

Court No. - 8

Case :- WRIT - B No. - 4877 of 1986

Petitioner :- Ram Lakhan And 3 Others

Respondent :- Deputy Director Of Consolidation
Bahraich And 4 Others

Counsel for Petitioner :- J.K.Sinha,Mukut
Bihari,Rajeiu Kumar Tripathi

Counsel for Respondent :- C.S.C.,D.P.Dutt
Tiwari,H.S. Tiwari,Pt. Devesh Kumar
Mishra,Ravindra Nath Tewari

Hon'ble Jaspreet Singh,J.

1. Heard Shri Rajeiu Kumar Tripathi, learned counsel for the petitioners and Shri R. N. Tewari, learned counsel for the private respondents.

2. Under challenge is the order dated 02.06.1986 passed by the Deputy Director of Consolidation, Bahraich whereby it has allowed the revision of the private respondents and set aside the judgment passed by the Settlement Officer of Consolidation and Consolidation Officer, as a result the objections of the private respondents were allowed.

3. During the pendency of the petition, few of parties had expired and the counsel for the petitioners has moved an application for substitution which has been allowed and the legal heirs have been brought on record. However, for the sake of convenience, the Court shall refer to the parties as they were originally impleaded at the time of filing of the petition.

4. In order to appreciate the controversy involved in the instant petition certain brief facts giving rise to the instant petition are being noticed hereinafter.

5. The dispute in question relates to Khata No.111, situate in village Bhoopani, Pargana Hisampur, Tehsil Kaisarganj, District Bahraich which was recorded in the name of the petitioners

in the basic year Khatauni. With the commencement of consolidation operations, the private respondents no.2 to 5 filed their objections under Section 9-A(2) of the U.P. Consolidation Holdings Act, 1953 raising a claim of co-tenancy in respect of the disputed Khata.

6. The contention of the private respondents was that the property in question was inherited by them and it came in their family from their maternal side (Nanihal). It was stated that the petitioners and the private respondents were members of one Hindu joint family and since Gokula Nand was the eldest, hence his name was recorded in the revenue records as Karta of the family. This was opposed by the petitioners who stated that the property in question was self acquired and it was not ancestral and the private respondents did not acquire any right in it. It was also stated that there was no jointness in the family nor the property was acquired by any joint family funds, hence the claim of co-tenancy cannot be claimed.

7. After the parties led evidence, the Consolidation Officer by means of its order dated 10.12.1982 rejected the claim/objections of the private respondents. The private respondents preferred an appeal before the Settlement Officer of Consolidation which also came to be dismissed by means of order dated 22.03.1984. The private respondents further escalated the matter before the Deputy Director of Consolidation who by means of its judgment dated 02.06.1986 allowed the revision holding that the property in question belonged to Rokana who was the maternal grand mother (Nani) of the parties and since it was a joint family property, hence it granted co-tenancy rights to the private respondents while allowing the revision. Being aggrieved against the judgment of Deputy Director of Consolidation dated 02.06.1986, the petitioners have preferred the instant petition.

8. Shri Tripathi, learned counsel for the petitioners has urged that the Deputy Director of Consolidation committed a grave error in holding Rokana to be the maternal grand mother whereas

there was no evidence led by the parties to establish the aforesaid fact. It was also urged that there was no evidence to the effect as to how the name of Gokula Nand came to be recorded in the revenue records on the basis of inheritance nor there was any mention of any order passed by competent court. The basic necessary ingredients required to plead and prove the claim of co-tenancy was also not established yet by ignoring all the aforesaid aspects. The Deputy Director of Consolidation has reversed the findings of the Consolidation Officer as well as the Settlement Officer of Consolidation which is apparently erroneous and as such the decision rendered by the Deputy Director of Consolidation deserves to be set aside.

9. Shri R. N. Tewari, learned counsel appearing for the private respondents, on the other hand, submits that the Deputy Director of Consolidation has relied upon the Khatauni of 1343 fasli year which indicated that the plots in question were in the name of Rokana. It is further urged that since the petitioners and the private respondents belonged to one family, hence it was a joint family property and accordingly the conclusion arrived at by the Deputy Director of Consolidation is absolutely just and proper and requires no interference. In the aforesaid circumstances, it has been prayed that the petition deserves to be dismissed.

10. The Court has heard the learned counsel for the parties and also perused the material on record.

11. The entire controversy can be seen in three parts:-**(i)** Whether the property belonged to the parties and was inherited by them through their maternal grand mother. If this aspect is seen, it would be found that the reference to the Khatauni of 1343 fasli relates to the year 1936-37 (CE), this is relevant for the reason that at the time, the Oudh Rent Act 1882 was in operation and in the said Act that there was no provision for inheritance. The other aspect that needs to be seen that there has been no reference nor pleading or any proof to indicate that how Rokana

was the maternal grand mother of the parties. Since the private respondents had raised the aforesaid plea it was their bounden duty to establish the pedigree having failed to do so and this essentially being a finding of fact, it was not open for the Deputy Director of Consolidation to have reversed it without there being any cogent evidence on record to establish the pedigree. Even otherwise, if at all, the property belonged to Rokana, then it was also necessary to indicate when did Rokana die so that the question of inheritance could be decided. What is significant to note is apart from the entry in 1343 fasli year, there is no further documents or revenue record to indicate the continuity of the entry in the name of Rokana and her heirs. There is also no order of any competent court or authority by which the name of Gokula Nand came to be recorded on the basis of inheritance. There is nothing on record which could establish that the name of Rokana continued and who was recorded in the revenue records on the date of vesting. This gives suspicion to the entry and even to the claim of the private respondents claiming the property to have been inherited through their maternal side. On the other hand, what is relevant to notice is that the name of Gokula Nand has been recorded in the basic year Khatauni and this entry was never challenged from the date of vesting onwards by any of the private respondents. Thus, the findings returned by the Deputy Director of Consolidation are completely erroneous and the findings of the Consolidation Officer and the Settlement Officer of Consolidation rejecting the claim of the private respondents holding that the property was not ancestral and did not belong to Rokana or the pedigree of Rokana was established, are appropriately recorded.

(ii) The second aspect which can be seen is the claim of the private respondents claiming the property to be ancestral and lay a claim of co-tenancy. On this count also, the private respondents could not establish that the property in question at any given point of time was recorded in the name of common ancestor. Neither the source of acquisition could be proved by the private respondents nor they could indicate that

the property was acquired by joint family funds or that the family had a joint nucleus from which the property was acquired. In this regard, it will be relevant to notice the decision of this Court in the case of **Jagdamba Singh Vs. D.D.C., 1984 (2) LCD page 398 (LB)** wherein the ingredients for claiming co-tenancy have been explained as well as the decision of this Court in **Dropadi Devi & others Vs. Shiv Chandra Dixit, 2020 SCC Online, All 104** wherein the concept of a joint family and joint family property has been explained. Needless to say that neither the ingredients for claiming co-tenancy has been pleaded and proved nor the issue of joint family and joint family property has been proved. This aspect has been appropriately considered by the Consolidation Officer and Settlement Officer of Consolidation while the Deputy Director of Consolidation has committed an error in disturbing the findings especially when there was no evidence in this regard on record.

(iii) The third aspect that can be seen is the presumption which has been drawn by the Deputy Director of Consolidation to the effect that since the property relating to another village was distributed amongst the parties, hence the same analogy should be drawn to the instant property of village Bhoopani is also not made out for the reason that the claim in the property of different village was not based on any compromise nor the said compromise was verified in court. Any arrangement which may have been arrived at between the parties relating to a different village would neither operate as *res-judicata* hence the analogy which have been adopted by the Deputy Director of Consolidation in holding that since the parties had entertained a compromise in respect of the property of a different village which would also mean that the instant property was ancestral and the parties were required to divide the same is also erroneous. The findings recorded by the Deputy Director of Consolidation are patently perverse as they do not flow from the record nor is supported by any cogent evidence or legal propositions.

12. Learned counsel for the private respondents

also could not demonstrate as to how the said property could be treated as ancestral or the parity of a compromise alleged in a different village could be borrowed and applied in the instant case. This Court is satisfied that the judgment and order dated 02.08.1986 passed by the Deputy Director of Consolidation, Bahraich is *per se* illegal and cannot sustain judicial scrutiny.

13. In light of the aforesaid, the writ petition is **allowed**. A writ in the nature of certiorary is issued quashing the order dated 02.06.1986 passed by the Deputy Director of Consolidation, Bahraich. The judgment of the Consolidation Officer dated 10.12.1982 is restored. Consequences to follow. Costs are made easy.

Order Date :- 11.3.2024

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