
(2017) 3 ADJ 591

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Case No: Consolidation No. 3242 of 1987

Ram Kumar

APPELLANT

Vs

Deputy Director of
Consolidation

RESPONDENT

Date of Decision: Feb. 16, 2017

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 5(2)

Citation: (2017) 3 ADJ 591

Hon'ble Judges: Rajan Roy, J.

Bench: Single Bench

Advocate: P.L. Mishra, A.P. Singh Vatsa, Ashok Pandey, Balram Yadav, Brijesh Kumar Yadav, Rohit Tripathi, Sushil Kumar Rastogi, Advocates, for the Petitioner; C.S.C, A.K. Pandey, Balram Yadav, Brijesh Kumar Yadav, R.L. Mishra, S. Mirza, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

Rajan Roy, J.—Heard learned counsel for the parties.

2. This is a writ petition under Article 226 of the Constitution of India challenging the order of the revisional Court dated 06.04.1987.

The facts of the case in brief are that one Thakurdin was the original tenure holder. Smt. Rajana was his wife. After the death of Thakurdin it is not in dispute that her name was recorded the tenure holder. The petitioners herein claim that Smt. Ranjana had executed a sale deed in favour of their father Shri Bhagole, on 03.12.1969. Based thereon his name was mutated in the revenue records on 13.02.1970. One Smt. Pranpati alleging herself to be the daughter of Smt. Ranjana filed a suit under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 in the year 1970 claiming a declaration of rights in respect of holdings of Shri Thakurdin which had been bequeathed to Smt.

Ranjana alleging that on the date of execution of alleged sale deed dated 03.12.1969 Smt. Ranjana had already expired, therefore, the transaction was a fraudulent one. In the said suit it is said that the sale deed was proved and suit was dismissed, against which an appeal was filed before the Commissioner. While the matter was pending before the Commissioner notification under Section 4 of the U.P. Consolidation of Holding Act, 1953 was issued and as a consequence, in view of Section 5 thereof, the suit proceedings which were pending at the appellate level, stood abated. The legal position in this regard has already been enunciated by the Supreme Court in the case of **Mool Chand and Ors. v. Deputy Director of Consolidation and Ors. reported in AIR 1995 SC 2493** and there is no dispute in this regard.

3. Thereafter, in the consolidation proceedings Smt. Pranpati filed objection under Section 9 claiming title as earlier. The Consolidation Officer after opportunity to the parties considered the evidence adduced before him and accepted the objections of Smt. Pranpati while rejecting the claim of Bhagole. Being aggrieved the father of the petitioners, namely, Bhagole filed an appeal before the S.O.C. The S.O.C. allowed the appeal.

4. Being aggrieved the respondents herein filed a revision against the order of the S.O.C. which was allowed. The revisional Court concurred with the findings of the Consolidation Officer. It is this order of the revisional Court which is under challenge herein.

It needs to be mentioned that the order of the Consolidation Officer which has been affirmed by the D.D.C. in Revision has not been specifically challenged in writ petition.

The contention of the learned counsel for the petitioners was that the judgment of the revisional Court is based on conjecture and surmises. The reasoning given in support of the judgment is not sustainable in law. The revisional Court has erred in placing reliance upon the documentary evidence adduced by the respondents, even though, certain entries in relevant column were missing. He also contended that the date of death of Smt. Ranjana was recorded as 30.12.1969 which was subsequently changed to 30.10.1969 by the Gaon Sabha at the behest of the respondents, that too, after the initiation of proceedings under Section 229-B of the Act, 1950 by her.

5. Learned counsel for the petitioners also relied upon the documentary evidence adduced by Bhagole, wherein, the date of death of Smt. Ranjana was mentioned as 30.12.1969 which according to him had not been appreciated by the Courts below. He also submitted that once a registered sale deed had been filed in evidence in support of the sale transaction then the burden of proving that it was fraudulent was upon the respondents which was not discharged as per law. He relied upon a judgment of this Court reported in **(2013) 31 LCD 782; Radhika Devi v. Chandar Bhan Singh** in this regard. He also contended that no proceedings were initiated by the respondents for cancellation of the said sale deed.

6. Learned counsel for the respondents on the other hand invited the attention of the Court to the order of the Consolidation Officer to contend that oral and documentary evidence had been scrutinized by the Consolidation Officer and based thereon findings were recorded which are supported by cogent reasons and it is these findings which have been affirmed by the revisional Court, therefore, while ascertaining the validity of the revisional Court's order the Court should look into the findings of the Consolidation Officer, which have not been specifically challenged by the petitioners before this Court.

As far as the Appellate Court's order i.e. the S.O.C.'s order, is concerned, he contended that the same was based entirely on the order passed by the S.D.M. under Section 229-B which was absolutely impermissible as the said suit proceedings subsequently abated at the appellate level and in view of the judgment of the Supreme Court in Mool Chand's case (supra) the same could not be looked into and the title had to be ascertained afresh in consolidation proceedings under Section 9.

7. As already indicated herein above the order of the Consolidation Officer has not been specifically challenged by the petitioners. They have only challenged the order of the revisional Court.

8. On a perusal of the order of the S.O.C., the Court finds that he was persuaded greatly by the order of the S.D.M. passed under Section 229-B of the Act, 1950 and held that even though at the Commissioner level the said order was set-aside it did not mean that the order of the S.D.M., even though the said proceedings abated, had no evidentiary value, which, in the opinion of this Court is apparently erroneous, as, once a notification under Section 4 was issued then the consequences as prescribed under Section 5(2), one of which is abatement of suit proceedings for declaration of rights etc. pending before any Court or authority whether of the first instance or of appeal, reference or revision on an order being passed in that behalf by the concerned Court or authority shall follow. True the said provision requires the passing of an order and the abatement will be from date of said order. It is also true that the provisions to Subsection 2 of Section 5 require that no such order shall be passed without giving notice to the parties as also opportunity of being heard, but, this is only to ascertain as to whether the subject matter of the proceedings are covered by Sub-rule 2, regarding which there is no dispute in this case. It does not mean that if no order of abatement is passed, even though the matter is covered by Sub-rule 2, the Court or authority concerned can decide the same on merits and if so, they can not be said to have abated. In the present case the matter was covered by Sub-rule 2, therefore, the Court concerned ought to have passed an order of abatement and could not have decided the suit even at the appellate stage, on merits, as, such abatement applies at all stages of pending proceedings. The order of the S.D.M. was thus without jurisdiction and the Courts below erred in relying upon it. Thus, no significance could be attached to the order of the S.D.M.

9. On a bare perusal of the order of the revisional Court, it is found that apart from setting-aside the order of the S.O.C. on the ground that he had relied upon the order of

the S.D.M. passed in proceedings under Section 229-B, which in fact stood abated and it was not permissible for him to do so, he has also considered the S.O.C.'s order in the light of the evidence led before the C.O. and the findings recorded therein and after an extensive discussion of the relevant facts and issues he has concurred with the order of the Consolidation Officer.

10. The main point to be considered herein is the date of death of Smt. Ranjana, as, in the event it is proved that she had died prior to 30.12.1969 which is the date of execution of the sale deed, then, no benefit of such execution, even if it was registered, can be given to the petitioners herein. From the record, specially the order of the C.O., it is evident that the date of death as recorded in the relevant records was 30.10.1969, which was subsequently changed to 30.12.1969. It is not known as to under what circumstances this change was effected. However, when Smt. Pranpati came to know about it she moved an application before the Gaon Sabha whereupon a resolution was passed restoring the original entry as regards the date death of Smt. Ranjana. The impression given during the course of hearing on behalf of the petitioners was, as if, initially the date of birth was mentioned as 30.12.1969 which was subsequently changed as 30.10.1969, which is not the case, as is evident from the order of the Consolidation Officer. Moreover, the Consolidation Officer has extensively discussed the oral evidence i.e. the witnesses produced by the respondents herein who belonged to the same village to which Shri Thakurdin and Smt. Ranjana belonged and have stated about the death of Smt. Ranjan and in the season in which she died, which does not support the date 30.12.1969 as held by the Consolidation Officer. The Consolidation Officer has also held that Shri Bhagole the father of the petitioners, in spite of being a resident of the same village, did not produce even a single witness on this issue of date of death of Smt. Ranjana.

11. On a careful perusal of the order of the Consolidation Officer, the Court finds it to be a very well considered and reasoned order. Each and every relevant issue including the date of death of Smt. Ranjana, as also, the issue as to whether Smt. Pranpati was the daughter of Shri Thakurdin and Smt. Ranjana, has been considered. The oral and documentary evidence has been considered and findings recorded based thereon. He has minutely considered the demeanour of Shri Bhagole and has opined that except for a parrot like repetition of certain facts he did not even disclose as to what was the month when he allegedly took Smt. Ranjana for execution of sale deed or what was her age. He did not even recollect the month in which the sale deed was executed. The Consolidation Officer has also recorded a finding that as per the evidence led by Shri Bhagole himself the fact that Smt. Pranpati was the daughter of Shri Thakurdin and Smt. Ranjana was established. This apart the oral evidence led by the respondents comprising of witnesses who were residents of the village, they had also testified to this effect, therefore, he recorded a finding that she was the daughter of Shri Thakurdin and Smt. Ranjana.

12. The Consolidation Officer has also recorded a finding that in the circumstances aforesaid, when the date of death of Ranjana itself was being disputed, it was obligatory

upon the petitioners herein to have proved the genuineness of the sale deed by producing the attesting witnesses but none of the two witnesses were produced. One Shri Harakh alleged to be one of the attesting witness testified his age as 18, the Consolidation Officer has opined that if on the date of testimony he was 18 years, then at the time of execution of sale deed he was only 7 years old thereby he has disbelieved his testimony, rightly so. Further more, the Consolidation Officer has also recorded the statement of Bhagole that on the same date two sale deeds had been executed by Ranjana, but the vendee of the other sale deed who belonged to the same village and was alive, was not produced, though he could have testified with regard to genuineness of the sale deed. This Court while exercising extraordinary jurisdiction under Article 226 of the Constitution of India does not sit in appeal over the judgments of the Courts below involving questions of title. The findings of fact recorded by the Courts below, unless they are utterly perverse or unsustainable in law are not liable to be interfered. As far as the judgment relied upon by the learned counsel for the petitioner is concerned, once the Courts below have recorded a finding that Smt. Ranjana had died prior to 31.12.1969 i.e. the date of execution of the sale deed, this by itself is sufficient to belie the genuineness of the sale transaction and renders the alleged registration also inconsequential. It is also noteworthy that at the relevant time there was no provision for affixing a photograph on the sale deed.

13. In these circumstances, as the revisional Court has concurred with the findings of the Consolidation Officer and on a perusal of the said findings this Court does not see any such patent error on the face of the record so as to warrant interference under Article 226 of the Constitution of India, therefore, the writ petition lacks merits and is dismissed.