

Court No. - 49

Case :- WRIT - B No. - 2876 of 2024

Petitioner :- Krishna Dutt And 7 Others

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Mohd. Shahanshah Khan,Rahul Sahai

Counsel for Respondent :- C.S.C.,Vishal Tandon

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the petitioners, learned counsel for private respondent nos. 3, 9 and 10 as well as learned standing counsel for State respondents no. 1 and 2.

2. The petitioners have invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, assailing the order dated 5.6.2024 passed by the Deputy Director of Consolidation in Revision No.0111 of 2021 (Computerized Case No. 2021531653000111) reversing the order dated 7.10.2021 passed by the Consolidation Officer in Case No.63 of 2021, whereby two impleadment/amendment applications dated 18.2.2020 under Order I Rule 10(2) read with Order VI Rule 17 of CPC filed on behalf of the contesting respondents in objections under Section 9A(2) of U.P. Consolidation of Holdings Act, 1953 (in brevity UPOCH Act) has been rejected.

3. The facts culled out from the record are that two separate objections dated 11.05.2018 (Annexure Nos. 2 & 3) under Sections 9A(2) of the UPOCH Act have been filed by Trishul and Basant Lal & two others including Trishul, respectively viz. (i) Basant Lal and two others vs. Kanhaiya Lal and others and (ii) Trishul vs. Kanhaiya Lal and other. At a later stage, Basant Lal & seven others including previous three applicants have filed another objection dated 29.9.2018 (Annexure No. 4) under Section 9A(2) of the UPOCH Act in the nature of supplementary objection. Similarly, Trishul has filed another objection dated 28.10.2018 (Annexure No. 5) under Section 9A(2) of the UPOCH Act as well in the nature of a supplementary objection. The opposite parties in proceedings under Section 9A(2) of the UPOCH Act (petitioner herein) have raised objection qua maintainability of the subsequent objection dated 29.09.2018 and 28.10.2018 filed under Section 9A(2) of the UPOCH Act. In response thereto, Trishul and Basant Lal & two others have filed two separate applications dated 17.12.2019, respectively, with the prayer that their first objection dated 11.5.2018 may be

treated as a main objection and subsequent objection may be treated as a supplementary objection. After due contest, the Consolidation Officer, vide order dated 11.2.2020 (Annexure No. 8), has rejected both applications dated 17.12.2019 and negated the subsequent objections on the grounds that it would promote multiplicity of proceedings, however, permitted to file amendment application if they want to explain/clarify their case. The order dated 11.2.2020 passed by the Consolidation Officer became final between the parties, inasmuch as same has not been assailed before any competent court. In light of the order dated 11.2.2020, the contesting respondents Basant Lal & two others and Trishul have filed separate amendment applications dated 18.2.2020 (collectively filed a Annexure No. 9) under Order I Rule 10(2) read with under Order VI Rule 17 of CPC, proposing amendment in their respective objections dated 11.5.2018 filed under Section 9A(2) of the UPCH Act. The Consolidation Officer, vide order dated 7.10.2021, has rejected both the amendment applications dated 18.2.2020. The Deputy Director of Consolidation (in brevity 'DDC'), on revision being filed on behalf of Trishul assailing the order dated 7.10.2021, has quashed the order dated 7.10.2021 passed by the Consolidation Officer and allowed the amendment application dated 18.2.2020, vide its order dated 5.6.2024, which is currently under challenge before this court.

4. Learned counsel for the petitioners has submitted that while passing the order impugned, the DDC did not clarify as to which amendment application is allowed as the revision was filed only by Trishul. It is next submitted that the reasoning given by the Consolidation Officer in rejecting the amendment application was neither considered nor reversed by the revisional court. No justifiable reasons are assigned for moving an amendment application, therefore, unless there is a necessity to amend the pleadings, the amendment application cannot be allowed. It is next submitted that an amendment application to substitute the heirs and legal representatives of the deceased is not maintainable in the eye of law. Learned counsel for the petitioners has emphasized that no person can be forced to be impleaded as a plaintiff in a suit/objection, therefore, to that extent, the application moved by the contesting respondents is unsustainable in the eye of law. And, even otherwise, the persons who are sought to be impleaded as plaintiffs in the cause title of the objection under Section 9A(2) of the UPCH Act have an opportune to file separate objections under Section 9A(2) of the UPCH Act and their impleadment in the previous case is not necessary. The impleadment of some of the persons as respondent in the cause title of the objection under Section 9A(2) of the UPCH Act has been questioned as well on the

grounds that the contesting respondents have not shown any grievance against the persons who have been sought to be impleaded, therefore, application is liable to be rejected. It is finally submitted that the order passed by the DDC is liable to be quashed being illegal, cryptic and unwarranted under the law.

5. Per contra, learned counsel for the private respondents has vehemently opposed the submissions advanced by learned counsel for the petitioners and contended that the Consolidation Officer has illegally rejected the amendment application, vide order dated 7.12.2021, which is precisely contradictory to his previous order dated 11.2.2020, wherein he had permitted to move an amendment application. The persons who have been sought to be impleaded as plaintiffs are not third person to the original proceedings, inasmuch as the subsequent objection under Section 9A(2) of UPCH Act filed on their behalf alongwith the Basant Lal was rejected by the Consolidation Officer intending to avoid multiplicity of proceedings. It is next contended that Chain Kumar had died before filing of the objection, therefore, the amendment application has rightly been filed to bring his heirs and legal representative on the record. It is further contended that order dated 7.10.2021 passed by the Consolidation Officer was a composite order on both amendment applications dated 18.2.2020, therefore, both amendment applications are allowed by the order dated 5.6.2024 passed by the DDC. It is finally contended that the instant writ petition is liable to be dismissed being misconceived and devoid on merits.

6. Having considered the rival submissions advanced by learned counsel for the parties and upon perusal of the record, it is manifested that Basant Lal and two others have moved an amendment application dated 18.2.2020 in their objection dated 11.05.2018 under Section 9A(2) of UPCH Act to amend the array of the parties and the details of the property in dispute. Similarly, Trishual has moved another amendment application on the same day i.e. 18.2.2020 in his objection dated 11.05.2018 under Section 9A(2) of UPCH Act to correct the details of Chain Kumar (respondent No.3 in objection), who had died before the filing the objections, as well as the details of the property in question. In substance, nothing specific has been sought to be amended by the contesting respondents that could affect the valuable rights of the respondents in the objection (the petitioners herein) to get the objection dismissed based on the previous pleadings. Amendment application moved by Basant Lal and two others evince that they have sought for four amendment; first, that (i) Sant Lal son of Devraj, (ii) Ramjhalla W/o Devraj, (iii) Kameshwar and (iv)

Gangeshwar S/o Buddhiman may be added/impleaded as plaintiffs in the cause title of the objections; second, to correct the details of Chain Kumar S/o Kannhaiya Lal, who had already died before filing the the objections, therefore, their heirs and legal representatives were sought to be added/impleaded in the cause title of the objection as respondents; third, to add/implead some more persons namely, (i) Vinod Yadav, (ii) Dinesh Kumar Agrahari, (iii) Urmila Devi W/o Raviraj Singh, (iv) Pramila W/o Dinesh Kumar, (v) Poonam W/o Babulesh as respondent nos. 10 to 14 respectively in the cause title of the objection, and fourth, to include/insert certain plot numbers in the objection being disputed property. Likewise, Trishul has sought for two amendments; first, to bring on record the heirs and legal representatives of predeceased Chain Kumar and, second, to include/insert some new plot numbers being disputed property. All the proposed amendments in both the objections under Section 9A(2) of UPCH Act, which have been sought for by the contesting respondents, are general in nature and cannot be considered to be fatal to the interests of the contesting opposite parties (the petitioners herein). They do not displace the present petitioners from the admission made by the contesting respondents. Needless to say that the plaintiff is dominus litis and has the discretion to assess his grievance. He has to determine as to against whom he is aggrieved and what relief he wants. By way of the amendment applications, the contesting respondents have included additional plot numbers being a disputed property and included more persons as respondents against whom they have a grievance with respect to the disputed property. Thus, modifying the details of the disputed property and including more persons being respondents does not have any bearing upon the rights of the present petitioners to contest the case.

7. I am skeptical of the submissions advanced by learned counsel for the petitioners that Sant Lal and three others have illegally been impleaded as a plaintiff in the plaint/objection without their consent and they cannot be forced to contest the case. The submission advanced by learned counsel for the petitioners in this respect is apparently in ignorance of the order dated 11.2.2020 passed by the Consolidation Officer, whereby both supplementary objections under Section 9A(2) of UPCH Act filed by the contesting respondents including the persons who were sought to be impleaded in the cause title of the objections as plaintiffs have been rejected intending to discourage the multiplicity of proceeding and observed that applicants (contesting respondents herein) can move amendment application, if they wants to clarify their case qua property in question. A perusal of the subsequent objection

dated 29.9.2018 under Section 9A(2) of UPCH Act reveals that it was filed by Basant Lal, Sant Lal, Ramjhalla, Rameshwar, Kameshwar, Gangeshwar, Gillan and Trishul. Their objection has been rejected by order dated 11.2.2020 on the ground that it would promote multiplicity of proceedings, however, they were permitted to move an appropriate amendment application in the original pleadings dated 11.5.2018. Prima facie, it appears that having regard to the order dated 11.2.2020 passed by the Consolidation Officer, the contesting respondents have filed an impleadment/amendment application to implead Sant Lal, Ramjhalla, Kameshwar and Gangeshwar. Thus, it is apparent from the record that the persons who have been impleaded as plaintiffs are the same persons who have filed the supplementary objection dated 29.9.2018, and said objection was rejected with the intent to avoid multiplicity of proceedings, however, liberty accorded to file an amendment application. Therefore, having regard to the observation made by Consolidation Officer in its order dated 11.02.2020, the another submission advanced by learned counsel for the petitioner in this respect that persons, who are sought to be impleaded, can move separate objection under section 9A(2) of UPCH Act is unsustainable in the eye of law. Needless to say that their separate objection dated 29.09.2018 under section 9A(2) of UPCH Act has been negated by order dated 11.02.2020 intending to avoid multiplicity of proceedings. Contesting respondents have no option but to move an impleadment/amendment application in previous objection dated 11.05.2018.

8. The submission raised by learned counsel for the petitioners that the DDC has not reversed the findings returned by the Consolidation Officer is not much convincing as well. The Consolidation Officer has rejected the amendment application basically, inter alia, on the grounds that any new person cannot be impleaded as a plaintiff without his consent; that once the application dated 29.1.2019 is moved denying the previous/first objection under Section 9A(2) of UPCH Act, there is no occasion to move the amendment application in the previous objections; and, lastly, it has been observed that Chain Kumar (opposite party no.3 in the objection) had already died in the year 2015, therefore, moving a belated application to implead his heirs, that too without condonation of delay, is not maintainable in the eye of the law. In my considered opinion, none of the grounds as taken by the Consolidation Officer to reject the amendment application is sustainable in the eye of the law. It is apposite to mention that, as per observation made by the Consolidation Officer, Chain Kumar had already died before the filing of the objection, therefore, bringing on record

his heirs and legal representatives being respondents in the cause title of the objection under Section 9A(2) of the UPOCH Act cannot be treated in the nature of a substitution. In the peculiar facts and circumstances of the present case, a substitution application is not maintainable in the eye of the law and moving an impleadment/amendment application is suffice. As such, the law of limitation is not applicable in the instant matter to bring on record the heirs and legal representatives of the deceased who had already died before filing of a case under Section 9A(2) of the UPOCH Act. The counsel for petitioners has not shown any legal provision denoting prescribed period of limitation for the purpose of moving an impleadment/amendment application. In this respect, the DDC has given categorical finding that the Consolidation Officer has illegally dismissed the impleadment/amendment application being barred by time. So far as the observation made by the Consolidation Officer qua application dated 29.1.2019 is concerned, the DDC has laid emphasis on the subsequent application dated 17.12.2019, wherein a prayer was made to accept the previous objection/case dated 11.5.2018, and the order dated 11.2.2020. The Consolidation Officer, vide order dated 11.2.2020, has passed a fresh order in the light of the application dated 17.12.2019. Thus, the previous application dated 29.1.2019 pales into insignificance in the light of the subsequent application dated 17.12.2019 and the order dated 11.2.2020 passed thereon. The observation made by the Consolidation Officer qua impleadment of certain persons as plaintiffs in objection under Section 9A(2) of the UPOCH Act has been countered as well by the DDC with an unequivocal observation that the impleadment of new persons being plaintiffs cannot be treated illegal, inasmuch as the impleadment/amendment application dated 18.2.2020 has been filed in the light of observations made by the Consolidation Officer in its order dated 11.2.2020.

9. Learned counsel for the petitioner has also raised concern as to which amendment application dated 18.2.2020 has been allowed by the DDC vide its order impugned dated 20.6.2024. Perusal of order dated 7.10.2021 reveals that Consolidation Officer has discussed the merits of both the amendment applications dated 18.2.2020 filed by the parties concern in their respective objections under Section 9A(2) of the UPOCH Act, however, said order has been passed in case No.63 of 2020 -21 Basant Lal and others Vs. Kanhaiya Lal and others. Pointing out this anomaly Trishul has filed the revision assailing the common order dated 7.10.2021 and taken specific ground that there are two cases filed on behalf of the parties under Section 9A(2) of the UPOCH Act being, one, Basant Lal

and others Vs. Kanhaiya Lal and, second, Trishul Vs. Kanhaiya Lal and others. However, amendment applications separately moved in the aforesaid two cases have been decided by common order that too referring only one case number. It is apposite to mention that Trishul is party in both the objections i.e. Basant Lal and others Vs. Kanhaiya Lal and and Trishul Vs. Kanhaiya Lal and others. The DDC has taken note of this plea raised on behalf of Trishul in his revision. Having considered the entire facts and circumstance of the case in its totality the DDC has quashed the order dated 7.10.2021 passed by the Consolidation Officer. Consequently, both the impleadment/amendment applications dated 18.2.2020 are allowed, therefore, plea raised by learned counsel for the petitioners in this respect is unsustainable and has got no sanctity in the eye of law. In my considered opinion, the DDC, vide order dated 5.6.2024, has allowed both the amendment applications dated 18.2.2020 filed by parties concerned in their respective objections under Section 9A(2) of the UPOCH Act.

11. In this conspectus, as above, I am of the considered opinion that the DDC has rightly allowed the revision and relegated the parties before the Consolidation Officer to get the original objection under Section 9A(2) of the UPOCH Act dated 11.05.2018 decided on its merits in the light of the amendments sought for in the application dated 18.2.2020. None of the amendments which have been sought for by the contesting respondents affects any right of the present petitioners if vested in them owing to the previous pleadings made in the objection dated 11.5.2018 under Section 9A(2) of UPOCH Act. There is no specific case of the petitioners that the contesting respondents, by way of the amendment application, have withdrawn their admissions made in the previous pleadings, or that such amendments would substantially affect the petitioners' right to get the objection dismissed. I do not find any justifiable ground to entertain the instant writ petition and interfere in the order impugned. There is no illegality, perversity, or infirmity in the order under challenge so as to warrant the indulgence of this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. There is nothing on the record to demonstrate as to how the petitioners are prejudiced, or if there is any likelihood of causing a miscarriage of justice to them, owing to the order under challenge.

12. Resultantly, the instant writ petition, being misconceived and devoid of merits, is **dismissed** with no order as to the costs.

Order Date :- 2.8.2024/vkg