(2014) 09 AHC CK 0144

Allahabad High Court (Lucknow Bench)

Case No: Consolidation Case No. 643 of 2014

Sudharani Pandey	APPELLANT
Vs	
D.D.C.	RESPONDENT

Date of Decision: Sept. 18, 2014

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 11, 12, 9

Citation: (2014) 125 RD 473

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

Bench: Single Bench

Advocate: Rama Kant Srivastava, Advocate for the Appellant

Judgement

@DELETEUPPERDATA

Ram Surat Ram (Maurya), J.
Heard Sri Rama Kant Srivastava for the petitioner and Sri Vikas Pandey for the contesting respondent. The writ petition has been filed against the order of Settlement Officer Consolidation dated 12.10.2011 and Deputy Director of Consolidation dated 8.9.2014.

2. By the impugned order appeal filed by Smt. Shashi Bala, respondent-4 has been allowed and the order of Assistant Consolidation Officer dated 20.2.2003 passed on the basis of alleged compromise has been set aside and the matter has been remanded to the Consolidation Officer for trial of the case on merit and the revision filed by the petitioner has been dismissed.

3. The dispute is related to the property of Babu Ram. On the death of Babu Ram the petitioner filed an application under section 9 of UP Consolidation of Holdings Act, 1953 (hereinafter referred to as the "Act") and on the basis of alleged compromise the name of

the petitioner was directed to be recorded by the Assistant Consolidation Officer by the order dated 20.2.2003. Shashibala filed two appeals claiming herself to be the daughter as well as denying the petitioner to be the daughter of deceased Babu Ram. The appeal was heard by Settlement Officer Consolidation who by order dated 12.10.2011 found that there is highly disputed question between Sudharani Pandey, petitioner on one side and Shashi Bala respondent-4 on the other side relating to being the daughter of Babu Ram Pandey, in such circumstances, the Assistant Consolidation Officer has no jurisdiction to decide the case on the basis of compromise and matter requires trial and the only course was open to Assistant Consolidation Officer to refer the dispute for trial. In such circumstances the appeals were allowed and the order of Assistant Consolidation Officer dated 20.2.2003 has been set aside and the matter has been remanded to Consolidation Officer for trial on merit. The petitioner filed two revisions against this order. Both the revisions were consolidated and decided by Deputy Director of Consolidation who by order dated 8.9.2014 found that the name of Manorama Pandey was recorded on the basis of PA-11 although it is claimed that Babu Ram executed a Will in favour of Manorama Pandey. In such circumstances, the Revenue Inspector has no jurisdiction to pass any order on the basis of PA-11 when the succession was derived on the basis of Will, similarly, the Assistant Consolidation Officer has no jurisdiction to decide the disputed question of fact and the order of Settlement Officer Consolidation does not suffer from any illegality. On these findings the revisions were dismissed. Hence this writ petition has been filed.

4. The Counsel for the petitioner submits that Smt. Shashibala is not daughter of Babu Ram Pandey, she is making forgery in the record and producing forged documents. She is claiming herself to be the daughter of Babu-ram Pandey. From the various documentary evidence it was proved that the petitioner was daughter of Babu Ram Pandey and Deputy Director of Consolidation could have decided the case on merit instead of remanding the case. He submits that Smt. Shashibala did not file any objection either before the Assistant Consolidation Officer under section 9/ 12 or before the Consolidation Officer as such she has no locus standi for filing the appeal directly before the Settlement Officer Consolidation against the order of Assistant Consolidation Officer. He relied upon the judgment of this Court in Tribeni Singh v. State of U.P. 1961 RD 58.

5. I have considered the arguments of the Counsel for the petitioner and examined the record.

6. So far as the contention of the Counsel for the petitioner that Smt. Shashibala is procuring forged papers and filing it before the Courts below as her papers are liable to be disbelieved and the petitioner has produced mass of documentary evidence showing that she is the daughter of Baburam Pandey as such the matter ought to have been decided by the Deputy Director of Consolidation on merit instead of remanding the case, is concerned, since the trial in this case has not been undertaken by any of the Court, in such circumstances, it is not possible to say that the papers produced by the petitioner are genuine papers or the papers produced by Shashibala are forged and fabricated

without giving opportunity to the parties to explain the genuineness of the papers filed by them as the findings in this respect cannot be recorded by any of the Court. In such circumstances, the order of Settlement Officer Consolidation remanding the matter for trial does not suffer from any illegality.

7. So far as the arguments of the Counsel for the petitioner that without filing any objection appeal filed by Smt. Shashibala was not maintainable, is concerned, section 11 of the Act provides the provision for appeal and the aggrieved person has been authorized to file an appeal against the order of Assistant Consolidation Officer and Consolidation Officer. In such circumstances, Smt. Shashibala, who is claiming herself to be the daughter of Baburam and also claiming herself to be aggrieved by the order of Assistant Consolidation Officer by which name of the petitioner was directed to be recorded over the land of Babu Ram, was maintainable and the arguments of the Counsel for the petitioner in this respect is not maintainable. The case law of Tribeni Singh (supra) relied by the Counsel for the petitioner, is related to the unamended provisions of U.P. Consolidation of Holdings Act and after amendment of the various provisions by U.P. Act No. 8 of 1963, the relevant provisions have already been changed. As such the aforesaid case law has no relevancy in the matter. The writ petition has no merit, it is dismissed.