

(2016) 09 AHC CK 0226
ALLAHABAD HIGH COURT
Case No: Writ-B No. 27666 of 2016.

Bhopal and Others - Petitioners
@HASH Joint Director of
Consolidation Meerut and
Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 21, 2016

Acts Referred:

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

Citation: (2016) 133 RD 457

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

Bench: Single Bench

Advocate: Raj Kumar "Dhama", Advocate, for the Petitioner; C.S.C., Manoj Kuamr Rajvanshi, S.K. Srivastava and Smt. Alka Srivastava, Advocates, for the Respondent

Final Decision: Allowed

Judgement

Ram Surat Ram (Maurya), J. - Heard Sri. Raj Kumar "Dhama" for the petitioners and Sri. Santosh Kumar Srivastava for the respondents.

2. The writ petition has been filed against the order of Joint Director of Consolidation dated 12.3.2010 passed in the title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act").

3. The dispute between the parties was in respect of the land recorded in basic consolidation year khata nos.49 and 211 of village Gona, pargana and tehsil Baghpat, district Meerut (now Baghpat). The pedigree has been given in the orders of Consolidation Officer as well as Settlement Officer, Consolidation. There is no dispute in respect of pedigree.

4. A perusal of the pedigree shows that Hariya had two sons- Jiram and Madwa. So far as the branch of Jiram is concerned there is no dispute in respect of their share. It is the dispute only in respect of branch of Madwa. Madwa had three sons - Sawant, Chhajjan and Sekhram. According to the petitioners, Sekhram died first and his share was inherited by his two brothers-Sawant and Chhajjan both, while according to the respondents Chhajjan died first and after the death of Sekhram his share was inherited by Sawant alone. Therefore, Sawant had $\frac{2}{3}$ rd share and heirs of Chhajjan had $\frac{1}{3}$ share in the $\frac{1}{3}$ share of Madwa. All the consolidation authorities have found that there was no evidence relating to date of death of Sekhram and that of Chhajjan. However, it has been found that in 1337 fasli, the name of Sawant was recorded while in the branch of Chhajjan the names of his sons were recorded. Therefore, a presumption has been raised that Chhajjan died when Sawant was alive and inherited $\frac{1}{3}$ share of Sekhram. However, by subsequent orders dated 11.1.1985 and 18.9.1985 passed by the Consolidation Officer, Settlement Officer, Consolidation respectively found that the inheritance of Sekhram would depend upon the date of his death. The question as to whether on the date of death of Sekhram, both the brothers Sawant and Chhajjan were alive or not should be decided and in the absence of any evidence of date of death of Sekhram and Chhajjan merely on the basis of entry in 1337 fasli it cannot be presumed that at the time of death of Sekhram, Chhajjan was not alive. Therefore, he divided the share of Sekhram in two brothers Sawant and Chhajjan and they were given $\frac{1}{2}$ share each. The order was challenged before Joint Director of Consolidation, who by order dated 12.3.2010 found that there was no evidence relating to date of death of Chhajjan and Sekhram. But allowed the revision on the basis of fact that in the name of Sawant, more than $\frac{2}{3}$ of total land in the share of Madwa was recorded and in the names of descendants of Chhajjan less than $\frac{1}{3}$ of total land of share of Madwa was recorded. Therefore it was found that Sawant had inherited the property of Sekhram. On this finding he set aside the orders of Consolidation Officer dated 11.1.1985 and Settlement Officer, Consolidation dated 18.9.1985 and maintained the earlier order of Consolidation Officer dated 28.10.1980. Hence this writ petition has been filed.

5. I have considered the argument of the counsel for the parties.

6. The dispute between the parties is in respect of inheritance of share of Sekhram. It has come on the record that there is no evidence that Sekhram died during the life time of Sawant and Chhajjan or Chhajjan died during the life time of Sawant and Sekhram. In the absence of any evidence a presumption has been raised on the basis of fact that more than $\frac{2}{3}$ rd property of the share of Madwa was recorded in the name of Sawant in 1337 fasli. In 1337 fasli about 24 bigha of land was recorded in the name of Sawant and about 7 bigha land was recorded in the name of heirs of Chhajjan. In such circumstances, a presumption of inheritance cannot be raised that Sekhram was inherited by Sawant alone as their shares were not $\frac{2}{3}$ rd and $\frac{1}{3}$ rd.. It is admitted the property in dispute was ancestral property. In the name of Sawant and heirs of Chhajjan there was no self acquired property. In the absence of evidence

relating to date of death of Sekhram and Chhajjan, the property will be divided equally in between Sawant and Chhajjan both. This fact is also not relevant that Chhajjan was not alive in 1337 fasli as such Sawant will get property of Sekhram inasmuch as the date of death of Sekhram and date of death of Chhajjan will determine the share of the parties. Admittedly, in 1337 fasli Sekhram and Chhajjan both were dead. In the circumstances, finding of Joint Director of Consolidation that Sekhram was inherited by his brother Sawant alone is liable to be set aside.

7. In the result the writ petition succeeds and is allowed. The order dated 13.3.2010 passed by the Joint Director of Consolidation is set aside and the orders of Consolidation Officer dated 11.1.1985 and Settlement Officer, Consolidation dated 18.9.1985 are confirmed.