

(2011) 05 AHC CK 0400

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 36166 of 1996

Rajendra Prasad Pandey and
Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision: May 31, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Evidence Act, 1872 - Section 115, 90
- Uttar Pradesh Land Revenue Act, 1901 - Section 34(5)
- Uttar Pradesh Tenancy Act, 1939 - Section 32
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 172, 172(2), 174, 229B

Hon'ble Judges: Bala Krishna Narayana, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Bala Krishna Narayana, J.

Heard learned Counsel for the Petitioner and Sri O.P. Pandey, learned Counsel for the Respondents.

2. This writ petition has been filed by the Petitioner with a prayer to issue a writ, order or direction in the nature of certiorari quashing the orders dated 7.10.1996 (annexure No. 1 to the writ petition), 16.6.1982 (annexure No. 2 to the writ petition) and 10.4.1978 (annexure No. 3 to the writ petition) passed by the Respondent Nos. 1, 2 and 3 respectively.

3. Facts of the case as emerging from the pleadings of the parties are that on 22.4.1981, Plaintiff/ Respondent No. 6 Prandei @ Ramavati instituted a suit u/s 229-B of the U.P.Z.A. & L.R. Act in the court of Assistant Collector, First Class, Jaunpur against Datadin, Udairaj, Ramdev, Khilawan, Musammat Lakhpati Devi, Musammat

Kevla Devi, Gaon Sabha Virampur, State of U.P., Rajaram and Bhagwati Devi, the predecessors of Petitioner No. 5 to 16.

4. The inter-se relationship amongst the Plaintiff and her ancestors was made intelligible with the help of the pedigree given at the foot of the plaint which runs as hereunder:

Ramnath - Smt. Prabhudei
Bajrangi

Smt. Prandei
(husband Chintamani)

In the plaint it was alleged that the Plaintiff's father Ramnath was fixed rate tenant of plot Nos. 66 and 21 (hereinafter referred to as the disputed plots). On his death tenancy had devolved on his son Bajrangi, the brother of the Plaintiff Prandei. On the death of Bajrangi who died issueless, the disputed plots were inherited by his mother Smt. Prabhudei widow of Ramnath who throughout her life remained in possession over the disputed plots. On 10.2.1947 a deed renouncing her right, title and interest in the disputed plots in favor of her daughter Smt. Prandei was executed by her whereupon she became fixed rate tenant in possession of the disputed plots. Smt. Prabhudei died sometimes in the year 1950 and as a consequence of abolition of zamindari Plaintiff became bhumidhar of the disputed plots. As she was mostly living with her in-laws, she was managing tillage with the aid of her father's relations Munni, Datadin and others Defendant Nos. 1 to 4. In the month of September, 1970 she was informed that Defendant Nos. 5 to 7 were planning to transfer some land by sale in favor of their daughters. The Plaintiff Prandei made an inquiry at the time of registration of the sale deed which revealed that the disputed plots were also included in the transfer. She objected then and there in Sub-Registrar's Office but to no avail. She thereafter inspected the revenue records and made a stunning discovery that the names of Defendant Nos. 1 to 4 and 10 to 13 were entered against the disputed plots. The Defendants had got their names mutated in the revenue records in collusion with the Lekhpal. Since, the Defendants had no saleable interest to execute the sale of disputed plots, the suit for declaration that Plaintiff is bhumidhar tenant in possession over the disputed plots was filed by her.

5. The suit was contested Defendant Nos. 1 to 7 and 10 to 12 who filed a joint written statement on 25.1.1978. The main thrust of the Defendants attack on the Plaintiff's right in the suit land was that the Plaintiff Smt. Prandei was not the bhumidhar tenant in possession. Her identity was also disputed and it was further asserted that one Chintamani resident of Rasoolpur was the moving force behind the suit. The Defendants further claimed that Ramnath, Prabhudei, Bajrangi and Smt. Prandei were joint tenants of the suit land from before the abolition Zamindari.

Smt. Prandei daughter of Prabhudei died on 3.9.1947 unmarried. After that her mother Smt. Prabhudei also died. Prandei was not married to Chintamani and the allegation to the contrary was incorrect. The so called surrender deed is unlawful and sham because no such document was ever produced. Smt. Prandei would not acquire any right, title or interest in the land through the surrender deed as Smt. Prabhudei was a tenant of the disputed holding as a member of joint family and, therefore, she had no exclusive right to transfer the disputed plots by any document, and surrender of title by her was illegal. The name of Smt. Prabhudei was recorded out of consolation to her and she acquired no right through it. The Defendants further asserted that they had inherited the suit land from Ramnath after his death in assertion of their own right and title. Chintamani was married to daughter of Raj Bahadur whose name was Prabhawati and Chintamani skillfully got her name entered as Prandei in voters list and in kutumb register. On the death of Smt. Prabhudei the contesting Defendants had moved for mutation of their names before the Tehsildar, Shahganj, Jaunpur which was objected by one Smt. Sukhdevi but her plea was summarily rejected.

6. The Petitioners in their written statement further alleged that Plaintiff Prandei was neither the daughter of Smt. Prabhudei nor sister of Bajrangi nor in possession over the land in dispute. The Petitioners also set up the plea in their written statement they had perfected their title in the land in dispute by long, continuous and adverse possession and had become bhumidhar tenants of the same. The plea of the suit being barred by limitation was also raised. It was also pleaded that Smt. Prabhudei was ill-for about 3-4 year before her eventual death and she was carried away from her house for treatment by Munnu and others. If in the meantime, any surrender deed was managed it was a forged and fabricated document.

7. Plaintiff Prandei filed her replication to the written statement. After the exchange of the pleadings the trial court framed the following issues:

1. Whether the Plaintiff is sole bhumidhar of the disputed land.
2. Whether the Plaintiff is daughter of Ramnath
3. Whether the Plaintiff is the sole bhumidhar of the disputed land and which of the two pedigrees set up by the Plaintiff and the Defendants is correct and to what extent.
4. Whether the suit is barred by the provisions of Section 34(5) of the U.P. Land Revenue Act.
5. Whether the suit is barred by Section 115 of the Evidence Act. To what relief, if any, the Plaintiff is entitled and,
6. Whether the suit is bad for non-joinder of necessary parties, if yes what is its effect.

8. The oral as well as the documentary evidence which was adduced by the parties before the trial court in support of their respective claims in the land in dispute has been referred to in detail in the three judgments which are impugned in this writ petition. The trial court/ Assistant Collector, First Class, Jaunpur by his judgment and decree dated 10.4.1978 (annexure No. 3 to the writ petition) decreed the Plaintiff's suit declaring her to be exclusive bhumidhar of khata No. 66 area 5-94 acres and co-bhumidhar of Khata No. 21 area 54 decimals along with the Defendants.

9. Aggrieved from the judgment and decree passed by the trial court the Petitioners preferred an appeal before the Commissioner, Varanasi Division, Varanasi which was registered as Appeal No. 323 of 1978 and transferred for disposal before the Respondent No. 2 and dismissed by him by his judgment and decree dated 19.6.1982 (annexure No. 2 to the writ petition).

10. The judgments and decrees passed by Respondent No. 3 and 2 were challenged by the Petitioners by filing Second Appeal No. 137 of 1981-82 before the Board of Revenue-Respondent No. 1 which was also dismissed by the Respondent No. 1 by judgment and decree dated 7.10.1996 (annexure No. 1).

11. The instant writ petition has been filed by the Petitioners who are the heirs and assignees of the original Defendants for quashing the aforementioned judgments and decrees dated 10.4.1978, 19.6.1982 and 7.10.1996 passed by the Respondent Nos. 3, 2 and 1 respectively.

12. Learned Counsel for the Petitioners has challenged the validity of the concurrent judgments of the courts below on the following grounds:

(1) The finding recorded by the trial court and affirmed up to the second appellate court that Smt. Prandei was the daughter of Smt. Prabhudei and Ramnath is not supported by any legally admissible evidence and is vitiated by complete non-consideration of the material evidence on record which conclusively established that Prandei was an imposter and not the daughter of Prabhudei and Ramnath.

(2) The Respondent Nos. 3, 2 and 1 committed a patent error of law in accepting the Plaintiff's case set up by her in the plaint that Smt. Prabhudei had executed a valid deed of surrender in favor of Smt. Prandei her daughter in respect of the disputed plots although from the evidence on record it was proved that surrender deed was a sham document. Smt. Prabhudei was in possession of the disputed plots as a member of joint family along with Defendants and she had no right to surrender the title in the disputed plots in favor of Smt. Prandei by executing a deed of surrender in her favor and the view taken by the courts below to the contrary is totally against the evidence on record.

(3) That the Respondent Nos. 3, 2 and 1 totally misinterpreted and misconstrued the law of inheritance while holding that apart from the surrender deed executed in favor of Prandei by her mother Smt. Prabhudei Smt. Prandei had acquired a right to

enter upon inheritance over the land in dispute after the death of her mother Smt. Prabhudei as her sole heir.

13. Per contra Sri O.P. Pandey, learned Counsel appearing for the contesting Respondent vehemently urged that the findings recorded by the Respondent Nos. 3, 2 and 1 which have been assailed by the Petitioner in this writ petition are pure findings of fact and since Petitioners have failed to demonstrate that the findings of fact recorded by the courts below are either vitiated by miss-construction of a document or wrong application of a principle of law in construing a document or the courts below have ignored material evidence or acted on no evidence, no interference with the concurrent findings of fact is warranted by this Court in the exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India and this writ petition is liable to be dismissed with costs.

14. Now I proceed to examine the three grounds on which the Petitioners have challenged the validity of the impugned orders. The first ground on which the Petitioners have assailed the impugned judgments is that the Respondent Nos. 3, 2 and 1 have ignored material evidence and have acted on no evidence while concurrently holding that Smt. Prandei was the daughter of Ramnath.

15. I have very carefully gone through judgment of the trial court, Respondent No. 3 (annexure No. 3) and I find that the Respondent No. 3 while deciding the issue No. 2 which was to the effect that whether Prandei was the daughter of Ramnath, along with issue No. 4 which was to the effect that which of the two pedigrees set up by the parties to the suit was correct, had after referring to and abjectly evaluating the entire evidence on record, oral as well as documentary and after discussing each and every piece of material evidence, came to the conclusion that the Defendants had miserably failed to prove that Prandei was not the daughter of Ram Nath and that she had died at the age of 6-7 years during their life time. While deciding issue Nos. 2 and 4 the trial court has given cogent reasons for disbelieving the evidence adduced on behalf of the Defendant for proving that Plaintiff Prandei was an imposter and she was not the daughter of Ramnath and Prabhudei and the Prandei who was the daughter of Ramnath and Prabhudevi had died during her childhood at a very early age. After examining the reasons given by the Respondent No. 3 in his judgment for deciding the issue No. 2 in favor of the Plaintiff and issue No. 4 against the Defendants and the evidence on which the trial court's decision on the aforementioned two issues is based, I do not find any substance whatsoever in the submission advanced on behalf of the Petitioners that the finding recorded by the Respondent No. 3 and as affirmed by the Respondent Nos. 2 and 1, that Prandei was the daughter of Ramnath is not based upon any evidence or the Respondent Nos. 3, 2 and 1 ignored any material evidence which indicated otherwise. Thus, there is no force in the first ground on which the Petitioner has challenged the impugned judgments and decree before this Court.

16. The second ground of challenge by the Petitioners to the judgments passed by the Respondent Nos. 3, 2 and 1, is that the surrender deed dated 10.2.1947 allegedly executed by Smt. Prabhudei in favor of Plaintiff Prandei her daughter was a forged and fabricated document as the same was never acted upon since the Plaintiff failed to get her name mutated over the disputed plots in place of her mother and further if the Plaintiff was the natural heir of Smt. Prabhudei where was the need for Prabhudei to surrender her interest in the land in dispute in favor of her daughter, Plaintiff Prandei. The surrender deed was also attacked by the Defendant Petitioners as being void on the ground that Prabhudei was in possession over the plots in dispute as a member of joint family and she had no right to surrender the title in the plots in dispute in favor of her daughter. Each of the courts below after considering the facts of the case and the entire evidence on record concurrently held that the surrender deed was executed by Smt. Prabhudei on 10.2.1947 in favor of her daughter. The document came from proper custody and was more than 20 years old and hence, the presumption of its genuineness was available u/s 90 of the Evidence Act. The recital of facts contained in the said surrender deed were in context of relationship of mother and her daughter and relinquishment was being out of her desire to invest her with property.

17. The three courts have concurrently held that the Defendants failed to prove by any evidence that the contents of the documents were untrue.

18. Learned Counsel for the Petitioner despite advancing elaborate submissions failed to show that the approach of the Respondent Nos. 3, 2 and 1 in accepting the surrender deed to be valid was vitiated in any manner.

19. Learned Counsel for the Petitioner further failed to even remotely demonstrate that the courts below committed any error or illegality in concurrently holding that Prabhudei the mother of the Plaintiff Prandei had inherited the disputed plots after the death of her son as his mother and hence she had acquired absolute interest in the disputed plots. Thus, the second ground on which the Petitioners have challenged the impugned orders also has no substance.

20. Now coming to the third and last ground of challenge to the impugned judgments canvassed before me that the trial court as well as the first appellate court and second appellate court totally misinterpreted the provisions of Section 172 (2) of U.P.Z.A. & L.R. Act (hereinafter referred to as the Act) while concurrently holding that on the death of Prabhudei, she was succeeded by her daughter Prandei u/s 174 of the Act, I find that this point has been considered and dealt with in detail by the Respondent No. 1 in its judgment and after considering the provisions of the Hindu Womens Right to Property Act, 1937 (Act No. XI of 1937) provisions whereof were extended to agricultural land with retrospective effect by U.P. Womens Right to Property (Extension to Agricultural Land) Act, 1942 (Act No. 11 of 1942). Section 181 of Mullas Hindu Law and Sections 172 and 174 of the Act, the Respondent No. 1 came to the conclusion that the relevant date for determining the capacity of the

bhumidhar as a life estate holder or an absolute holder is not the date of the death of the bhumidhar but the relevant date is the date immediately preceding the date of vesting and since Plaintiff's mother Smt. Prabhudei widow of Ramnath succeeded to her son Bajrangi as fixed rate tenant as mother of her son and not as a widow and, therefore, the interest in the holding which she had inherited as mother was an absolute interest and when Prabhudevi died in 1950 Smt. Prandei Plaintiff succeeded as daughter u/s 32 of the U.P. Tenancy Act, 1939, as fixed rate tenancy is both heritable and transferable and hence, accordingly Smt. Prabhudei had right to validly renounce her interest in the holding and the notions of hindu law had nothing to constrain the exercise of her right. The Respondent No. 1 further held that since Bajrangi was the last male tenant and he died before the date of vesting, the holding which he held as fixed rate tenant on his death devolved on his mother Smt. Prabhudei who had absolute interest in the holding and as such according to Section 174 of the Act on the death of Prabhudei Smt. Prandei the Plaintiff was her rightful successor as a daughter.

21. The Respondent Nos. 3, 2 and 1 rightly held that the claim of the Defendants based on succession, the pedigree given by the Defendants was of no significance, in view of the settled finding that Smt. Prabhudei alone was fixed rate tenant who had renounced her title in the year 1947 and Smt. Prandei inherited as a daughter of Ramnath and Smt. Prabhudei.

Learned Counsel for the Petitioner could not pin point any error in the concurrent view taken by the Respondent Nos. 3, 2 and 1 that the Plaintiff Prandei was the rightful heir of Smt. Prabhudei and hence, entitled to succeed the disputed holding u/s 174 of the U.P.Z.A. & L.R. Act. Thus, the third ground on which the impugned judgments have been assailed by the Petitioner also is without any merit.

22. In view of the above, the writ petition fails and is accordingly dismissed. There shall be no order as to costs.