

Court No. 8

Case :- WRIT - B No. - 2579 of 1980

Petitioner :- Chhanga And Others

Respondent :- Deputy Director Of Consolidation And Others.

Counsel for Petitioner :- S.K. Gupta,H.S. Sahai,U S Sahai

Counsel for Respondent :- C.S.C.,G.S. Nigam,S.C. Tewari

Hon'ble Jaspreet Singh,J.

1. Heard Sri U.S. Sahai, learned counsel for the petitioners.
2. In the instant petition, the original petitioners namely Chhanga and Bashir have assailed the order dated 08.09.1978 passed by the Consolidation Officer, Mishrik, District Sitapur. The other order under challenge is dated 12.08.1980 passed by the Deputy Director of Consolidation, Sitapur, as a consequence, the claim of co-tenancy claimed by the private respondents which was upheld by the Consolidation Officer did not find favour with the Settlement Officer of Consolidation but in revision before the Deputy Director of Consolidation, the order of SOC was set aside and the order of CO was upheld.
3. During pendency of the instant petition, the private respondent nos. 3, 4 and 5 have died and their legal heirs have been brought on record. The petitioners also moved another application bearing No. 104261 of 2013 indicating that the original petitioners have sold their share in favour of the applicants who have moved the said application for impleadment.
4. Even though, the said application remained pending, some of the applicants expired and another application bearing No. 159033 of 2021 was

moved to correct the original application for amendment. Though, the said applications have been received by the learned counsel for the private respondents Sri Tiwari, however, no objections have been filed, as a consequence, the applications have been considered by the Court and are *allowed*.

5. The learned counsel for the applicants shall carry out the necessary amendments and the office is directed to ensure that the certified copy of this judgment shall not be give unless the counsel for the petitioner carries out the said amendments in the arrays of parties.

6. The Court had heard Sri Sahai, learned counsel for the applicants who has assailed the impugned orders primarily on two grounds; (i) there was no material on record by which it could be established that the property in question was ancestral. The entries recorded in the revenue records have been misinterpreted by ignoring the provisions of law as applicable which has given rise to incorrect results.

7. The contention is that initially the property was recorded in the name of Munnu who was the common ancestor, however, upon his death which took place when the Oudh Rent Act, 1886 was in operation and at that time there was no provision for inheritance.

8. It is further urged that the name of Turab, the predecessors in interest of the present petitioners continued to be recorded at the time of date of vesting as well as in the base year Khatauni. Upon the death of Munnu, fresh rights were created in favour of Turab by the Zamindar and it is in this view of the matter that it was Turab whose name continued in the

revenue records. At no point of time, any efforts were made by Kudrat and Khuda Baksh, the brothers of Turab to get their names incorporated or to correct the revenue records entries, accordingly, once these entries continued to remain in the name of Turab and the property has come in the hands of his successors namely Safdar and after him, the name of the original petitioners namely Chhanga and Bashir, accordingly, the claim of co-tenancy is not sustainable nor the necessary ingredients required to establish the same was proved.

9. The other submission of Sri Sahai, is that long-standing entries cannot be disturbed merely on the asking or setting up of claim by a party and in case if such a party does raise a claim at an appropriate time, heavy burden is on the said party to prove it which has not been done in the instant case.

10. It is also urged that the ground taken by the private respondents that they were party of a joint family, this plea is also not available to the respondents as the concept of joint family is amongst Hindus and not amongst the persons professing the faith of Islam, hence, in the aforesaid circumstances, this plea, though, not available had been incorrectly extended to the private respondents by the Consolidation Officer as well as the Deputy Director of Consolidation rendering their judgments susceptible to judicial interference by this Court.

11. The learned counsel for the petitioner in support of his submissions has relied upon a decision of this Court in *Jagdeo Vs. DDC, Allahabad and Others ; (2006) SCC Online Alld. 1663; Bhanmati and Others Vs. Salik Ram; MANU/UP/3046/2023; Usman Ghani and others Vs. Taufeeq Ali*

and Others; MANU/UP/1086/1982 (LB); Ram Prasad and Others Vs. DDC, Pratapgarh and Others; MANU/UP/0912/2019.

12. It is noticed that this matter was listed on 13.02.2024, 16.02.2024, 20.02.2024 and 23.02.2024 on which dates, after hearing the learned counsel for the petitioners, the matter was reserved but on none of the dates, any counsel for the private respondents appeared to argue.

13. Having heard the learned counsel for the petitioners and before adverting to the submissions of the learned counsel for the petitioner, it will be relevant to notice few brief facts giving rise to the instant petition.

14. The dispute involved in the instant petition relates to Khata No. 175 of Village Gaitha, Tehsil Mishrik, District Sitapur. The said Khata was recorded in the name of Safdar son of Turab in the basic year Khatauni.

15. At this stage, it will be relevant to notice the pedigree for better appreciation of the controversy involved.

16. The petitioners are the successors-in-interest of Turab son of Munnu whereas the private respondents no. 3 and 4 are the sons of Kudrat Son of Munnu while the private respondent nos. 5 and 6 are the sons of Khuda Baksh Son of Munnu.

17. Upon commencement of consolidation operations, the private respondents filed their objections under Section 9-A (2) of the Uttar Pradesh Consolidation of Holdings Act, 1953 stating that the property in question belonged to the heirs of Munnu wherein Kudrat, Turab and Khuda Baksh had 1/3rd share each and though the name of Turab continued to remain recorded in the revenue records, yet his other two brothers namely

Kudrat and Khuda Baksh also had a right and upon the death of Khuda Baksh and Kudrat, the private respondents being the successors claimed co-tenancy rights.

18. The Consolidation Officer framed two issues for consideration; (i) Whether the private respondents were the co-tenants and if yes their share therein; (ii) what was the area of the disputed plots of Khata No. 175.

19. Upon consideration of evidence led by the respective parties, the Consolidation Officer held that the pedigree as setup was not disputed between the parties. It also found that in the Khatauni of 1339 Fasli, the property was recorded in the name of Munnu, the common ancestor and in the Khatauni of 1340 Fasli, this came in the name of Turab son of Munnu. The Consolidation Officer also noticed and took into account a compromise dated 15.06.1964 wherein Safdar (Father of the original petitioners) had admitted that the property in question was ancestral but the entry remained in the name of Turab son of Munnu.

20. The Consolidation Officer taking note of the evidence including the compromise as aforesaid concluded that apparently the property was recorded at the initial stage in the name of Munnu and thereafter it came in the name of Turab who in the compromise relating to the year 1964 clearly stated that the property was ancestral and this entry continued between the parties, hence, the claim of co-tenancy claimed by the private respondents was upheld with 1/3rd share with the heirs of Khuda Baksh, 1/3rd share of heirs of Kudhar and 1/3rd share of the original petitioners being the sons of Safdar.

21. This judgment of the Consolidation Officer dated 06.09.1978 was assailed by Safdar in Appeal before the Settlement Officer of Consolidation who set aside the order passed by the Consolidation Officer and held that the entire property was in the name of Safdar and the claim of co-tenancy was turned down.

22. The Settlement Officer of Consolidation also held that after the death of Munnu, the fresh property rights were conferred upon Turab and this continued to remain in the hands of the heirs of Turab, consequently, no case for co-tenancy was made, accordingly, by means of its judgment dated 01.05.1979, the appeal was allowed.

23. The private respondents assailed the said order of the Settlement Officer of Consolidation in Revision before the Deputy Director of Consolidation who again by means of its judgment dated 12.08.1980 allowed the revision, set aside, the judgment of the Settlement Officer of Consolidation and upheld the judgment of the Consolidation Officer.

24. In the aforesaid backdrop, the question before this Court is as to whether the claim of co-tenancy has been made out or fresh rights were created in favour of Turab which continued to remain written his family alone and to the exclusion of his other two brothers namely Kudrat and Khuda Baksh.

25. In order to determine the aforesaid issue and from the perusal of the material on record, it would be seen that it is not disputed that initially the property was recorded in the name of Munnu.

26. The record indicates that Khatauni of 1339 Fasli year (1932 CE) was

filed on record which was in the name of Munnu and the period of cultivation was shown as ten years. In the Khatauni of 1340 Fasli (1933 CE), it is recorded in the name of Turab with the period of cultivation being one year. In the Khatauni of 1356 Fasli (1949 CE) and Khatauni of 1359 Fasli (1952 CE), the name of Turab has been shown and the period of cultivation shown is 10 and 17 years, however, another important document on record is the compromise dated 15.06.1964 executed by Safdar wherein it was admitted by him that the property in question was ancestral. It is also to be seen that receipts regarding payment of land revenue have been filed which also indicate the name of Turab.

27. Coming to the Khataunis of 1339 and 1340 Fasli years which relates to 1932, 1933 CE would indicate that at the relevant time, the Oudh Rent Act of 1886 was in operation. It is no doubt true that in terms of the Oudh Rent Act, 1886, there was no provision for inheritance of tenancy, however, the heirs of the deceased tenant could retain the possession for a period of five years and it was open for the Zamindar to evict the heirs of the deceased tenant or to settle the land afresh with either the heirs of the deceased tenant or a fresh settlement in name of some other person.

28. The case set up by the petitioners was that after the death of Munnu, the Zamindar had settled fresh rights with Turab and it is in this way that Turab alone had rights in the property and Kudrat and Khuda Baksh would have no rights but what is important to note that since the averment of Safdar son of Turab was that his father had acquired fresh rights, this burden lay upon Safdar.

29. Apparently, no document or lease was brought on record to indicate

that after the death of Munnu, the Zamindar had either evicted the heirs of the deceased tenant Munnu nor there is any evidence to indicate that fresh lease was given by the Zamindar in favour of Turab.

30. On the other hand, there is a compromise dated 15.06.1964 wherein Safdar himself admitted that the property was ancestral. The Consolidation Officer has taken note of the entries as well as given due weightage to the compromise to come to a finding that in light of the admission made by Safdar and there being no contrary document showing that fresh rights had been conferred upon Turab and also considering the fact that by and large the plots which were shown in the name of Munnu had come in the name of Turab, hence, the claim of co-tenancy was upheld. This has also been approved by the Deputy Director of Consolidation.

31. The learned counsel for the petitioner could not dispute the fact that no such document was placed on record by which it could be established that the Zamindar had created or settled the property in question afresh in the name of Turab.

32. Much emphasis was laid that the document dated 15.06.1964 was not binding on Safdar and that it was the burden of the private respondents to establish that they had co-tenancy rights especially when upon the death of Munnu, there was no right of inheritance in the Oudh Rent Act, 1886.

33. Considering the aforesaid submissions, a fact which is not disputed is that Kudrat, Turab and Khuda Baksh were real brothers sons of Munnu. It is also not disputed that there is document of 1339 Fasli indicating the plots to be recorded in the name of Munnu. Nothing could be placed or pointed

out from the record to indicate when Munnu died or when the fresh settlement was made in the name of Turab.

34. From the oral testimony, a reference has been made that some lease was made in favour of Turab by the private respondents, however, the fact remains that it was a case of Safdar that the Zamindar had made a fresh settlement in favour of Turab, thus, the burden to establish the same was on Safdar. Having failed to establish this conferring of fresh rights and on the other hand in light of a compromise dated 15.06.1964 wherein Safdar admitted the share of the private respondents and also noticing that the property in question was ancestral, hence, the petitioners are stopped from raising any contrary plea.

35. In so far as the plea that the parties to the petition were following the faith of Islam, hence, the plea of Hindu Joint Family is not extended to them is not quite correct for the reason that joint families was a phenomena and it was not confined to any religion. The claim of co-tenancy has its own nuances and in the instant case, it would be seen that Safdar himself in the compromise had admitted the property to be ancestral and he also admitted the share of the private respondents.

36. A feeble plea was raised that the said compromise was not binding as it was executed under undue influence and pressure, however, there is no material to establish this fact. If the said compromise was executed under pressure, it was always open for Safdar in his lifetime to have challenged it or could have explained it but no such effort or proceedings was made by Safdar.

37. This can be seen from another angle, inasmuch as, assuming that the heirs of Kudarat and Khuda Baksh had no right but the family tree is not disputed and it is admitted that Khuda Baksh and Kudarat were the real brothers of Turab. It was always open for them to have entered into any settlement amongst themselves irrespective whether any right of succession accrued to them or not. In this light, the compromise dated 15.06.1964 assumes significance as it indicates that Safdar had admitted the share of the sons of Kudarat and Khuda Baksh.

38. The Settlement Officer of Consolidation was not right in ignoring this important piece of document especially when no contrary document was brought on record to indicate creation of new rights in favour of Turab. Thus, the findings recorded by the Consolidation Officer were affirmed by the Deputy Director of Consolidation and it does not appear to be bad which may persuade this Court to interfere.

39. In so far as the decision cited by the learned counsel for the petitioner in *Jagdeo (Supra)* is concerned, it would indicate that in the said case, the Court had noticed the rights of co-tenancy could be acquired through estoppel and in light of the exposition of law as mentioned in the aforesaid report in paras 19 to 29, it can be seen that the rights of co-tenancy can be acquired through estoppel. This has been noticed both by the Consolidation Officer as well as the Deputy Director of Consolidation while placing reliance on the compromise and as such the decision of *Jagdeo (supra)* does not help the petitioner.

40. In *Bhanumati (Supra)*, the issue before the Court was in respect of the jurisdiction in terms of Section 331 of the Uttar Pradesh Zamindari

Abolition and Land Reforms Act, 1950 viz.a.viz. the Civil Court. The proposition as noticed in the aforesaid decision in paragraph 36 is in a different fact situation which also does not help the petitioner for the reason that even though the right of inheritance was not available in the Oudh Rent Act, 1886 but the fact remains that it was Safdar who had raised the issue of fresh rights being settled in favour of Turab but there was no evidence to establish that fact. There is also no evidence to indicate that the Zamindar had actually evicted or acquired the rights from Munnu and then made a fresh settlement in favour of Turab.

41. In *Usman Ghani (Supra)*, it could be seen that though the provisions of Oudh Rent Act, 1886 and the U.P. Tenancy Act have been considered yet the same would have no applicability in the instant case as in the instant case there was not enough material placed on record to indicate when Munnu died and whether the Zamindar made a fresh settlement in favour of Turab or the heirs of Munnu continued to be the statutory tenant and in absence of any eviction at the behest of the Zamindar against Kudarat, Khuda Baksh and Turab who would acquire statutory tenancy rights and upon their death and with the advent of U.P. Zamindari Abolition and Land Reforms Act, 1950, their rights would continue and be governed as such.

42. Since there is no material on record as to when the succession would open, hence, to state that the land was exclusive of Turab is not made out.

43. Similarly, the decision in *Ram Prasad (Supra)* also does not help the petitioner as in the said case, the contesting parties were claiming on the basis of a Marfat entry which has a different connotation altogether and as such has no applicability in the instant case.

44. For the aforesaid reasons, this Court does not find that there is any merit in the petition which is accordingly *dismissed*. Costs are made easy.

Order Date :- 22nd March, 2024

Asheesh

(Jaspreet Singh, J.)