

Court No. - 17

Case :- WRIT - C No. - 3005526 of 1981

Petitioner :- State Of U.P And Others

Respondent :- A.D.J. Bahraich And Others

Counsel for Petitioner :- C.S.C.

Counsel for Respondent :- Dr. L.P. Misra, Shafiq Mirza

Hon'ble Alok Mathur, J.

1. Heard learned Standing Counsel on behalf of the State-petitioner.
2. Present writ petition assails the order of First Additional District Judge, Bahraich dated 07.05.1981 where he has set aside the order of the prescribed authority and has allowed the appeal.
3. Brief facts of the present case are that notices were issued to the original tenure holder i.e. Shukhdeo/respondent No. 2 S/o Ambika Prasad where after hearing the objections by means of order dated 25.02.1978, 10.075 acres of the land in terms of irrigated land was declared surplus. Sukhdeo Prasad preferred a rent appeal No. 64 of 1978 before the District Judge, Bahraich which was decided on 11.05.1978. The appeal was allowed and surplus land was reduced to 7.682 acres in terms of irrigated land. The original tenure holder was not satisfied with the order of the District Judge and consequently filed a writ petition before this Court being Writ Petition No. 2794 of 1981 which was allowed and the matter was remitted back to the District Judge, Bahraich.
4. The District Judge, Bahraich further remanded the matter to the prescribed authority to rectify his order and accordingly the prescribed authority by order dated 27.07.1979 corrected the surplus area to be 8.74 acres instead of 7.682 acres. Subsequently, the District Judge by means of his judgment dated 26.02.1980 allowed the appeal and remanded the matter back to the prescribed authority to determine the surplus land and deciding the share of the original tenure holders in the holdings. The prescribed authority thereafter by means of order dated 29.12.1980 declared 7.84 acres of the land in terms of irrigated area as surplus against which Sukhdeo prasad preferred an appeal before the District Judge which has been allowed by means of order dated 07.05.1981 which has been impugned before this Court in the present writ petition.
5. Before the District Judge, it was contended that the appellant

therein had only 1/6th share in the holdings of his ancestor Shitla Bux and not 1/3rd. It was submitted that Sukhdeo Prasad was the son of Ambika Prasad who had three sons, namely, Gangadhar, Sukhdeo and Chanda Pratap. It was stated that a suit was filed in the court of Civil Judge, Bahraich by Prabhu Devi widow of Parmeshwar Din S/o Shitla Bux. The matter was referred to Arbitrator and subsequently a decree was passed in terms of the award. The District Judge while deciding the said case has perused the record and original file of the prescribed authority and he has satisfied himself that in the said decree half share in the holding of the common ancestor Shitla Bux was considered to be belonging to Gangabux and half share was belonging to Ambika Prasad.

6. Since Ambika Prasad has three sons and appellant was one of the three sons of the Ambika Prasad therefore share of Sri Sukhdeo was fixed as 1/6th of the share of the entire land rather than 1/3rd. The District Judge did not agree to the findings recorded by the prescribed authority which were based on the report of the concerned Lekhpal. The Lekhpal had stated that Ambika Prasad had three sons and consequently Sukhdeo would received 1/3rd share of property of Ambika Prasad. The Lekhpal report did not consider the fact that there was a decree passed in the said matter whereby only shitla Bux had received only half share in the said property and not the full share.

7. Apart from the aforesaid facts, the District Judge has further considered that the notice under Section 10(2) of the Act was also received by Gangadhar who is the real brother of the respondent No. 3. The proceedings against Gangadhar attained finality at the stage of District Judge where his share was fixed as 1/6th in the property of shitla Bux. The said order became final and no appeal was preferred against the said order. It was stated that once the share of Gangadhar has already been determined by the competent authority to be 1/6th then the share of the Sukhdeo who is the real brother of Gangadhar would also be 1/6th and there is no reason to quantify a different share between two real brothers were inherited a property from a common ancestor. It was further stated that these facts were placed before the consolidation authorities as in the meanwhile consolidation operations took place in the said village.

8. The consolidation authorities also accepted the said facts and fixed the share of Gangadhar as well as Sukhdeo as 1/6. It is in all the aforesaid fact by the District Judge has reversed the findings recorded by the prescribed Authority and held that Sukhdeo has only 1/6 share of the property of shitla Bux and accordingly allowed the appeal.

9. Learned Standing Counsel while assailing the order of the District Judge has vehemently submitted that Gangadhar had instituted separate proceedings where his share was duly quantified upto the level of District Judge and separate proceedings were instituted with regard to Sukhdeo and separate notice was given under Section 10(2) of the Act and consequently both the cases had to be decided on their own merits and in the case of Gangadhar would have no consequence with regard to the share of Sukhdeo. Further he does not dispute the orders passed by the various authorities which has been considered by the District Judge.

10. Considering the aforesaid facts and the arguments raised by learned Standing Counsel and also after perusal of the record, it is noticed that learned District Judge has dealt into all the matters and perused the relevant record with regard to fixation of share of Sukhdeo. He has taken into account the fact that there was a civil suit preferred by Prabhu Devi which culminated in passing of a decree in 1946 where the share of Shitla bux was half of the share in the entire land and further considered the fact that share of Gangadhar who is real brother of Sukhdeo has been fixed as 1/6 in the entire land and the said order attained finality. Even the consolidation authorities were accepting the said ground and considering the fact that Ambika Prasad had three sons and accordingly each of the son would have 1/6 share of the entire land.

11. It is noticed that District Judge has rightly given a finding with regard to the share of Shukhdeo as well as considered the fact that under similar circumstances share of Gangadhar has already fixed as 1/6.

12. It is in the aforesaid circumstances, it cannot be doubted that the share of the petitioner has been correctly fixed as 1/6 and accordingly this Court does not find any infirmity in the order passed by the District Judge.

13. In light of the above, there is no merit in the writ petition which is accordingly dismissed.

(Alok Mathur, J.)

Order Date :- 11.10.2023

Ravi/