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(2012) 04 AHC CK 0196

Allahabad High Court

Case No: Writ - B. No. 2039 of 1975

Laxman APPELLANT

Vs

D.D.C. RESPONDENT

Date of Decision: April 2, 2012

Citation: (2012) 116 RD 225

Hon'ble Judges: Sanjay Misra, J

Bench: Single Bench

Advocate: A.S. Diwakar, K.S. Kushwaha and R.N. Singh, for the Appellant; Ajay Kumar Singh, Ashish Kumar Singh, J.N. Chatterji, R.K. Verma, R.P. Srivastava, R.S. Prasad and S.N. Tewari, C.S.C, for the Respondent

Final Decision: Partly Allowed

Judgement

Sanjay Misra, J.
Heard Sri Krishna Ji Khare holding brief of Sri K.S. Kushwaha learned Counsel for the petitioner and Sri R.C. Singh holding brief of Sri R.K. Verma for the private respondents as also learned Standing Counsel for the State-respondent. This writ petition has been filed assailing the orders dated 29.1.1975 passed by the respondent No. 1 Deputy Director of Consolidation, Ballia as also the order dated 20.10.1970 passed by the respondent No. 2 Assistant Settlement Officer Consolidation, Ballia. Sri Krishna Ji Khare has submitted that the dispute before the Consolidation Officer was relating to the Khatas No. 13, 110, 111 and 183 which all were recorded in the basic year in the name of the ancestors of the parties.

2. According to him all the said khatas are coming down from the common ancestors of the respondents as also the petitioners. He states that the Consolidation Officer by his order as contained in Annexure 2 to the writ petition had considered the objections of the parties and insofar as plot No. 97/2 area 0.55 decimal in Khata No. 13 is concerned he directed that it should be recorded in the name of Laxman the petitioner who has also obtained bhoomidari sanad of the said plot.

3. According to Sri Khare a clear finding has been recorded by the Consolidation Officer with respect to plot No. 97/2 in khata No. 13 since the respondents had all sold their shares to outsiders and those vendees had been recorded over the plot on the share purchased by them and it was only the petitioner Laxman who retained his share in this plot coming down from his ancestors. He states that the respondents filed objection against this plea taken by the petitioner Laxman but subsequently the)'' withdrew their objection and therefore insofar as plot No. 97/2 is concerned the Consolidation Officer had rightly directed that the petitioners name should be recorded therein exclusively. With respect to the other plots he states that the basic year entries were of all the parties concerned and therefore there was no objection as such by the petitioner to them.

4. Feeling aggrieved the respondents filed Appeal No. 185 and 186 (Ram Lochan and others v. Laxman and others) before the Settlement Officer Consolidation who considered this finding recorded by the Consolidation Officer and allowed the appeals of the respondents for the reason that the property in question is coming from the common ancestor and all of them had been recorded in the basic year therefore all the Khatas were joint with all the parties including plot No. 97/2.

5. The petitioner feeling aggrieved filed Revision Nos. 93 and 94 (Ram Lochan and others v. Laxman and others) before the Deputy Director of Consolidation. The Deputy Director of Consolidation has affirmed the order of the Settlement Officer Consolidation and recorded a finding that the petitioner has not been successful in bringing on record any evidence as to how he acquired plot No. 97/2 in his sole name and thereby obtained bhoomidhari sanad.

6. According to Sri Khare the Settlement Officer Consolidation as also the Deputy Director of Consolidation have erred in non-suiting the petitioner insofar as plot No. 97/2 of Khata No. 13 is concerned. According'' to him when the claim of the petitioner before the Consolidation Officer went un-contested there was no occasion for the petitioner t(5 prove his acquisition on plot No. 97/2 for the reason that he had clearly stated that the respondents had sold their shares to outsiders and the outsider vendees have been recorded therein and since the petitioner had not sold his share in that plot he would be the sole owner of his share upon obtaining bhoomidhari sanad which was as a consequence of such transfer made by the respondents.

7. Sri R.C. Singh has disputed the submission made by learned Counsel for the petitioner and has submitted that there is no evidence on record either of the Consolidation Authorities or before this writ Court to establish as to how the petitioner obtained sole bhoomidhari rights over plot No. 97/2 area.55 decimal. He further states that when there is no evidence of transfer made by the respondents in favour of outsider the Consolidation Officer had committed an error in holding that the petitioner alone should be recorded over an area 0.55 decimal in plot No. 97/2. He justifies the order passed by the Deputy Director of Consolidation and states that admittedly there was no evidence filed by the petitioner in his support and to that effect the Deputy Director of Consolidation

has clearly recorded so.

8. Having considered the submission of learned Counsel for the parties and perused the record insofar as the claim of the petitioner for exclusive bhoomidhari rights over an area.55 decimal in plot No. 97/2 is concerned the plot had total area of 1.04 acres. Objection was filed by the petitioner Lax-man before the Consolidation Officer claiming exclusive rights over his share of the plot in view of the fact that he has obtained bhoomidhari sanad on 17.11.1949. His case was that the respondents had sold their shares to outsider in plot No. 97/2 therefore the entry of their names in the basic year required to be expunged and that of the petitioner recorded. The Consolidation Officer considered the fact that although the respondents had filed objection to this plea of the petitioner but they subsequently withdrew their objection. The result was that the plea of the petitioner Laxman for expunging the name of the respondents from the basic year record only with respect to an area of.55 decimal over plot No. 97/2 went uncontested. When there is no contest made by the respondents to the claim of the petitioner over this plot there was no occasion for the petitioner to led any evidence primarily for the reason that an issue is made only when there is a claim and a denial by the parties. When there is such a dispute then evidence is required to be led by the parties to prove their case.

9. In the present case there was no objection against the claim of the petitioner with respect to plot No. 97/2 area.55 decimal and as such he was not required to led any evidence in his support. The Consolidation Officer has recorded that the objection has been withdrawn by the respondents with respect to this plot and therefore has directed that it be recorded exclusively in the name of the petitioner who has already obtained bhoomidhari sanad on 17.11.1949. The Settlement Officer Consolidation has upset the judgment of the Consolidation Officer on the ground that there is no evidence as to how the petitioner obtained sole rights over plot No. 97/2 area.55 decimal and the Deputy Director of Consolidation has affirmed the said finding of the Settlement Officer Consolidation by recording that the petitioner had not filed any evidence regarding his acquisition or bhoomidhari sanad exclusively over the plot in question. Clearly the Settlement Officer Consolidation and the Deputy Director of Consolidation have erred inasmuch as when the respondents did not dispute the claim of the petitioner before the Consolidation Officer and withdrew their objections with respect to area.55 decimal over plot No. 97/2 there was no dispute about the petitioners claim. The petitioner had also obtained bhoomidhari sanad on 17.11.1949 by virtue of his being the exclusive owner since the other respondents had sold their shares to the vendees and the vendees were recorded therein. As such the respondents had no share in plot No. 97/2 since they had sold their shares and the entry of their names in the basic year did not reflect the correct position about the ownership of the said plot.

10. In view of the aforesaid circumstances the impugned order dated 29.1.1975 passed by the Deputy Director of Consolidation in Revision Nos. 93 and 94 and the impugned order dated 20.10.1970 passed by the Assistant Settlement Officer Consolidation in Appeal Nos. 185 and 186 cannot be sustained. They are accordingly set aside only with

respect to the claim of an area.55 decimal in plot No. 97/2.

11. With respect to the other Khatas the direction has been given for dividing shares of the parties who come from the common ancestor including the petitioner. Admittedly all the parties are coming from the common ancestor who were recorded in the basic year record and the petitioner had not claimed any exclusive right with respect to the other plots. Therefore no interference is required in the impugned orders insofar as the other Khatas are concerned.

12. The writ petition stands partly allowed. No order is passed as to costs.