

(2014) 08 AHC CK 0147**Allahabad High Court****Case No:** Writ-B No. 35104 of 2014

Ajai

APPELLANT

Vs

Deputy Director of Consolidation

RESPONDENT

Date of Decision: Aug. 6, 2014**Citation:** (2014) 107 ALR 140 : (2014) 125 RD 2**Hon'ble Judges:** Anjani Kumar Mishra, J**Bench:** Single Bench**Advocate:** Riduvant Pratap Singh and Yogesh Tiwari, Advocate for the Appellant**Judgement**

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Anjani Kumar Mishra, J.

Heard Shri Riduvant Pratap Singh, learned Counsel for the petitioner and the learned Standing Counsel for the State respondents. This writ petition arises out of an objection under section 9-A(2) and has been filed seeking a writ of certiorari for quashing the orders dated 1.3.2014 and 30.4.2013 passed by the respondent Nos. 1 and 2 respectively.

2. The dispute relates to plot Nos. 213/1, 236/1, 269/1, 269/1, 272/1 and 261/1 situated in village Ramana, Pargana Dehat Amanat, Tehsil and District Varanasi.

3. Indisputably these plots initially belonged to Badri son of Baccha. In the basic year record the disputed plots were recorded in the name of Panaru, Rameshwar and Man Kubari. The following pedigree has been set up by the petitioner:

4. On the start of consolidation operation a claim of co-tenancy raised by the petitioners were recorded in CH Form 5 which led to the filing of the objection under section 9-A(2) by Panaru, father of the contesting respondent Nos. 3 and 4, claiming that a gift deed had been executed in his favour by Badri and it is on this basis that

he was recorded in the basic year.

5. The dispute thus is as to whether Panaru was the exclusive owner or whether it was the joint holding of Panaru along with his brothers.

It is the case of the petitioners that they were ordered to be recorded as co-tenants along with Panaru on the basis of a compromise which was accepted by the order dated 5.3.1997.

6. The compromise order recorded by the Consolidation Officer was challenged by means of an appeal by Panaru on the ground that the order dated 5.3.1997 was ex parte. This appeal was dismissed with default on 18.5.2005 Panaru is stated to have died in 2009. After his death, his sons, the contesting respondents, filed a restoration application and ultimately the Settlement Officer, Consolidation allowed the appeal by his order dated 30.4.2013 holding that Panaru was exclusive owner of 1/3rd share in the disputed khata.

7. Aggrieved the petitioners filed a revision before the Deputy Director of Consolidation who by his order dated 10.3.2014 dismissed the revision. Hence this writ petition.

8. It has been submitted by the learned Counsel for the petitioner that the Settlement Officer, Consolidation only modified the order of the Consolidation Officer. He failed to record any finding as regards the compromise. In any case this compromise was entered into by Panaru, the predecessor-in- interest of the contesting respondents, and was binding upon them. Even the Deputy Director of Consolidation has failed to set aside the compromise and yet orders contrary to the compromise and having passed. He further submits that the statement of Panaru recorded before the Consolidation Officer has also not been considered by the Courts below. It has further been submitted that Panaru did not deny the compromise but only stated that it had been obtained by setting up a imposter.

9. Lastly, it has been contended that Shyam Nath father of the petitioner was contesting the case before the Settlement Officer, Consolidation but since all his heirs which included the widow and sons of a pre deceased son, Vinod, were not substituted on his death, therefore, the appeal was rendered defective, and the same could not have been allowed.

10. I have considered the submission made by the learned Counsel for the petitioner and have also perused the record.

11. A perusal of the impugned order reveals that the gift deed dated 26.1.1948 was a registered document and on its basis the donees' name was recorded over the land in dispute and it is for this reason that Panaru was solely recorded over the land of Khata No. 139. The Settlement Officer, Consolidation has recorded that this gift deed has not been denied by the petitioners'. This registered document was given effect to in the revenue record and was a document more than twenty years

old and, therefore, held that Panaru had exclusive 1/3rd share in the property in dispute. This finding has been affirmed in revision.

12. In the appeal, Panaru had denied his thumb impression on the compromise. The thumb impression of Panaru and Ram Chandra were verified by JPN Singh but there was no Vakalatnama of Shri JPN Singh on record and, therefore, the Deputy Director of Consolidation has held that the compromise did not stand verified and appeared to be a Farzi document. The Deputy Director of Consolidation has further recorded that the order-sheet of 18.11.1996 is not available on record nor there was any order-sheet of subsequent date. Therefore, there was no occasion for the case being decided on 4.12.1996. It is for this reasons that the compromise has been discarded and for the same reasons, there appears no justification for interfering with the impugned orders.

13. As regards, the contention of the learned Counsel for the petitioner that Panaru had not denied the compromise it would suffice to state that this submission of the learned Counsel for the petitioner is misconceived. It has categorically been stated in the memo of appeal that the compromise had been obtained by setting up an imposter. This clearly shows that it was the case of Panaru that he not signed the compromise. This for all practical purpose amounts to denial of the compromise itself and, therefore, the submission of the Counsel for the petitioner has no force.

14. As regards, the other submission of the learned Counsel for the petitioner that the appeal itself was incompetent in the absence of the heirs of Vinod, a predeceased son of Shyam Lal is concerned, it is at best a defect and would not render the impugned orders illegal. It is admitted that on the death of Shyam Nath his sons were substituted and therefore the estate of the deceased stood represented on record and merely because some of heirs had been left out the same would not lead to abatement of the appeal itself and under the circumstances this point is also of no help of the petitioner.

15. From the aforesaid discussions, it is clear that a registered gift deed was executed by Badri in favour of Panaru in the year 1948. This registered document was given effect in the revenue records which entries continued as such till the basic year wherein Panaru is recorded exclusively over the land in question. These entries in favour of Panaru was never challenged by other heirs of Badri nor were challenged by the brothers of Panaru himself. Therefore, the Court below have rightly rejected the claims of the petitioners.

16. I, therefore, find no merit in the submissions made by the learned Counsel for the petitioners. The impugned orders are perfectly justified and call for no interference. The writ petition lacks merits and, is accordingly dismissed.