

(2003) 08 AHC CK 0186

Allahabad High Court

Case No: C.M.W.P. No. 1138 of 1973

Bal Govind (D) through L. Rs.

APPELLANT

Vs

Deputy Director of Consolidation
and Others

RESPONDENT

Date of Decision: Aug. 22, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 9

Citation: (2003) 6 AWC 4868 : (2003) 95 RD 249

Hon'ble Judges: Janardan Sahai, J

Bench: Single Bench

Advocate: V.K.S. Chaudhary, for the Appellant; N.D. Kesari and S.C., for the Respondent

Final Decision: Dismissed

Judgement

Janardan Sahai, J.

Heard Shri V.K. S. Chaudhary, learned senior counsel for the Petitioners.

2. Parvat, Vikramjeet and Mahadeo were brothers. The dispute in the present writ petition relates to the share of Parvat. Smt. Kasturia, Respondent No. 2 since deceased filed objections u/s 9 of the U.P. Consolidation of Holdings Act claiming the share of Parvat. The objections were filed beyond the prescribed period of limitation. The Consolidation Officer by order dated 11.10.1971, Annexure-1 to the writ petition, rejected the application for condoning the delay. Appeal against the order preferred to Smt. Kasturia before the Settlement Officer, Consolidation was also dismissed on the ground that it was not maintainable as what had been decided by the Consolidation Officer was only an application for condonation of delay. The Revision filed by Smt. Kasturia has been allowed by the Deputy Director of Consolidation by the impugned order dated 21.12.1972 (Annexure-3 to the writ petition).

3. The Consolidation Officer relied upon the statement of Smt. Kasturia made before him that she had knowledge about the case between Balgovind son of Mahadeo and Respondent Nos. 3 to 6 and her case that she had no knowledge about the proceedings was false. The Deputy Director of Consolidation has allowed the revision and has set aside the order of the Consolidation Officer with direction to decide the case on merits. The finding is that Smt. Kasturia is the daughter of Parvat and prima facie she has title to the property and it was necessary in the interest of justice to provide her opportunity of hearing.

4. Sri V.K. S. Chaudhary, learned Counsel appearing for the Petitioners submitted that no finding on the sufficiency of cause has been recorded by the Deputy Director of Consolidation and that the Settlement Officer, Consolidation Shri J. N. Dwivedi who had decided the appeal had also decided the revision as Deputy Director of Consolidation and, therefore, the order passed by the Deputy Director of Consolidation is liable to be set aside. It was also submitted that in a mutation case Smt. Kasturia had admitted that she had no share in the property. Copy of the compromise arrived at in the mutation case has been filed in the writ petition as Annexure-5. It is also submitted that Smt. Kasturia was a married daughter of Parvat and was set up by Respondent Nos. 3 to 6 after the decision in the consolidation proceedings holding that Mahadeo father of the Petitioner had a 2/3rd share and Vikramajeet's branch had a 1/3rd share. It is submitted that the brother is a preferential heir to the married daughter and, therefore, Smt. Kasturia would not inherit the share of Parvat which would go to his brothers, a circumstance to show that Smt. Kasturia has no case as has been set up.

5. I shall take up the submissions of the learned Counsel for the Petitioners one by one.

6. As regards the finding on the question of sufficiency of cause, the Deputy Director of Consolidation has no doubt not recorded any specific finding that sufficient explanation for the delay has been given. However, the Deputy Director of Consolidation has relied upon the affidavit of Smt. Kasturia that she is an illiterate lady and the Defendants had been assuring her that she has a share and it was when they denied it that she filed the objections. From the facts on record, it does appear that Smt. Kasturia was a rustic lady. The finding that she was illiterate has not been assailed.

7. The property is situate in Village Chandupur whereas Smt. Kasturia was residing in village Mohariya, a fact borne out from her statement, copy of which has been filed as Annexure-4 to the writ petition. The Petitioners have not filed the copy of the application for condoning the delay or of the objection. However, in her statement the relevant facts stated are : Parvat her father died three years before her statement was recorded on 12.10.1971 ; that after the death of Parvat, Bal Govind and others did not give any share of the properties to her ; that she was resident of village Mohariya and was not residing in village Chandupur where the property in

situate ; that she had knowledge about the case between Bal Govind and Sadasheo when the case was being fought out. The copy of compromise in the mutation proceedings shows that on the death of Parvat a compromise was entered into on 25.3.1965. Her statement made in 1971 that Parvat died three years back and in her affidavit she relied upon the assurance given by her husband's brother's sons of a share demonstrates how naive she is and is unable to state correctly even the period of her father's death. In the circumstances, the statement made by an illiterate village lady of poor intellect that she had knowledge about the case Bal Govind - Sadasheo is not sufficient to disbelieve her case or to deprive her of a right to litigate for her claim to her father's property by dismissing it on grounds of limitation. A liberal view has to be adopted in dealing with an explanation for delay given by an illiterate rustic lady hardly conscious of her rights. Her affidavit relied upon by the Deputy Director of Consolidation indicates that's she was being assured of her share by the Defendants and it was when they refused her that objections were filed. In the case of an illiterate rustic lady, this was a sufficient explanation of delay and no interference in the extraordinary jurisdiction under Article 226 is called for.

8. As regards the contention that Smt. Kasturia was a married daughter at the time of her father's death, there is no specific averment in the writ petition nor is there any material in the papers filed by the Petitioner that she was married at the point of time of death of her father Parvat. That apart whether Smt. Kasturia, assuming her to be a married daughter, would be excluded from inheriting her father would depend upon the sequence of deaths of Parvat, Vikramajeet and Mahadeo. In case Parvat died after Vikramajeet and Mahadeo, Smt. Kasturia the married daughter of Parvat would have a preferential claim to Parvat's brothers sons, the Petitioners. However, these are questions which relate to the merits of the objection. The observations being made are only in the context of the submissions made by the learned Counsel for the Petitioner that Smt. Kasturia had been set up as she was a married daughter and could possibly have no claim. It is being made clear that all observations made in this order are in the context of the application for condoning delay and shall not influence the case before the authorities below on merits.

9. The Petitioners then rely upon the settlement made in mutation proceedings in which she admitted that she had no share and that Bal Govind had half share and Sadasheo and others also a half share. What worth this settlement has is apparent from the Petitioners' own stand that the consolidation courts had allowed a 2/3 share to Mahadeo. On the basis of this paper, I am not inclined to disbelieve the version of Smt. Kasturia that she was being assured of a share. That apart the Division Bench in Bhurey v. Peer Bux, 1973 AWR 279, has held that an admission of title in a mutation case is not admissible in title proceedings. I have some doubt about the correctness of this view but it is not necessary to go into this question here or to refer the matter, as what is under challenge in this case is an order condoning the delay in filing objections and the question is not directly involved. It is

also not clear whether the Khata was a bhumidhari or a sirdari one. A sirdar has no right to transfer or relinquish his right in favour of another tenant and any settlement or admission which would have that effect made by party in respect of Sirdari land especially in mutation proceedings is not admissible in a title proceedings.

10. An heir inherits a share by law. A simple admission as in this case that a party has no share without any admission of a fact the existence of which may determine the course of succession, is not by itself an admission purely of a fact. The share, which a party inherits, is governed by law. The admission made in a mutation proceeding by an illiterate rustic lady that she has no share cannot be pitted against her as an estoppel to her claim for succession.

11. As regards the last submission made by the learned Counsel for the Petitioner that the appeal and the revision were decided by the same officer, it is clear that the appeal was dismissed on the ground that it was not maintainable. In the revision, it is not the order of the appellate court that has been set aside but the order of the Consolidation Officer by which the application for condoning the delay was refused. Consequently, this is also not a ground upon which the order of the Deputy Director of Consolidation may be set aside.

12. There is no merit in this petition. Dismissed.