

Neutral Citation No. - 2023:AHC:200172

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HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. 48

Case :- WRIT - B No. - 545 of 1977

Abdul Sattar

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Petitioner

Through :- Arvind Srivastava,
Advocate

Vs.

D.D.C. & Others

.....

Respondents

Through :- A.K. Rai, A.C.S.C,
Mohd. Arif,
Advocate

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Arvind Srivastava, Advocate, holding brief of Sri Mukhtar Alam, learned counsel for petitioner, Sri Mohd. Arif, learned counsel for contesting respondents and Sri A.K. Rai, learned A.C.S.C. for State.

2. The brief facts of present case are as follows :-

(i) In the basic year, petitioners were recorded as tenure holder of land in dispute.

(ii) During the consolidation proceedings original respondents number 3 filed objection claiming his right on two grounds, firstly, that a lease was granted in favour of petitioner's predecessor-in-interest before enforcement of U.P. Zamindari Abolition and Land Reforms Act and after death of his father he continued to be in possession of land in dispute, and secondly that their continuous possession on the land in dispute was adverse to petitioners and no proceedings were ever undertaken by petitioners to evict him, therefore, he has perfected his right over land in dispute.

(iii) The Consolidation Officer by an order dated 16.12.1968, rejected the claim of original respondent mainly on ground that his possession was permissible in nature and it would not be a adverse possession as well as that lease was executed in favour of father of original respondent and after his death it was not extended to him. The relevant part of order is reproduced hereinafter:-

“Now the question remains if any rights can accrue to the plaintiffs on the basis of their continuous possession since 1362 F. upto 1371 the basic year. Entries in the khasras of 1362 F. to 68, 70 and 71 F. only show the possession of the plaintiff and not its nature. Abdul Malik in examination stated that land in suit came into the possession of his father Abdul Gafoor with the consent of Mohammed Saddiq earlier recorded in the khata. This shows that the nature of the possession of plaintiffs was permissive. Through Permissive possession no rights can accrue to the plaintiff on the basis of khasra entries since 1362 F. to 1371 F. Rights can only accrue through adverse possession pleaded as an alternative case by the plaintiff under sec. 210 of the U.P.Z.A. and L.R. Act. But it is incumbent upon the plaintiffs to show that the adverse possession was hostile and to the knowledge of the Opp. parties. The possession since 1362 F. of the plaintiffs shall have to be deemed as permissive as per alternate plea in the plaint unless it is proved adverse.

Contents of para 6 of the plaint forms an important admission of the plaintiffs that possession of the plaintiffs become hostile and adverse some where in 1369F. When proceedings under sec.145 Cr.P.C. started on the application of Abdul Malik plaintiff. As a result of dispute for the first time in 1369F. land in dispute was attached on the spot on 13.12.61, the attached crop was put to auction and the sale money was deposited in the treasury and the crop of gram was given in the custody of the

superdar. No other evidence is required to come to the conclusion that possession of the plaintiffs had become adverse in 1369 F. In view of the own admission of Plaintiffs that dispute leading to criminal proceeding started in that year. Limitation against a person who is lawfully in possession e.g. as a licensee in the beginning just as in the case of the plaintiffs but whose possession subsequently becomes wrongful would start from the date his possession becomes unlawful i.e. in the present case since 1369F. The limitation prescribed under section 209 is for 6 years. Since the limitation has not sirdari rights cannot accrue to the plaintiffs under section 210 of the U.P. Z. A. L.R. Act even though their possession is established since 1362 F. Regd. possession now on spot Abdul Malik has stated that he is in possession. He has admitted in cross that land in suit has been partly allotted to other tenure holders and since more than 6 months have passed regd. the delivery of possession over the new chaks 24 of the U.P.C.H.Act, it shall have to be inferred under sec. 28 (2) of that Act that the tenure holders to whom land in suit had been allotted in chaks have entered into actual physical possession of the land in suit. Since no chak has been formed of the land in suit in the name of plaintiff and I hold that on spot plaintiffs are not in possession of the land in suit now.

As discussed, neither it is proved that Adhivasi rights had accrued to the plaintiffs who should become sirdar nor it is proved that plaintiffs had and otherwise become sirdar because of old possession.

Issue is answered in the negative.”

(Emphasis Supplied)

(iv) The original respondents preferred an appeal, challenging the above referred order before Settlement Officer Consolidation, which was

allowed by an order dated 8.4.1969, on ground that contesting respondents have perfected their right being adverse to petitioners. The relevant part of order is reproduced hereinafter:-

“In the present case the lease is claimed to have been taken 18 or 19 years back when the U.P. Tenancy Act was in force. In these circumstances, the view taken in the above case law would quite apply to it and according to it the possession of the appellants cannot be anything” but adverse. Moreover, the respondents themselves have challenged the possession of the appellants and this fact goes a long way to prove that the nature of their possession can only be adverse. I quite agree with the learned counsel for the appellants that it was quite legal for them to have taken an alternative plea and this should not affect the merit of their case.”

(Emphasis Supplied)

(v) In the aforesaid circumstances, the petitioners preferred a revision petition before Deputy Director of Consolidation which was allowed by an order dated 21.4.1971, however, it was challenged before this court by way of filing a writ petition (Civil Misc. Writ No.4943 of 1971) by respondent and the same was allowed by an order dated 14.8.1975 and the impugned order therein was set aside and the matter was remitted back to Deputy Director of Consolidation to decide it fresh with certain observations. The relevant part of order of this Court is reproduced hereinafter :-

“It appears that the petitioners had taken two distinct pleas. One plea was based on a lease being granted in favour of their father. The Consolidation Officer having held after an appreciation of the evidence that the theory of lease was not established. That finding has not been set aside by any court. That finding has, therefore, become final. It was, therefore, in-consequential to

consider whether the alleged lease was granted by one of the zamindars and whether it was valid or invalid on that account. Even assuming that the father of the petitioners came into possession with the consent of the land holder he would at best be a licensee. This licence would ensure at the most for the duration of the life of the father of the petitioners unless it was revoked earlier. The effect and the nature of the possession of the petitioners thereafter has not at all been considered by the Deputy Director. Neither any evidence has been referred to. What was the nature of the possession of the petitioners after the death of their father? Was their possession also permissive? These questions have not been alluded to in the order of the Deputy Director. I, therefore, do not find the order of the Deputy Director to be in accordance with law. This case will, therefore, have to be sent back to the Deputy Director for a fresh decision in accordance with law keeping in view the observations made above.

In the result, therefore, the petition is allowed, the impugned order of the Deputy Director dated 21.4.1971 is quashed and the case is sent back to the Deputy Director for a fresh decision in accordance with law. However, in the circumstances of the case I make no order as to costs.”

(Emphasis Supplied)

(vi) In pursuance of above referred order of this Court, Deputy Director of Consolidation has decided the case fresh and by impugned order dated 31.12.1976, the revision petition filed on behalf of petitioners was dismissed. The relevant part thereof is mentioned hereinafter :-

“The land was let out to his father by Saddiq. After the death of Abdul Ghaffoor, their father Abdul Malik and others are in possession of the land in dispute. This fact was denied by Abdul Sattar in his statement. But even if granted it will be

presumed that the lease was invalid as one of the landlords has no right to grant a valid lease. In view of this, possession of Abdul Ghafoor was that of a licensee and the Hon'ble High court has observed in his judgment dated 14.8.75 the licence would ensure at the most for the duration of the life of the father of petitioner unless it is revoked earlier. There is no evidence on record that the said licence was revoked by Abdul Sattar and others. After the death of Abdul Ghafoor, the father of Abdul Malik and others, the possession became hostile or adverse. As such Abdul Malik and others are in adverse possession of the said land.

On behalf of Abdul Malik and others Sri Narottam Saran was examined as witness No.1 in this Court. Narottam Sharma stated with the help of the mutation registered that the name of Abdul Ghafoor was expunged by the order of the competent court on 9.8.1956 and the names of Abdul Malik and others were mutated. Abdul Malik was also examined as D.W. 2 in this court and he stated that his father Abdul Ghafoor died in 1955.

In view of the above, the possession of Abdul Malik and others was hostile and adverse against Abdul Sattar and others from the year 1955 when Abdul Ghafoor died. From the perusal of Khasra 1362F it is evident that Abdul Malik and others entered into possession in 1362F or in the year 1954, in the year 1954 the limitation prescribed u/s 209 was three years and Abdul Malik and others completed three years possession on 30.6.1958. This period of limitation was amended on 27.3.1959 and the period of limitation prescribed was 6 years. Even if six years possession is applicable to the present case the Abdul Malik and others completed six years possession on 30.6.1961 i.e.1367F. In view of this Abdul Malik and others have acquired sirdari rights by virtue of their adverse possession over the land in dispute.

This revision has no force and is therefore dismissed,”

(Emphasis Supplied)

(vii) The aforesaid order passed by Deputy Director of Consolidation is impugned in present writ petition.

3. Sri Arvind Srivastava, learned counsel appearing on behalf of petitioner submitted that it appears that Deputy Director of Consolidation has accepted the observations made by this Court in its entirety and proceeded the case on that basis only. In order to prove adverse possession by respondents, there must be material pleadings which shall include five factors i.e. the date they came into possession, duration of their possession, nature of their possession, their possession was open to real owners and that entries in revenue records were prepared in accordance with due procedure as prescribed in Uttar Pradesh Land Records Manual.

4. Learned counsel further submitted that the finding returned by Deputy Director of Consolidation is that respondents become licensee was not based on any material except placing reliance on observation made by this Court in this regard.

5. Learned counsel has further submitted that the entries in Khasra is only in regard to possession, however, nature of possession was not provided and for that learned counsel referred certain part of order passed by Consolidation Officer.

6. Learned counsel for petitioner also submitted that issue in regard to limitation has been decided contrary to establish law and Revisional Authority has failed to consider the specific finding returned by Settlement Officer Consolidation in this regard.

7. Learned counsel appearing on behalf of respondents has heavily placed reliance on the impugned order passed by Deputy Director of Consolidation and submitted that they were in long possession which was

in knowledge of petitioners, therefore, they have perfected their right being in nature of adverse possession.

8. Learned counsel has also referred to proceedings under section 145 Cr.P.C. between parties and submitted that respondents were in possession of disputed land.

9. Learned counsel further referred the finding returned by Deputy Director of Consolidation in regard to limitation that even within the extended period of limitation the petitioners have failed to initiate any proceedings to evict the respondents.

10. Learned counsel further submitted that since the Revisional Authority has passed a well reasoned order and petitioners have failed to point out any perversity therein, therefore, this Court may not interfere with the impugned order.

11. Heard counsel for parties and perused the record.

12. As referred above and also very clear from order passed by this Court in earlier round that respondents have placed their case on two distinct pleas:-

(i) The first plea was based on a lease being granted in favour of their father and, therefore, be considered to be extended to them also, however, since claim was rejected by the Consolidation Officer and said findings was not challenged before any other higher Authority, therefore, claim on basis of lease was completely failed.

(ii) The other claim of respondents that they have perfected their right on basis of adverse possession was rejected by the Consolidation Officer, however, it was allowed by the Settlement Officer Consolidation in an appeal filed by them, however, as referred above in paragraph No.2(iv), the findings returned were bereft of any legal sustainable reasons rather it would fall under category of cryptic orders, therefore, it was interfered by this Court.

13. In the earlier round a writ petition filed by petitioners was allowed by an order dated 14.8.1975 and claim of respondents on adverse possession was rejected. Matter was remitted to Deputy Director of Consolidation to consider the effect and nature of possession of respondents after death of their father i.e. whether it was permissive or not.

14. A revision filed by petitioners was re-heard. The Deputy Director of Consolidation returned a finding that there was no evidence on record that license was revoked by petitioners and even after death of father of respondents, they remained in possession for years, therefore, their possession became hostile.

15. The Deputy Director of Consolidation has also considered the adverse effect of not filing any suit under Section 209 of U.P. Zamindari Abolition and Land Reforms Act, 1950 within limitation of 6 years to be in favour of respondents.

16. In order to consider whether on basis of material on record, finding returned by the Deputy Director of Consolidation that respondents have perfected their right, being adverse, it would be relevant to refer few paragraphs of a judgment passed by this Court in the case of **Mata Din Singh Vs. Deputy Director of Consolidation & Ors 2023:AHC:158629**. 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."

(Emphasis Supplied)

17. The emphasis given by Deputy Director of Consolidation was on nature of possession of respondents after death of their father, in whose favour a lease was executed and admittedly it was not extended to them, however Revisional Authority has swept away with the observation made by this Court in earlier round and without considering evidence on record as well vital issues whether nature of possession of respondents was permissive or not or whether they have perfected their right on basis of their adverse possession i.e. whether Form PA-10 was prepared or if prepared, due process was followed or not and has rejected the revision.

18. I have carefully perused the impugned order. The Revisional Authority has not even referred about Form PA-10. The impugned order was passed only on basis that respondents continued in possession even after death of their father and since within the limitation period, no suit was filed, their possession could be considered to be adverse, however, this would not be a correct approach. Admittedly, respondents have failed to prove their claim on basis of lease. The only evidence in favour of respondents was in regard to entry in 1362 F, however, there was no finding returned on nature of entry i.e. whether it was under remark column or not.

19. The Deputy Director of Consolidation has recorded that father of respondents died in the year 1955 and his name was expunged by an order of a competent Court on 09.08.1955. It was further referred that respondent entered into possession in 1362 F (year 1954) and extended period of six years expired in 1961 (1367 F) and since no suit for ejectment was filed, therefore, they perfected their right being adverse and further acquired *sirdari* rights. Entire discussion was based on revenue entries. There was no discussion whether possession was permissive or not, which was the issue on which matter was remitted to Revisional Authority.

20. In this regard findings returned by the Consolidation Officer would be relevant to mention that witness (Abdul Malik) of respondent in examination has stated that land in dispute came in to possession of his father Abdul Ghafoor with consent of Mohammed Saddiq earlier recorded

in the Khata and, therefore, nature of possession of respondent was permissive only. The Deputy Director of Consolidation, despite direction of this Court, has not even touched the issue in impugned order that whether possession of respondents was permissive or not. The Deputy Director of Consolidation has only concentrated on issue of adverse possession and as discussed earlier, the respondents have not taken any endeavour to prove their claim on adverse possession either in their pleadings (documentary or oral). The finding returned by the Deputy Director of Consolidation on adverse possession was in teeth of law as discussed above, therefore, legally unsustainable.

21. The possession of respondents was always remained to be a 'permissive possession' and it is well settled position of law that a person in permissive possession can claim his possession became adverse only when he proves that he had shed character of permissive possession and started his possession to be adverse to real owner. As discussed above, at no point of time such event had taken place. The question of commencement of limitation period, therefore, does not even arise.

22. In view of above discussion, I am of the considered opinion that Deputy Director of Consolidation has proceeded with the case in own way, without considering the observation made by this Court and without appreciating that in order to prove right on basis of adverse possession, there shall be specific finding that possession of respondent was *nec vi, nec clam, nec precario*, however, impugned order is silent on above issues.

23. In above referred circumstances, an irregularity as well as illegality was committed, therefore, impugned order is unsustainable in eyes of law. The impugned orders (order dated 08.04.1969 passed by Settlement Officer Consolidation and order dated 31.12.1976 passed by Deputy Director of Consolidation) are set aside and this writ petition is accordingly, **allowed**. The legal consequence thereof shall follow.

24. No order as to costs.

Order Date :- 17.10.2023

P. Pandey