. In the instant case the suit has been filed by the petitioners against the respondent no. 4 for specific performance. So long as the said suit is not

decreed the petitioners cannot claim title over the land and whosoever is the recorded tenure holder will have to abide by the outcome of the suit

which is said to be pending for the specific performance. So long as there is no judgment and decree there is no occasion for the consolidation

authorities to accept the claim of the petitioners and they have therefore rightly rejected their objections.

9. The contention of Sri Giri that the ex-parte decree by the Civil Court was in favor of the petitioners does not hold water as according to him the

said ex-parte decree has already been set aside and the suit has been restored to its original number. In the absence of any such declaration of title

in favor of the petitioners, I see no reason to interfere with the impugned orders.

10. The writ petition is dismissed.