

(2013) 01 AHC CK 0448

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 3258 of 2013

Shriram

APPELLANT

Vs

Deputy Director of
Consolidation and
Others

RESPONDENT

Date of Decision: Jan. 21, 2013

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 12, 48, 9A

Citation: (2013) 6 ADJ 191 : (2013) 6 AWC 5918 : (2014) 122 RD 311

Hon'ble Judges: Ran Vijai Singh, J

Bench: Single Bench

Advocate: Ashwani K. Mishra and Brahmanand Tripathi, for the Appellant; A.K. Dwivedi and Ramesh Rai, for the Respondent

Final Decision: Allowed

Judgement

Ran Vijai Singh, J.

Heard Sri Ashwani Kumar Mishra, alongwith Sri Brahmanand Tripathi, learned counsel for the petitioner, Sri Ramesh Rai, alongwith Sri A.K. Dwivedi, learned counsel for the respondent Nos. 4 and 5 and learned Standing Counsel appearing for the State. Learned counsel for the parties agree for final disposal of this writ petition at this stage, without exchange of affidavits. Therefore, with the consent of learned counsel for the parties, the writ petition is taken up for final disposal.

2. Through this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the judgment and order dated 3.1.2013 passed by the Deputy Director of Consolidation, Kushinagar (in short, "DDC") in revision Nos. 183, 193, 210 of 2012 (Daroga and others v. Shriram) as well as revision Nos. 710 and 1083 of 2007 (Daroga and others v. Shriram).

3. The facts giving rise to this case are that with regard to recording of name over the land belonging to one late Ram Prasad, who passed away on 12.6.1984, the petitioner is claiming his right on the basis of registered adoption deed, whereas the respondents are claiming their right on the basis of un-registered will. It is stated that the petitioner was adopted by late Ram Prasad through registered adoption deed. On a small part of the land belonging to late Ram Prasad, petitioner's name was also mutated in the revenue record on the basis of compromise vide order dated 12.2.1980, but for the remaining land, an application was filed by Shriram (the petitioner herein) for mutation of his name, which was allowed by the Consolidation Officer vide order dated 31.10.1985.

4. The respondent Nos. 4 and 5, since they were not heard, claimed their right on the basis of un-registered will and they filed two appeals against the order dated 31.10.1985 passed by the Consolidation Officer, which were numbered as appeals Nos. 2348 and 2347; one appeal was filed against the order dated 12.2.1980 and another against the order dated 30.10.1985. The Assistant Settlement Officer of Consolidation allowed the appeals by setting aside the impugned orders in appeals and remitted back the matter before the Consolidation Officer for fresh order vide order dated 11.1.1990.

5. The petitioner claims that he was neither noticed nor heard when the order dated 11.1.1990 was passed, allowing the appeals and remitting the matter before the Consolidation Officer. He only came to know about the same in the year 1992 and immediately thereafter, has filed an application on 9.3.1992 for recall of the order dated 11.1.1990. In the said recall application, respondent Nos. 4 and 5 were noticed and they have been heard. The Assistant Settlement Officer of Consolidation has recalled the order passed by him on 2.4.2003 by recording a specific finding that there is no notice available on record from which it can be inferred that the applicant (the petitioner herein) was ever noticed and heard. So far as the publication of notice in the newspaper is concerned, it is recorded that it is weekly newspaper and there is no mention on the order sheet containing the order of the Court for such publication in the newspaper. After recording this finding, the order dated 11.1.1990 was recalled.

6. It also appears that after the order dated 11.1.1990, the Consolidation Officer has proceeded with the matter and vide order dated 6.5.1991 has held that the will executed in favour of respondent Nos. 4 and 5 is a valid one and he has passed the order for recording the names of respondent Nos. 4 and 5. On coming to know about the order dated 6.5.1991, the petitioner has filed an appeal and the same was allowed by the Settlement Officer of Consolidation vide order dated 8.5.2003.

7. Against the order dated 8.5.2003 as well as order dated 2.4.2003 passed on restoration application of the petitioner for recall of the order dated 11.1.1990, two revisions were filed before the Deputy Director of Consolidation, which were numbered as revision Nos. 182, 193, 210 of 2012 (Daroga and others v. Shriram) and revision No. 910 and 1083 of 2007 (Daroga and others v. Shriram). These revisions were allowed by the DDC taking note of the judgment dated 4.8.1993 passed in revision No. 186 by the DDC,

which is alleged to have been filed by the petitioner. It appears that against the order dated 6.5.1991, as alleged, the petitioner has filed an appeal No. 2073 which was dismissed on 25.11.1991 as barred by time and against that, revision No. 186 was filed before the DDC, which too was dismissed as barred by time.

8. In the objection to the present revision filed by the respondents, in paragraph No. 5 of the objection, the petitioner has categorically stated that he has neither filed the appeal No. 2073 nor has signed its memo and the said appeal appears to have been filed by an impostor. For appreciation, the ground taken in paragraph No. 5 of the objection is reproduced hereinunder:

9. Sri Mishra contends that the DDC fell in error in relying upon the judgment dated 4.8.1993, without recording any finding with respect to the objection taken in paragraph No. 5 of the objection that the petitioner has neither filed the appeal nor signed the memo. He has also contended that the order dated 6.5.1991 is also contrary to the provisions contained under sub-rule (2) of Rule 26 of the U.P. Consolidation of Holdings Rules, 1954 (in short, the Rules"). In his submissions, although the petitioner was neither noticed nor heard, even then, it was incumbent upon the Deputy Director Consolidation to frame proper issues and only thereafter, could pass the order dated 6.5.1991. In his further submissions, the DDC has also committed the error while disbelieve the registered adoption deed of the petitioner by observing that it was never produced. In his submissions, at no point of time, there was occasion to produce the adoption deed, as throughout been, the matter was decided ex parte and the petitioner has been challenging only those orders. Even before the DDC, the DDC has not given any opportunity to produce the registered adoption deed. In his submissions, the power of DDC to pass order under sub-section (1) of Section 48 of the Act is unfettered, but he could not exercise the same ignoring the provisions contained in the statute, particularly, the provisions contained under the Act and the Rules framed thereunder in the year 1954. In his submission, the impugned order passed by the DDC cannot be sustained in the eye of law.

10. On the other hand, Sri Ramesh Rai has invited attention of the Court towards the finding recorded by the Consolidation Officer saying that the petitioner has got himself examined alongwith Pradhan of the village, but has not produced any evidence with regard to the adoption. In his submissions, in view of the finding recorded by the DDC that this was challenged in the appeal and the appeal was dismissed, the revision filed by the petitioner was also dismissed and those orders have become final, the DDC has rightly allowed the revisions and quashed the orders dated 2.4.2003 and 8.5.2003.

11. I have heard learned counsel for the parties and perused the records.

12. It is not in dispute that both the parties are claiming their right and title over the land belonging to late Ram Prasad. The petitioner is claiming his right on the basis of registered adoption deed and the respondents are claiming their right on the basis of

un-registered will. Earlier, on the application of the petitioner u/s 12 of the U.P. Consolidation of Holdings Act, 1953 (in short, "the Act"), his name was ordered to be mutated vide order dated 31.10.1985. The said order was challenged by respondent Nos. 4 and 5 through appeal which was allowed and the matter was remanded vide order dated 11.1.1990 by the Settlement Officer of Consolidation.

13. As per the case of the petitioner, since the order dated 11.1.1990 was ex parte order, when he came to know that recall application has been filed on 9.3.1992, which was allowed vide order dated 2.4.2003. The order dated 2.4.2003 was passed after hearing both the sides and specific finding has been recorded that there was no notice available on record indicating therein that the applicant (petitioner herein) was served. The publication in the newspaper was also disbelieved by the Settlement Officer of Consolidation for the reason that there was no such order on the order sheet for serving the petitioner by publication in the newspaper. It is also recorded that the said newspaper was a weekly newspaper and was not of wide circulation.

14. It is also noticeable that prior to the filing of the restoration application, pursuant to the remand order dated 11.1.1990 passed by the Settlement Officer of Consolidation, the Consolidation Officer has proceeded and passed the order dated 6.5.1991, against which, appeal was filed and the same was allowed on 8.5.2003.

15. The learned counsel for both the parties, apart from the arguments which have been noted above, also advanced several arguments, but I am not willing to address myself on those points for the simple reason that in paragraph No. 5 of the objection to the revision, specific ground has been raised that the petitioner has neither filed the appeal No. 2073 nor he has signed the memo, therefore, while basing the judgment and the order dated 4.8.1993 passed in revision as well as the order dated 25.11.1991 passed in appeal, it was incumbent upon the DDC to record the specific finding as to whether the appeal No. 2073 was filed by the petitioner or not by comparing the signatures, either by himself or through an expert. I am also satisfied that once the DDC was passing the order on merit, it was incumbent upon him to proceed with the matter according to the provisions contained under sub-rule (2) of Rule 26 of the Rules and final order should have been passed only after giving fullest opportunity to the parties to adduce evidence in support of their case.

16. Rule 26 of the Rules reads as under:

26. Section 9-A --(1) The cases received from the Assistant Consolidation Officer shall be entered in the Misilband register in C.H. Form 6 in the office of the Consolidation Officer.

(2) On the date fixed under sub-rule (2) of Rule 25-A, or on any subsequent date fixed for the purpose, the Consolidation Officer shall hear the parties, frame issues on the points in dispute, take evidence, both oral and documentary, and decide the objections.

(3) The notice, which it may become necessary for the Consolidation Officer to issue any person in connection with the disposal of a dispute by him shall be in C.H. Form 6-A.

(4) Where all the tenure-holders of a joint holdings oppose partition and the Consolidation Officer is satisfied that the opposition of each co-tenure-holder is genuine, he shall not proceed with the partition, unless for reasons to be recorded by him in writing, he considers it necessary so to do in the interest of better consolidation.

(5) For deciding dispute relating to the determination of exchange ratio of a plot or the valuation of a tree, well or other improvement existing on a plot, the Consolidation Officer shall make a local inspection of the plot concerned, prepare an inspection memo and place it on the connected file.

17. As would appear from the bare reading of sub-rule (2) of the Rules that on the date fixed, the Consolidation Officer shall hear the parties, frame the issue on the point in dispute, take evidence, both oral and documentary, and decide the objection. Here in this case, once one party has come up with the case that the petitioner earlier challenged the impugned order in the revision through an appeal and after dismissal of appeal has also availed the remedy of revision, which too was also dismissed and the petitioner has denied that the filing of such appeal and revision, it was incumbent upon the DDC either to remit the matter after framing the issue on this point before the Consolidation Officer for taking evidence and decide the same after providing an opportunity to adduce evidence, both oral as well as documentary in support thereof, or decide himself on the said issue taking note of sub-rule (2) of the Rules, but here in the present case, the DDC has based his judgment only on the submissions of the other side without ascertaining the facts as to whether the petitioner has really filed any appeal/revision or it was filed by an impostor with a view to defeat the case of the petitioner.

18. In view of the foregoing discussions, I am of the view that the order passed by the DDC is unsustainable in the eye of law and the same is hereby quashed.

19. The writ petition succeeds and is allowed.

20. The matter is remitted back before the DDC to pass an appropriate order in accordance with law after hearing all concerned after giving fullest opportunity to the parties to adduce evidence, etc. This exercise has to be done by the DDC within a period of one year from the date of production of certified copy of the order of this Court. Till the matter is decided finally, the parties are directed neither to create any third party right nor to change the nature of the land in the meantime.