

Neutral Citation No. - 2023:AHC:197942
Judgment Reserved on 3.10.2023

Delivered on 13.10.2023.

Court No. - 48

Case :- WRIT - B No. - 1701 of 1974

Petitioner :- Ram Lal

Respondent :- D.D.C.And Others

**Counsel for Petitioner :- P.P. Chaudhary,Achal
Singh,Sanjai Kumar Pandey**

**Counsel for Respondent :- S.D. Pathak,Dinesh
Pathak,Jokhan Prasad,Mahendra Prasad,Mahendra
Pratap,P.K. Chaudhary,P.K.Chaudhary,Rakesh
Pathak,S.C.**

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Sanjai Kumar Pandey, learned counsel for the petitioner and Sri Rakesh Pathak, learned counsel for respondents.

2. In present case, initially dispute was in respect of two parcel of land i.e. Gata No.361/1 area 0-2-10 and Gata No.399/1 area 0-14-10 situated in Village Nahri Tappa, now District-Siddharth Nagar, however, the petitioner has not pressed his claim in respect of Gata No.361/1-9-2-10 and, therefore, dispute remains only in respect of Gata No.399/1, 0-14-10.

3. Earlier there were proceedings between parties under Section 229-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (hereinafter called the "Act of 1950"). Suit

was decreed in favour of petitioner. However, during appeal thereof, since consolidation proceedings commenced, in village concerned, therefore, appeal was abated. During consolidation proceedings, objections were filed by both parties under Section 9A (2) of Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter called the "Act of 1953").

4. The case set up by original petitioner was that his father was in possession of land in dispute and after his death, he continued in possession and for that revenue record of 1364-69F and 1370-74F were referred.

5. Per contra, claim of original respondents was based on a registered Bainama dated 21.5.1963 executed by Smt. Mudai in favour of original respondents and that in pursuance of it, possession was handed over to original contesting respondents. The Consolidation Officer has framed following three issues:

"1. Whether Sadal etc. are bhumidhar of Plot No.361/0-2-10, 399/1/0-14-10 on the basis of registered sale deed.

2. Whether Samber s/o Nagashar is sirdar in possession over plot No.361/0-3-10.

3. Whether Ram Lal s/o Nirhu is sirdar in possession over plot No.399/1/0-14-10."?

6. The Consolidation Officer after hearing the parties and considering documents on record accepted the objections filed by original petitioner and rejected the objection filed by contesting respondents vide order dated 30.8.1971. Relevant finding thereof are mentioned hereinafter:

"First I take the case of Ram Lal.

Ram Lal has stated that he is in possession since long. Sadal says that he is in possession from the date of sale deed. Sadal has not stated that previous to sale deed

Bhan Shanker etc. were in possession. It means that they were in possession of Ram Lal before execution of the sale deed. Several evidence is against Sadal etc. and in favour of Ram Lal as regards papers the name of the father of Ram Lal is recorded in remarks since 1364F. to 1369F. and from 1370F to 1374F. of Ram Lal. After his name is recorded in class IX under the orders of S.K. Brahm Shanker etc. never ejected to Ram Lal. So Ram Lal became sirdar when Ram Lal became sirdar then Brahm Shanker etc. were not bhumidhar and were not entitled to execute the sale deed."

(Emphasis Supplied)

7. Contesting original respondents have preferred an appeal before the Settlement Officer of Consolidation. However, same was dismissed by order dated 30.12.1971. Though copy thereof is not on record. However, a typed copy thereof was handed over by counsel for petitioner during hearing which has not been objected by learned counsel for respondents. Relevant part of the order is mentioned hereinafter:

"अपीलकर्ता का कथन है कि विवादित गाटे के भूमिधर पहले ब्रह्मशंकर कौरह थे। उनके बीच एक खानगी बंटवारा हुआ जिससे यह गाटे श्रीमती मुझा के नाम हुये। श्रीमती मुझा ने उनका बैनामा अपीलकर्ता के हक में कर दिया। उक्त बैनामा देखने से पता चलता है कि केवल गाटा 399/1 का उल्लेख बैनामे में है। यद्यपि अपीलकर्ता का कथन है कि गलती से गाटा संख्या 361 का उल्लेख बैनामे में छूट गया है। खसरा 12.... से प्रकट होता है कि गाटा 311 में लगातार 1365 फ० से रामपाल वर्मा 9 अंक्ति चला आया है और उसके हक में विद्वान जूडिशियल अफसर नौगढ़ ने डिग्री भी कर दी है। इस आदेश के जिन्हें विद्वान अतिरिक्त अधुक्त गोरखपुर मंडल के समक्ष भी अपील हुयी थी जो अखेट हो गई है। राम लाल के इतने दीर्घकालीन अध्यासन को संदिग्ध नहीं माना जा सकता और ऐसी स्थिति में श्रीमती मुझा को इस गाटे का विक्रय करने का कोई अधिकार नहीं था। अतः विद्वान चक्रवर्ती अधिकारी का निष्कर्ष व निर्णय सही जान पड़ता है और उसमें हस्ताक्षर की आवश्यकता नहीं जान पड़ता। जहां तक गाटा 361 का प्रश्न है उसे सिद्ध करने में अपीलकर्ता पूरी तरह असफल रहा है। अपील निराधार है और खारिज करने योग्य है तथा तदनुसार ही निस्तारित की जाती है।"

(Emphasis Supplied)

8. Both above referred authorities have placed reliance on

revenue records in favour of Ram Lal i.e. original petitioner and that he was in long continuous possession of land in dispute, therefore, since vendor was not in possession of land in dispute, she was not legally entitled to execute a sale deed consequently, vendee also could not get any right over land in dispute.

9. In above circumstances, original respondents preferred a revision before the Deputy Director of Consolidation which was allowed by impugned order dated 18.12.1973, whereby orders passed by two lower authorities were set-aside. Relevant part thereof is reproduced hereinafter.

"4. गाटा सं0 399/1 के विषय में निगरानीकर्तागणों का कहना है कि विवादित गाटे को उन्होंने दिनांक 21.05.68 के रजिस्टर्ड बैनामों के आधार पर मु० मुद्दा अदि से खरीदा और बैनामों के आधार पर वे इस गाटे के भूमिधर हैं। दोनों अधीनस्थ न्यायालयों ने निगरानीकर्तागणों की क्रमशः अपत्ति और अपील खारिज कर दी और विवादित गाटे का सीरदार रामलाल को घोषित किया। अधीनस्थ न्यायालयों के आदेश से क्षुब्ध होकर प्रस्तुत निगरानी दायर की गयी है।

5. मैंने उभय पक्षों के विद्वान अधिवक्ताओं की बहस को सुना तथा अगर न्यायालयों की फावलिओं का अवलोकन भी किया।

6. रामलाल विपक्षी ने श्रीमती मुद्दा अदि पर मु० सं० 870/196... अन्तर्गत धारा 229 बी० ज० वि० अधि० के अन्तर्गत दायर किया और विद्वान जे०ओ० नौगढ़ ने रामलाल का वाद दिनांक 16.9.69 को डिग्री किया। विद्वान जे०ओ० के आदेश के विरुद्ध अपील दाखिल की गयी और अपील स्तर पर सम्स्त विवाद दिनांक 1.9.70 को अफेट हो गया। विद्वान जे०ओ० के आदेश के अनुसार रामलाल का नाम अभिलेखों में दर्ज करने का आदेश के अनुसार सम्भवतः रामलाल का नाम अभिलेखों में दर्ज करने का आदेश हुआ। चूँकि वह मुकद्दमेबाजी अंतिम रूप नहीं ले सकी थी, अतः पक्षों के बीच इस सम्मति विवाद गुण-दोष के आधार पर देख जा सकता है जहाँ तक निगरानीकर्तागणों के स्वत्व का प्रश्न है उसे विक्रेताओं मु० मुद्दा अदि की ओर से स्वीकार किया गया है। निगरानीकर्तागणों की ओर से सन्द भूमिधरी, रजिस्टर्ड बैनामा, परगना अधिकारी के आदेश दिनांक 11.06.69 की प्रति अदि लिखित साक्ष्य दाखिल किये गये हैं जिन्से स्पष्ट है कि मु० मुद्दा अदि ने निगरानीकर्तागणों के पक्ष में बैनामा और उसके आधार पर परगना अधिकारी ने अमलदरामद का आदेश किया।

7. जहाँ तक रामलाल के स्वत्व का प्रश्न है उन्होंने कब्जे के आधार पर विवादित गाटे पर सीरदारी अधिकार माँगा है। इस सम्बन्ध में 1363 लायत 1374 फ० के खसरे की प्रति दाखिल की गयी है। 1363 फ० से 1369 फ० तक खाना कैफियत में विवादित गाटे पर निरहू का कब्जा अंक्ति है निरहू रामलाल के पिता थे। चूँकि 1363 फ० से 1369 फ० तक के कब्जे की

प्रविष्टियों के आधार पर निरहू अपना सीरदारी अधिकार परिपक्व नहीं कर सके थे, अतः उनके विषय में हुई कब्जे का प्रविष्टियों का लाभ रामलाल को नहीं मिल सकता 1971 आर०डी० पृष्ठ सं० 523 के अनुसार अन्य व्यक्तियों के अनाधिकार कब्जे की प्रविष्टियों का लाभ दूसरे को नहीं दिया जा सकता। 1370 फ० से 1373 फ० तक रामलाल का कब्जा खाना कैफियत में अंकित है और 1374 फ० से उनका नाम शिकमी के खाने में आ गया है। चूँकि रामलाल और मु० मुद्दा अदि के बीच 1968 यानी 1372 फ० में मुकद्दमेबाजी शुरू हुई, अतः उसके बाद के कृत्यों के इन्द्राजों पर कोई ध्यान नहीं दिया जा सकता है। यदि रामलाल का कब्जा 1370 फ० से 1375 फ० तक का मान भी लिया जाये तो भी उनका स्वत्व परिपक्व नहीं होता, क्योंकि कब्जे की शुरुवात के बाद वाली फसलों से मियाद जोड़ने पर ही ६ वर्ष की अवधि पूरी नहीं होती। इसके अतिरिक्त खाना कैफियत के जो भी इन्द्राज (अस्पष्ट) पक्षों में से उनमें प०क० 10 (अस्पष्ट) हवाला नहीं है। 1973 आर०डी० पृष्ठ संख्या (अस्पष्ट) के अनुसार यदि कब्जे के इन्द्राजों के विषय में प०क० 10 की कार्यवाही होने का प्रमाण न हुआ हो तो ऐसी प्रविष्टियाँ नहीं मानी जानी चाहिये। इस प्रकार रामलाल का स्वत्व विवादित भूमि पर सिद्ध नहीं होता।"

10. The Revisional Authority has held that name of original petitioner (Ram Lal) was recorded in revenue records on basis of decree passed in a suit filed under section 229-B of Act of 1950, however, since its appeal was abated therefore, it has no legal value. Father of original petitioner could not perfect his right on basis of entries of 1363F to 1369F being under remark column. The entries from 1370F to 1375F would not be sufficient since not only period for adverse possession would not be complete but Form P.A. 10 was also not mentioned.

11. Learned counsel for petitioner has submitted that Revisional Authority has acted beyond its jurisdiction and has erroneously interfered with concurrent finding of Consolidation Officer and Settlement Officer of Consolidation and replaced it by own findings. He further submitted that on basis of revenue records long continuous possession of father of original petitioner was proved and thereafter possession of original petitioner continued. Revenue Records were rightly appreciated by Consolidation Officer and Settlement Officer of Consolidation.

12. Learned counsel for petitioner further submitted that finding

returned by Consolidation Officer and Settlement Officer of Consolidation that vendor of original respondents was never in possession in land in dispute and further finding that even after a registered Bainama, original respondents (vendee) were never put in possession was not disturbed by the Revisional Authority as well as there was no revenue record that vendor or vendee was ever in possession of land in dispute, therefore, impugned order is liable to be set-aside.

13. Per contra, learned counsel for contesting respondents has submitted that Consolidation Officer and Settlement Officer of Consolidation misread the effect of nature of entries in revenue records. Effect of Entry of original petitioner being under Column 9 (Sikmi) was skipped from consideration by both authorities. Original petitioner or his father has never perfected his right over land in dispute.

14. Learned counsel has further submitted that since there was a perverse finding returned by Consolidation Officer and Settlement Officer of Consolidation, therefore, Revisional Authority has rightly interfered and passed an order on basis of correct appreciation of revenue records. The vendor has sufficient documents to prove her right over land as well right to sell land in dispute to original contesting respondents and it was the basis of order of amal daramad passed by Pargana Adhikari, therefore, impugned order does not require any interference.

15. Heard learned counsel for parties and perused the records.

16. The issue requires consideration is that whether within limited jurisdiction (as it was) the Revisional Authority was justified in interfering with concurrent finding of two authorities.

17. As referred above, original petitioner was given benefit of revenue entries of his as well as his father's possession in revenue records by two authorities however, the Revisional

Authority has interfered on ground that original petitioner could not have perfected his right since he was a *Sikmi* and period of 6 years was not complete and further that details of Form P.A.10 was not referred in revenue records.

18. It was not under dispute that name of father of original petitioner was recorded under column of 'Remarks' since 1346F to 1369F and from 1370F to 1347F and thereafter name of original petitioner was recorded in Class IX under orders of Revenue Authority. Respondents, admittedly never initiated any proceedings to eject father of original petitioner or original petitioner. At this stage, both lower authorities ought to have scrutinized that whether entry was made after due process i.e. Form P.A. 10 was prepared or not, especially when period was less than 6 years however, both lower authorities without considering validity of entry have erroneously declared that father of original petitioner became Sirdar and that since Smt. Mudai were not a Bhumidhar, therefore, she got no right to execute a sale deed in regard to land in dispute.

19. This Court has discussed about importance and procedure of Form P.A. 10 in a judgment passed in case of ***Mata Din Singh Vs. Deputy Director of Consolidation & Ors*** **2023:AHC158629**. Relevant paragraphs thereof are extracted hereinafter::

"30. On the face of it, the above approach of Consolidation Officer appears to be contrary to the settled position of law. As referred above, there must be a finding on the basis of clear and unequivocal evidence that possession was hostile to real owner and to denial of his title and knowledge, to the property claimed. There must be animus of the person doing those acts which must be ascertained from the facts and circumstances of

the case. However, the Consolidation Officer has in very cursory manner has decided the issue of adverse possession, without reference of above referred essential pleadings and nature of evidence being on record.

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32. The Deputy Director of Consolidation has placed heavy reliance again only on the entries made in revenue records and has not considered factors relevant for taking decision in regard to adverse possession that the possession was adequate in continuity, publicity and adverse to competitor. Adverse possession requires that all three essential requirements to co-exist at the same time, viz., it should be adequate in continuity, adequate in publicity and adverse to competitors in denial of the title and his knowledge. There must be physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner. However, these important factors also skipped from consideration of Deputy Director of Consolidation as well as two Courts below.

33. I have carefully perused the contents of memo of counter affidavit filed by the respondents, however, they have not stated any averment in regard to any of the factors referred above. Even during the course of argument, learned Senior Advocate appearing for respondents has not pointed out any relevant detail or factor on record that claim of adverse possession was positively proved in terms of the above referred factors. The Ramdular (supra) relied upon by learned Senior Advocate for respondent would not be helpful since

it is on the issue of power under Section 48 of U.P. Consolidation of Holdings Act, 1953, and Revisional Authority has power to reexamine the issue but contrary in present case, Deputy Director of Consolidation has not exercised that power.

34. In view of discussion and findings on above referred issues, I am of the considered opinion that all the Authorities under the Consolidation Act have erred and miserably failed to return a finding whether mandatory procedure for recording revenue entries under 'the Manual' was followed and have also erred in returning a finding about adverse possession only on the basis of revenue entries which only indicates the possession of the respondents for less than 12 years as well as that PA-10 was not prepared in terms of the procedure prescribed under 'the Manual' and further erred in placing reliance on the evidence of mukhtar-khas who was not competent to give evidence in regard to facts which were in exclusive knowledge of the original respondent qua to adverse possession. Lastly, the Authorities have also failed to give finding that possession of respondent was nec vi, nec clam, nec precario."

20. From above it would be clearly evident that Form P.A.10 is an important piece of evidence to prove possession of original petitioner to be adverse to real owner, however, both authorities have not considered as to whether Form P.A.10 was prepared according to due process or not. The original petitioner has not brought on record any material that Form P.A.10 was prepared in due process, therefore, I don't find any error that since original petitioner failed to prove Form P.A.10, the lower two authorities have committed a legal error in

ignoring a material piece of evidence. The finding returned that original petitioner had perfected his right was not only wrong rather it was perverse.

21. In aforesaid circumstances, this Court has to consider as to whether the Revisional Authority was justified in reversing concurrent findings of two lower authorities within its limited jurisdiction (as then it was).

22. The Revisional Authority had jurisdiction to interfere with order or orders passed by lower authority or authorities only under such circumstances when authority has exercised jurisdiction not vested in him in law or failed to exercise jurisdiction vested in him or acted in the exercise of his jurisdiction illegally or with substantial irregularity and as a result of which substantial injustice appeared to have been caused to a tenure holder. (See Act No.XXXVIII of 1958).

23. The word 'substantial' carries importance. Word 'substantial' often means more than 'significant'. Word 'substantial' means 'having substance' 'essential', 'real', 'of sound worth', etc. According to P.Ramanatha Aiyar's: The Law Lexicon 3rd Edition, 2012 meaning of word 'substantial' is 'considerable' and is not the same as 'not substantial'. Hindi translation of word 'substantial' as used in Amendment Act is 'साखान्' i.e. which goes to the root of dispute.

24. The Supreme Court in ***Ram Avadh & Ors Vs. Ram Das & Ors., (2008) 8 SCC 58***, has held that concurrent findings of two lower authorities could not be disturbed mainly on basis of assumption or without any basis. It would be relevant that above referred clauses were neither referred nor considered effect of U.P. Land Laws (Amendment) Act, 1982 (U.P.Act No.XX of 1982) enforced with effect from 10.11.1980.

25. In above context word 'substantial irregularity' used in Section 48 of Act of 1953 (as then was) has to be interpreted.

As referred above, non-consideration of an important issue that whether Form P.A.10 was prepared by due process or not would definitely be an irregularity and since entire case was based on such entry, therefore, it would definitely be a 'substantial irregularity' and further it would have definitely caused 'substantial injustice' to a tenure holder i.e. respondent herein/revisionist therein. Therefore, I am of a considered opinion that Revisional Authority was legally justified in interfering with concurrent finding of two lower authorities even within its limited jurisdiction since two lower authorities have acted with substantial irregularity and as a result of which substantial injustice was in fact caused to revisionist/respondent herein.

26. The petitioner has failed to point out that finding returned by the Revisional Authority were perverse or contrary to record.

27. In consideration of above discussion, I am of the view that there is no illegality or irregularity in impugned order, therefore, writ petition has no force. Accordingly dismissed.

28. No order as to costs.

Order Date :-13.10.2023

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