

(2016) 09 AHC CK 0227

ALLAHABAD HIGH COURT

Case No: Writ-B No. 33041 of 2011.

Smt. Bhagwati - Petitioner
@HASH D.D.C. and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: Sept. 26, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Limitation Act, 1963 - Section 5
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 41
- Uttar Pradesh Land Revenue Act, 1901 - Section 201

Citation: (2016) 133 RD 454

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

Bench: Single Bench

Advocate: Rajeev Gupta, M.K. Rajvanshi, N.C. Rajvashi and Ram Surat Saroj, Advocates, for the Petitioner; C.S.C., A.K. Sachan, Advocate, for the Respondents

Final Decision: Dismissed

Judgement

Ram Surat Ram (Maurya), J. - Heard Sri. N.C. Rajvanshi, Senior Advocate assisted by Sri. Ram Surat Saroj for the petitioner and Sri. A. K. Sachan for the contesting respondents.

2. The writ petition has been filed against the order of Deputy Director of Consolidation dated 4.5.2011 allowing the revision and setting aside the order of Consolidation Officer dated 20.12.2010.

3. The dispute between the parties was in respect of land of khata no. 139 and 143 of village Chhatanga Kurd, pargana and tehsil Jewar, distt. Gautambudh Nagar. The petitioner filed an objection dated 27.11.1989 claiming 1/5 share in the land in dispute. The case of the petitioner before the Consolidation Officer was that her

father Bhima was co-sharer in the land in dispute along with his other brothers Dayaram, Shiv Dutt, Ganga Dan and Sukhan. Bhima died in the year 1949 leaving behind the petitioner who is the only female issue of Bhima. The petitioner was born in the year 1941 and she was minor at the time of death of her father Bhima, therefore her name was not recorded in the revenue record. The objection of the petitioner was forwarded by the Assistant Consolidation Officer to Consolidation Officer on 8.12.1989 for decision on merit. It is alleged that before the Consolidation Officer issues were framed and case was listed for evidence of the parties on 19.12.1989. On that day the case was adjourned and 4.1.1990 was fixed. On 4.1.1990 an application was filed on behalf of the petitioner that she does not want to press her objection, which was allowed and the objection of the petitioner was dismissed as not pressed and the Consolidation Officer by the order dated 30.1.1990 decided the share of the other recorded tenure holders according to pedigree.

4. The petitioner filed an application for recalling the order dated 30.1.1990 on 23.12.2008 along with delay condonation application. In the application it has been stated that the petitioner was having $\frac{1}{5}$ share in the land in dispute and she has filed an objection claiming her $\frac{1}{5}$ share in the land in dispute. The objection was forwarded to Consolidation Officer by the Assistant Consolidation Officer on 8.12.1989 for decision on merit. On 4.1.1990 some impostor has filed an application for dismissing the objection as not pressed along with affidavit containing thumb impression of the petitioner as well as signatures of her husband and Advocate on it. The applicant is an old lady of about 70 years and presently residing at village Ganghola, pargana Dankaur, tehsil Sikandrabad, distt. Gautam Budh Nagar. She could not get any information regarding the order dated 30.1.1990. It is only on 18.12.2008 when she got inspection of the record then she came to know that her objection was dismissed on 30.1.1990 and the recall application was filed. The case was transferred at various places. Ultimately it was heard by the Consolidation Officer Jansath who by the order dated 20.12.2012 condoned the delay and allowed the recall/restoration application and recalled the order dated 30.1.1990.

5. The contesting respondents filed two revisions against the order dated 20.12.2010 before the Deputy Director of Consolidation. Both the revisions were consolidated and decided by the Deputy Director of Consolidation. The Deputy Director of Consolidation after hearing the parties found that the petitioner was participating in the proceeding before the Consolidation Officer as such the limitation of 15 days will apply for filing the recall application. The proceeding of various stages of consolidation is used to be published and after the title dispute chaks were carved out and CH Form 23 was distributed in the village. Thereafter delivery of possession had taken place and CH Forms 35 and 45 were distributed in the village. The recall application has been filed with an inordinate delay of about 18 years and there is no explanation for inordinate delay. There is no allegation in the recall application that any fraud has been committed upon the petitioner but the Consolidation Officer has illegally made out the case that fraud has been committed.

On these findings he allowed the revisions and set aside the order of Consolidation Officer dated 20.12.2010. Hence this writ petition has been filed.

6. The argument of the counsel for the petitioner is that admittedly name of Bhima was recorded in the revenue record in khatauni 1356 F. Bhima died in the year 1949. The petitioner was minor daughter of Bhima and she was nearest heir of Bhima at the time of his death. Therefore she had inherited $\frac{1}{5}$ share of Bhima in the land in dispute. Before the Assistant Consolidation Officer, the petitioner has filed an objection under Section 9 of the Act claiming her $\frac{1}{5}$ share in the land in dispute. The objection was forwarded to Consolidation Officer for disposal on merit. But before the Consolidation Officer a fabricated application along with affidavit containing thumb impression of petitioner as well as signatures of her husband and Advocate, was filed on the basis of which the objection of the petitioner was dismissed on 4.1.1990 and thereafter share of the recorded tenure holders was decided on 30.1.1990. The Consolidation Officer was satisfied with the merit of the recall application and condoned the delay and allowed the recall application. But the Deputy Director of Consolidation has illegally interfered in the discretion exercised by the Consolidation Officer. The order of Deputy Director of Consolidation is illegal and liable to be set aside.

7. I have considered the arguments of the counsel for the parties and examined the records.

8. Admittedly, the petitioner has filed objection under Section 9 of the Act on 27.11.1989 and the objection of the petitioner was forwarded for disposal on merit before the Consolidation Officer on 8.12.1989. Thus the petitioner was herself objector before the Consolidation Officer. Under Section 41 of UP Consolidation of Holdings Act, 1953 and Chapters IX and X of UP Land Revenue Act, 1901 have been applied and recall application can be filed according to the provisions of Section 201 of UP Land Revenue Act, 1901. Under Section 201, 15 days limitation has been provided for the applicant. In this case the recall application was filed after about 18 years. Even if the case of the petitioner that she did not file any application for dismissal of her objection as not pressed and it was filed by some impostor, even then the petitioner was being an objector could have made an inquiry in respect of progress of her objection within a reasonable time. Although under the law, she was entitled to move recall application within 15 days but within the reasonable time recall application was not filed and it was filed with a delay of about 18 years.

9. It is well settled that delay under Section 5 of the Limitation Act, 1963 is not liable to be condoned only on the ground of mercy or merit of the case. It has been through out held that if right has been accrued to other party then they could not be lightly displaced. The order of Consolidation Officer was passed on 30.1.1990 and chaks were carved out on its basis shortly thereafter. The parties were given possession over their confirmed chak and they were in possession of it for more than 12 years. The Consolidation Officer has not assigned any reason for condoning

the inordinate delay but the delay has been condoned merely on the ground that liberal approach should be taken in consolidation. There must be some reasonable cause due to which delay has occurred. Then instead of examining the cause for delay meticulously, liberal approach is required to be taken. In the absence of reasonable cause, delay cannot be condoned. In this case there is absolutely no explanation as to why the petitioner could not take any care of her objection for about 18 years. In such circumstances, the Deputy Director of Consolidation has rightly allowed the revision.

10. No interference is required by this Court. The writ petition has no merit. It is dismissed.