

(1977) 05 AHC CK 0003

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 2740 of 1973

Noor Khan

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision: May 20, 1977

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 27(1), 27(2), 4(2), 49
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 176

Citation: (1977) AWC 394

Hon'ble Judges: K.N. Seth, J

Bench: Single Bench

Advocate: B.B. Paul, for the Appellant; N.C. Rajvanshi, for the Respondent

Final Decision: Dismissed

Judgement

K.N. Seth, J.

The Petitioner filed two suits u/s 176 of the U.P. Zamindari Abolition and Land Reforms Act claiming half share in the land in dispute. In Suit No. 309 of 1967 division of Khata No. 155, recorded in the names of the Petitioner and Ali Khan, Respondent No. 4, was claimed and in suit No. 310 of 1967 partition of Khata No. 156, recorded in the names of the Petitioner and Respondents Nos. 4 to 8, was claimed. It was alleged that the property was ancestral and came down to Phool Khan and Madar Bux Khan from their father Badlu. The Plaintiff, claiming to be the son of Phool Khan, sought partition of his half share, the other half being owned by Respondents Nos. 4 to 8, who were the sons of Madar Bux Khan. The Defendants pleaded that the Petitioner was also the son of Madar Bux Khan and not that of Phool Khan as alleged and being real brothers each one of them were entitled to 1/6th share in the land in dispute. It was also pleaded that the suit was not maintainable. The trial court passed a preliminary decree declaring the share of the Petitioner to be half in the disputed Khatas. It was followed by a final decree. On appeal by the Defendants the learned Additional Commissioner held that the land in

dispute was ancestral and that the Plaintiff was the son of Madar Bux Khan and not that of Phool Khan and consequently the Plaintiff and the Defendants each were entitled to 1/6th share. The Board of Revenue affirmed the decree of the learned Additional Commissioner.

2. The finding that the Petitioner is the son of Madar Bux Khan and not that of Phool Khan is a finding of fact. It was urged that since the Petitioner was recorded as son of Phool Khan in the revenue records and this was not challenged during consolidation proceedings no dispute regarding the parentage of the Petitioner could be validly raised and decided in the petition suits in view of Section 49 of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act). Reference in this connection was made to certain provisions of Chapter III of the Act which deals with preparation of consolidation scheme. A provisional scheme is first drawn up of which notices are sent to the tenure holders concerned and persons interested and the scheme is published in the consolidation unit. Persons to whom notices are issued and other persons affected by the provisional scheme are entitled to file objections which are decided and thereafter the scheme is confirmed and published in the unit and allotment orders for the tenure holders concerned are issued. After the final consolidation scheme has come into force a new map, field book and record of rights in respect of the consolidation area is prepared on the basis of entries in the map. By Sub-section (2) of Section 27 it is provided that all entries in the record of rights prepared in accordance with the provisions of Sub-section (1) shall be presumed to be true until the contrary is proved. Learned Counsel pointed out during the proceedings for preparation of the record of rights under Chapter III of the Act no objection was filed regarding the parentage of the Petitioner as shown in the revenue records and in the final record of rights the Petitioner was shown to be the son of Phool Khan, it was contended that since it was open to the Defendants to raise an objection regarding his parentage in those proceedings and as that was not done, no such objection could be taken in the suit in view of Section 49 of the Act.

3. Section 49 of the Act bars the jurisdiction of the Civil and Revenue courts to entertain any suit or proceeding with respect to the declaration and adjudication of rights of tenure holders in respect of land lying in an area for which a notification has been issued under Sub-section (2) of Section 4 or for adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act. The dispute in the present case did not relate to declaration and adjudication of right of tenure holders in respect to any land. It was contended that the dispute in the present case was covered by the latter clause of the section which bars a suit "with respect to any other matters for which a proceeding could or ought to have been taken under this Act". In support of the contention it was urged that an objection about the parentage of the Petitioner could and ought to have been taken in proceedings under Chapter III of the Act and since no such objection was raised the matter could not be agitated by way of a suit.

I am not impressed by the argument. Proceedings under Chapter III of the Act are confined to the preparation of record of rights. If a person's name is shown as a tenure holder of the land, he can possibly have no grievance in that proceeding. The details about parentage, residence etc. are not material in that proceeding. Moreover, the consolidation authorities are concerned with regard to rights of a person as a tenure holder and this alone they are competent to adjudicate upon. The question of parentage of a person does not relate to any right in the land. Such a matter can be adjudicated upon only by regular courts. Even if such a dispute is raised before the consolidation authorities, they would not be competent to decide it. While preparing the record of rights the consolidation authorities are not concerned with the shares which the different tenure holders have in the land. They are also not competent to take proceedings for partitioning of the respective shares of the tenure holders. Objections contemplated under Chapter III have to be confined to the arrangement of the consolidation scheme and cannot go beyond it. In this view of the matter it cannot be accepted that the objection relating to the parentage of the Petitioner could or ought to have been raised in consolidation proceedings. Since the matter did not relate to any right in the land and could not have been raised in consolidation proceedings, the bar created by Section 49 of the Act is not attracted and the court was competent to adjudicate upon the dispute.

4. No other point has been pressed for consideration.

5. The petition has no merit and is dismissed. Parties shall bear their own costs.