

(2014) 01 AHC CK 0132

Allahabad High Court

Case No: Writ B. No. 13189 of 1987

Dukhoo Upadhyaya

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision: Jan. 10, 2014

Acts Referred:

- Evidence Act, 1872 - Section 67
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 12, 5, 5(1)(c), 5(1)(c)(ii), 52

Citation: (2014) 1 ADJ 495 : (2014) 122 RD 569

Hon'ble Judges: Ram Surat Ram (Maurya), J

Bench: Single Bench

Advocate: Sanktha Rai, Vijay Kumar Rai and Arvind Kumar, Advocate for the Appellant;
A.K. Rai, V.K. Singh, R.N. Singh and Rajendra Rai, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Ram Surat Ram (Maurya), J.

Heard Sri Vijay Kumar Rai, for the petitioner and Sri R.N. Singh, Senior Advocate, assisted by Sri A.K. Rai, for the respondents. The writ petition has been filed against the orders of Assistant Consolidation Officer dated 25.2.1969, Assistant Settlement Officer Consolidation dated 19.8.1974, Consolidation Officer, dated 2.11.1979, Assistant Settlement Officer Consolidation dated 22.12.1983 and Deputy Director of Consolidation dated 16.5.1987, passed in title proceedings under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute relates to the land recorded in khatas 176 and 343, of village Majhwar Khas, pargana Majhwar, district Varanasi. In basic consolidation year, the aforesaid khatas were recorded in the names of Ram Kumar son of Ram Baran, Shyam Baran son of Gaya and Smt. Dulari widow of Ram Garib. During partial, disputes relating to inheritance of Ram Kumar and Shyam Baran (who were dead), 1/3 share of all the three recorded tenure holders and discrepancy of area of some plots were noted in

CH Form-4. After notification u/s 9 of the Act, the parties appeared before Assistant Consolidation Officer and entered into compromise. On the basis of conciliation, Assistant Consolidation Officer, by separate orders dated 25.2.1969, relating to two villages, recorded the names of Dukhoo (the petitioner), Sadho and Shiv Shankar (respondents-10 and 11) as the heirs of Shyam Baran, Subedar and Adya (respondents-12 and 13) as the heirs Ram Kumar, corrected area of the plots and held shares of Ram Kumar, Shyam Baran and Smt. Dulari as 1/3 each. No appeal was filed within time from the order dated 25.2.1969. A separate chak (i.e. chak No. 80) was carved out, in the name of Smt. Dulari of her 1/3 share of the land of village Majhwar Khas. It may be mentioned that the parties also jointly owned land at village Shakalpura, pargana Majhwar, district Varanasi, where also share of Smt. Dulari was admitted as 1/3 and a separate chak in her name of 1/3 share was carved out. Right of Smt. Dulari in village Shakalpura was not challenged by any one. Village Shakalpura was notified u/s 52 of the Act, on 5.6.1973. Smt. Dulari sold the land of village Shakalpura to one Babban Yadav. His name was mutated on the basis of sale-deed and was not challenged by any one.

3. Smt. Dulari executed a registered agreement to sale deed dated 17.4.1973 of the disputed land in favour of Rambodh, Dashmi, Gopal and Sheorati (now represented by respondents 4 to 9) (hereinafter referred to as the respondents). Thereafter Smt. Dulari executed a sale-deed dated 22.8.1973 of the disputed land in favour of the respondents. At this stage, after delay of more than four years, the petitioner filed a time barred objection u/s 9 of the Act, on 12.8.1973, challenging the right of Smt. Dulari in the land in dispute, which was dismissed by Consolidation Officer, by order dated 6.12.1973 and no appeal or revision was filed against this order, which has become final. The petitioner also filed two time barred appeals, on 23.10.1973, along with delay condonation application, from the orders of Assistant Consolidation Officer, dated 25.2.1969. It may be mentioned that respondents-10 to 13, the other co-sharers of the petitioner, did not join as the appellants in the appeals filed by the petitioner. The appeals were consolidated and heard by Assistant Settlement Officer Consolidation, who by order dated 19.8.1974, held that a separate chak in the name of Smt. Dulari was carved out, on the basis of order of Assistant Consolidation Officer and delivery of possession over the confirmed chaks in the village had taken place on 30.3.1971 as such allegation that the petitioner had no knowledge of the order dated 25.2.1969 was not liable to be believed. On these findings, delay condonation applications were rejected and the appeals were dismissed as time barred, by order dated 19.8.1974.

4. The petitioner filed two revisions from the aforesaid orders. During pendency of the revisions, Smt. Dulari died on 16.3.1975. The petitioner filed applications for substitution in the revisions, alleging therein that after death of Smt. Dulari, the petitioner, Sadho and Shiv Shankar (brothers of the petitioner) were her nearest heirs. The respondents filed an application for substituting them as transferees of Smt. Dulari through sale-deed dated 22.8.1973. Deputy Director of Consolidation

remitted the dispute relating to substitution of the heirs of Smt. Dulari to Consolidation Officer, who was directed to frame issues and record evidence relating to inheritance of Smt. Dulari and submit his finding to him within 45 days.

5. The respondents also filed an application (registered as Case No. 20/71), u/s 12 of the Act, for mutating their names over chak No. 80 of village Majhwar Khas, on the basis of the sale-deed dated 22.8.1973, executed by Smt. Dulari. The petitioner and his brothers contested the case and denied right as well as execution of the sale-deed by Smt. Dulari. In this case, also after death of Smt. Dulari, dispute relating to substitution of her heirs was raised. The Consolidation Officer, by order dated 21.8.1976, substituted three daughters of Smt. Dulari, namely Smt. Basmati, Smt. Patti and Smt. Sursatti as her heirs. However after order of Deputy Director of Consolidation dated 19.8.1976, both the matters were consolidated. The Consolidation Officer framed issues and recorded evidence of the parties. The respondents, apart from documentary evidence, examined Chekhur, Ramji and Rambodh witnesses. The petitioner and his brothers apart from documentary evidence, examined Rajesh Dutt Singh. Shiv Kumar Mishra and Dukhoo Upadhyay as witnesses. The Consolidation Officer, by order dated 2.11.1979 held that alteration of the chak in the name of Smt. Dulari, she deposited 20 times of land revenue on 16.6.1973 and obtained bhumidhari certificate of her sirdari land and executed registered sale-deed dated 22.8.1973 in favour of the respondents; due execution of the sale-deed was proved by Chekhur Prasad, who was marginal witness of the sale-deed. Possession of the respondents over the land in dispute was proved by Ramji, an independent witness. As Smt. Dulari had sold the land in dispute to the respondents as such, issue relating to her inheritance has become irrelevant. On these findings, the Consolidation Officer, by order dated 2.11.1979, directed for recording the names of the respondents over the land in dispute on the basis, of the sale-deed dated 22.8.1973, executed by Smt. Dulari.

6. The petitioner and his brothers filed an appeal (registered as Appeal No. 156) from the aforesaid order. The appeal was heard by Assistant Settlement Officer Consolidation, who by order dated 22.12.1983 held that some of the co-sharers, in order to grab the properties of Smt. Dulari filed an application before Tahsildar for mutation of their names in the year 1973, during life time of Smt. Dulari, showing her as dead, in which Smt. Dulari appeared before Tahsildar and got her statement recorded on 26.5.1973. The sale-deed executed by Smt. Dulari in respect of her land of village Shakalpura was not challenged by the petitioner and other co-sharers. Sale-deed dated 22.8.1973 executed by Smt. Dulari in favour of the respondents is a valid document. On these findings the appeal was dismissed by order dated 22.12.1983.

7. The petitioner filed a revision (registered as Revision No. 35/2640) from the aforesaid order. This revision was consolidated with the previous revisions of the petitioner, i.e. Revision Nos. 6985 and 6986 and heard by Deputy Director of

Consolidation (respondent-1), who by order dated 16.5.1987 held that compromise entered before Assistant Consolidation Officer contained signatures of all the co-sharers, including Dukhoo. Portion of the compromise, which contained signature of Dukhoo was torn. 1/3 share as proposed to all three co-sharers was noted in CH Form-5 but the petitioner or any Other co-sharer did not file any objection against it within time. After delay of more than four years, a time barred objection was filed by Dukhoo on 12.8.1973 which has been dismissed by Consolidation Officer by order dated 6.12.1973 and no appeal or revision has been filed against this order which has become final. On the basis of order of Assistant Consolidation Officer, a separate chak in the name of Smt. Dulari was carved out and delivery of possession over the confirmed chaks in the village had taken place on 30.3.1971, as such allegation that the petitioner had no knowledge of the order dated 25.2.1969 was not liable to be believed. Smt. Dulari was rightly given 1/3 share in the land in dispute according to the pedigree of the parties. Smt. Dulari, being bhumidhar of the land in dispute, was full owner as such had right to sell the land in dispute and due execution of the sale-deed by Smt. Dulari has been proved. As she had transferred her entire share as such provisions of section 5(1)(c) of the Act is not attracted. On these findings, the revisions were dismissed by order dated 16.5.1987. Hence, this writ petition has been filed.

8. The Counsel for the petitioner submitted that Ram Garib (husband of Smt Dulari) died on 19.8.1932, during jointness of the family. His interest in the land in dispute was inherited by his surviving brother Shyam Baran (father of the petitioner). In any case, after death of Smt. Dulari, the petitioner and his brothers are her heirs u/s 172 of U.P. Act No. 1 of 1951. Smt. Dulari was having life interest only and had no right to transfer the land in dispute as held by this Court in *Mst. Manbhari v. Bishun Prasad*, 1957 ALJ 357 (DB) [Mahabir Vs. Suba Lal and Durga Prasad](#), *Munna Singh v. D.D.C. and others*, 1969 RD 341 (DB) [Smt. Prema Devi Vs. Joint Director of Consolidation \(Head quarter\) at Gorakhpur Camp and Others](#), *Smt. Tilari v. D.D.C. and others*, 1971 RD 232(DB) [Lurkhur Vs. Jhuri and Others](#), *Uma Shankar v. D.D.C. and others*, 1973 RD 387 [Palak Dhari and Another Vs. Deputy Director of Consolidation, Varanasi and Others](#), [Rudra Pratap and Another Vs. Board of Revenue, U.P. and Others](#), *Chhidoo Singh v. D.D.C. and others*, 1976 (Suppl.) RD 166 *Birbal v. D.D.C. and others*, [Ram Jivan Vs. Smt. Phoola \(Dead\) by Lrs. and Others](#), [Ram Bodh and Others Vs. Deputy Director of Consolidation and Others](#), and Writ-B No. 57408 of 2013 *Smt. Chandan v. Allahabad Collector/D.D.C.* decided on 20.11.2013. Order of Assistant Consolidation Officer dated 25.2.1969 was illegal as the conciliation proceeding was neither signed by the petitioner nor two members of the Consolidation Committee according to the provisions of Rule 25-A of the Rules as held in *Ram Pal Singh v. D.D.C. and others*, 1980 (Suppl.) RD 74 and *Hori Lal v. D.D.C. and others*, 1982 RD 78 *Smt. Dulari* did not take prior permission to sell the land in dispute as required u/s 5(1)(c)(ii) of the Act, as such sale-deed dated 22.8.1973 executed by her is void as held in *janta Junior High School v. D.D.C. and*

others, 1969 RD 434 [Smt. Ram Rati and Others Vs. Gram Samaj, Jehwa and Others](#), Ramji Lal Singh v. State of U.P., 1977 RD 307 (DB) [Pancham Vs. Deputy Director of Consolidation and Others](#), Raj Kumar v. D.D.C. and others, 1997 RD 322 and Dhanesara v. D.D.C. and others, 2000 RD 145 Due execution of the sale-deed was not proved according to the provisions of section 67 of the Evidence Act as such it could not be acted upon as held by this Court in [Smt. Fehmidi and Others Vs. IVth Upper District Judge and Others](#), The consolidation authorities have not considered the oral evidence as such its judgments are vitiated as held in Krishna Kant v. D.D.C. and others, 1996 (Suppl.) RD 352.

9. In reply to the aforesaid arguments, the Counsel for the respondents submitted that the land in dispute was tenancy holdings and governed by the provisions of tenancy laws. On the death of Ram Garib (husband of Smt. Dulari) on 19.8.1932, Smt. Dulari inherited his share u/s 24 of Agra Tenancy Act, 1926 and her name was through out recorded as hereditary tenant. After date of vesting, she became sirdar of the land in dispute u/s 19 of U.P. Act No. 1 of 1951. She obtained bhumidhari certificate on 16.6.1973 as such she had right to execute sale-deed dated 22.8.1973 under U.P. Act No. 1 of 1951, as a bhumidhar has transferable right. U.P. Act No. 1 of 1951 does not recognize a limited ownership as held by Supreme Court in [Ramji Dixit and Another Vs. Bhriqunath and Others](#), The name of Smt. Dulari was recorded in basic consolidation record. In CH Form-5, her share was shown as 1/3. The petitioner or any other co-sharer did not file any objection against Smt. Dulari. All the parties entered into compromise before Assistant Consolidation Officer. The conciliation proceeding was duly signed by all the co-sharers and two members of Consolidation Committee as held by the consolidation authorities. Order of Assistant Consolidation Officer dated 25.2.1969 does not suffer from any illegality. On the basis of order of Assistant Consolidation Officer, a separate chak No. 80 was carved out in the name of Smt. Dulari, in respect of her 1/3 share. She sold the entire chak to the respondents through sale-deed dated 22.8.1973. No permission was required for sale of entire holdings under provisions of section 5(1)(c)(ii) of the Act, (as it was at that time), as held in [Smt. Ram Rati and Others Vs. Gram Samaj, Jehwa and Others](#), and [Rajendra Kumar Vs. Dy. Director of Consolidation A.D.M. \(F\) and Another](#), Due execution of the sale-deed dated 22.8.1973 by Smt. Dulari has been proved by Chekhuri Prasad, marginal witness. The matter is concluded with findings of fact. The writ petition has no merit and is liable to be dismissed.

10. I have considered the arguments of Counsel for the parties and examined the record. First question arises as to whether the consolidation authorities have committed any illegality in not condoning the delay in filing the appeal from the order of Assistant Consolidation Officer dated 25.2.1969. Respondents-1 and 2 found that on the basis of order of Assistant Consolidation Officer, a separate chak in the name of Smt. Dulari was carved out and possession over the confirmed chaks was delivered to her on 30.3.1971. Similar compromise was entered into between the parties in respect of the land of village Shakalpura but right of Smt. Dulari or her

transferee in respect of land of village Shakalpura has not been challenged by the petitioner and his brothers. Apart from the petitioner neither his brothers nor other co-sharers challenged the compromise and order of Assistant Consolidation Officer. The conciliation recorded by Assistant Consolidation Officer was signed by the petitioner and all the co-sharers as well as two members of Consolidation Committee. Although in CH Form-5, 1/3 share of Smt. Dulari was noted but no objection, within stipulated time, was filed by the petitioner and his brothers and time barred objection filed by them has been dismissed by Consolidation Officer by order dated 6.12.1973, which order has not been challenged. For the aforesaid reasons allegation that the petitioner had no knowledge of the order dated 25.2.1969 earlier was disbelieved and delay in filing the appeals, (which were filed on 20.10.1973) was not condoned. The findings of facts recorded by respondents-1 and 2 in this respect do not suffer from any illegality and no interference is required by this Court.

11. As the order of Assistant Consolidation Officer dated 25.2.1969 is based upon compromise between the parties and such the petitioner has no right to challenge this order in the absence of any allegation relating to fraud being committed before Assistant Consolidation Officer. Admittedly the name of Smt. Dulari was recorded in basic consolidation record and according to the pedigree, she had 1/3 share in the land in dispute. Order of Assistant Consolidation Officer in respect of the land of village Shakalpura also operate as constructive res-judicata.

12. The next point raised by the Counsel for the petitioner that Smt. Dulari had no right in the land in dispute as Ram Garib (husband of Smt. Dulari) died on 19.8.1932, during jointness of the family. His interest in the land in dispute was inherited by his surviving brother Shyam Baran (father of the petitioner) as the Hindu Women's Right to Property Act, 1937 came into force on 14.4.1937. This arguments is misconceived. The property in dispute was "hereditary tenancy" and the provisions of Agra Tenancy Act, 1926 was applicable to it. u/s 24 of the Agra Tenancy Act, 1926, the widow is the preferential heir than the brother as such after death of Ram Garib, his share was inherited by Smt. Dulari as his widow and not by Shyam Baran. Smt Dulari was through out recorded as hereditary tenant. After date of vesting, she became sirdar of the land in dispute u/s 19 of U.P. Act No. 1 of 1951.

13. Now the question arises for consideration as to whether Smt. Dulari had right to transfer the land in dispute. Smt. Dulari deposited 20 times of land revenue and obtained bhumidhari certificate on 16.6.1973 and executed the sale-deed in question on 22.8.1973 in favour of the respondents. The Counsel for the petitioner submitted that as Smt. Dulari inherited the land in dispute as widow as such she had a limited right till her death or remarriage u/s 172 of the Act. On her death, the property would devolved upon the heirs of her husband u/s 172 of the Act. The controversy came for consideration before Supreme Court in [Ramji Dixit and Another Vs. Bhriqunath and Others](#), Supreme Court after noticing the various

provisions of U.P. Act No. 1 of 1951 held that there is nothing in the Act. which indicates that when a female who inherits the rights of a bhumidhar, u/s 171 or section 172 or section 172-A, any residuary interest remains vested in any other person. Under the Act she is the owner of the property: the entire estate is vested in her. It is a fundamental rule of our jurisprudence that an estate does not remain in abeyance. If it was intended by the Legislature that the interest inherited by a female mentioned in section 171 was to be a life-interest, there would be some indication that the reversionary or residuary interest remains vested in another person designated for that purpose. But a search in that behalf in the Act is fruitless. On a careful review of the provisions of the Act, we are unable to hold that it was intended by the legislature to enact by implication that the holding-inherited by a female heir belonging to one of the classes of female heirs in section 171 is not held as a life-estate. Thus it has been clearly held that whenever the interest was devolved by way of inheritance on the female heir, she inherits absolute right in the holding and concept of limited right cannot be applied to it. Smt. Dulari inherited hereditary tenancy from her husband and became sirdar u/s 19 of U.P. Act No. 1 of 1951. Smt. Dulari deposited 20 times of land revenue and obtained bhumidhari certificate on 16.6.1973 as such on the date of sale-deed dated 22.8.1973, she had transferable right. The case law relied upon by the petitioner were in respect of the provisions of sections 172 and 174 of U.P. Act No. 1 of 1951 and are not applicable in this case.

14. So far as the argument of Counsel for the petitioner that sale-deed dated 22.8.1973 was void for want of necessary prior permission u/s 5(1)(c)(ii) of the Act, is concerned, by U.P. Act No. XXXVIII of 1958, the Act was amended. The relevant provisions are quoted below:--

5. Effect of declarations.--(1)....

(a)....

(b)....

(c) Notwithstanding anything contained in the U.P. Zamindari Abolition and Land Reforms Act, 1950, no tenure holder, except with the permission in writing of the Set- element Officer Consolidation previously obtained shall-

(i)....

(ii) transfer by way of sale, gift or exchange any part of his holding in the consolidation area.

45-A. Penalty for contravening provisions of section 5.--(1)....

(2) A transfer made in contravention of the provisions of section 5(1)(c)(ii) shall not be valid or recognized; anything contained in any other law for the time being in force to the contrary notwithstanding.

15. Section 5(1)(c)(ii) was further amended by U.P. Act No. 34 of 1974 as follows:--

(ii) transfer by way of sale, gift or exchange his holding or any part thereof in the consolidation area.

16. Sale-deed dated 22.8.1973 was executed before coming into force of U.P. Act No. 34 of 1974. The words "any part of his holding" as mentioned in section 5(1)(c)(ii) of the Act, came up for consideration before Full Bench of this Court in [Smt. Asharfunisa Begum Vs. Dy. Director of Consolidation Camp at Hardoi and Others](#), in which Full Bench held that expression "any part of his holding" did not include entire holding and the ban applied only where part of holding was transferred and not where whole holding was transferred. Correctness of the Full Bench in Asharfunnisa Begum's case was doubted due to different wording of Hindi version of the Act and the matter was again referred to Full Bench of (5 Hon'ble Judges) in [Smt. Ram Rati and Others Vs. Gram Samaj, Jehwa and Others](#), in which it has been again held that expression "any holding" did not include the whole holding and it is not necessary to obtain permission of Settlement Officer Consolidation for transfer of the holding as a whole. In view of the law laid down by aforesaid Full Bench of this Court, sale-deed dated 22.8.1973 by which Smt. Dulari transferred her entire Chak No. 80 was valid.

17. The arguments of the Counsel for the petitioner that due execution of the sale-deed was not proved according to the provisions of section 67 of the Evidence Act and the consolidation authorities have not considered the oral evidence are misconceived. Due execution of the sale-deed dated 22.8.1973 has been proved by marginal witness Chekhuri Prasad. The consolidation authorities have considered the entire evidence on record and there is no illegality in this respect. The writ petition has no merit and is dismissed.