

Neutral Citation No. - 2024:AHG-LKO:56027

Reserved

Court No. - 8

Case :- WRIT - B No. - 1805 of 1981

Petitioner :- Hausla And Another

Respondent :- Ram Ashish And Others

Counsel for Petitioner :- Mohd Abid Ali,Atiya Abid

Counsel for Respondent :- L.P.Shukla,Moti Chand
Yadav,Som Kartik

Hon'ble Jaspreet Singh,J.

1. Heard Ms. Atiya Abid, learned counsel for the petitioners and Shri Moti Chand Yadav, learned counsel for the contesting private respondent no.1.

2. The instant petition has been filed by the petitioners assailing the judgment dated 15.12.1980 passed by the Deputy Director of Consolidation, Faizabad (now Ayodhya) whereby it allowed the revision preferred by the private respondent no.1 and set aside the order passed by the Settlement Officer of Consolidation dated 18.05.1972 as a result the order passed by the Consolidation Officer dated 31.07.1970 was maintained.

3. In order to appreciate the controversy involved in the instant petition, certain germane facts are being noticed first. The dispute between the parties relates to Khata No.12 of village Baranpur, Pargana Birhar, Tahsil Tanda (now Ambedkar Nagar), District Faizabad (now Ayodhya).

4. Upon commencement of consolidation operations in the village, the private respondent no.1 Ram Ashish through his guardian Chetu filed his objections under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 on the ground that the property in question belonged to Algoo. Upon his death, his share devolved on his two brothers, namely, Muneshwar and Jageshwar. Upon the death of Muneshwar, his share also devolved on Jageshwar. Upon the death of Jageshwar, Ram Ashish being his adopted son inherited the entire property and as such it was stated that his name alone should be recorded in so far as Khata No.12 is concerned.

5. However, in the base year Khatuani the said khata was recorded in the name of Hausala and Prabhawati. Prabhawati is said to be the daughter of Algoo and Hausala is said to be the son-in-law (Damad) of Smt. Phekaha and who is said to be the widow of Muneshwar.

6. Smt. Phekna and Hausala also filed their objections and they contested the claim of Ram Ashish on the ground that Ram Ashish was not the adopted son of Jageshwar. The case set up by Smt. Phekna and Hausala was that the property in question belonged to Panchu. Upon the death of Panchu, the

property devolved on his three sons, namely, Algoo, Muneshwar and Jageshwar.

7. It was further stated that Algoo died first in point of time and as such his share devolved on his two brothers, namely, Muneshwar and Jageshwar. Thereafter, Muneshwar died and his share devolved on his widow Smt. Phekna. Smt. Phekna in her life time executed registered sale deed in favour of Hausala (her Damad) in respect of part of the property. Later, Jageshwar died on 01.07.1963 and as he was issueless thus the share of Jageshwar thereafter devolved on Smt. Phekna and in the aforesaid circumstances Smt. Phekna would be the exclusive tenure holder in respect of the property in question except to the extent of share which was sold by her to her own son-in-law Hausala.

8. The matter was contested before the Consolidation Officer who framed five issues. The dispute was crystallized before the Consolidation Officer and, *inter alia*, the major issue was whether Ram Ashish is the adopted son of Jageshwar and sole tenant or Smt. Phekna was the sole tenant and whether the land was acquired by Panchu. The Consolidation Officer vide his judgment dated 31.07.1970 recorded a finding the land in

question was acquired by Panchu. Thereafter he went on to consider as to whether Ram Ashish was the adopted son of Jageshwar and he found that the adoption was duly proved and held Ram Asish to be the adopted son of Jageshwar. It was also noticed by the Consolidation Officer that Smt. Phekna was not the wife of Muneshwar but it also noticed that since Smt. Phekna was residing with Muneshwar hence, she inherited the share of Muneshwar and had also executed a sale deed in favour of Hausala, hence the property in dispute was divided between Hausala having half share and Ram Ashish having half share.

9. Being aggrieved, four appeals came to be filed before the Settlement Officer of Consolidation, out of which one was filed by Ram Ashish, two appeals were filed by Smt. Phekna and another appeal was filed by Chetu. All the four appeals were consolidated, heard and decided by a common judgment passed by the Settlement Officer of Consolidation dated 18.05.1972.

10. The Settlement Officer of Consolidation in his judgment reversed the findings of the Consolidation Officer and recorded his own findings to the effect that Smt. Phekna was the wife

of Muneshwar. He upheld the finding of the Consolidation Officer to the effect that the property was acquired by Panchu. It also concluded that after the death of Panchu, the property devolved on his three sons, namely, Algoo, Muneshwar and Jageshwar. He also upheld the finding of the Consolidation Officer to the effect that Algoo died first in point of time thereafter Muneshwar died and Smt. Phekna was his widow. He also held that Smt. Basanta and Sanora were the daughters of Smt. Phekna and Muneshwar and Smt. Phekna had the right to transfer the portion of her share in favour of her son-in-law Hausala. The Settlement Officer of Consolidation also returned a finding that Ram Ashish was not adopted the son of Jageshwar and in light thereof he reversed the judgment of the Consolidation Officer holding that Smt. Phekna was the sole tenant of the property in question except the share of which she had executed a sale deed in favour of her son-in-law Hausala. In this regard, the appeal filed by Smt. Phekna were allowed and the appeal filed by Chetu and Ram Ashish were dismissed by means of judgment dated 18.05.1972.

11. Being aggrieved against the aforesaid decision of the Settlement Officer of Consolidation, two revisions were filed

before the Deputy Director of Consolidation, one by Chetu and the other by Ram Ashish.

12. The revisional court after hearing the parties allowed the revision of Ram Ashish reversing the decision of the Settlement Officer of Consolidation and it maintained the judgment of the Consolidation Officer dated 31.07.1970 and while doing so it rejected the revision preferred by Chetu.

13. During the pendency of the proceedings before the Deputy Director of Consolidation, Smt. Phekna expired. Thereafter Hausala and Ram Kailash filed the instant writ petition assailing the order of the Deputy Director of Consolidation. In the petition, it was stated that Ram Kailash was the adopted son of Smt. Phekna.

14. During the pendency of the writ petition, the petitioner no.1 Hausala died and upon his death, his legal heirs, namely, Basanta (his widow) and his two sons, namely, Ram Girish and Ramjeet were substituted and brought on record.

15. The record further reflects that private respondent no.1 Ram Ashish also died and an application to bring his legal heirs on record was allowed by a Co-ordinate Bench of this Court by means of order dated 07.05.2024 and though the said

application was allowed but the substitution was not carried out, hence this Court while hearing the matter on 25.07.2024 permitted the counsel for the petitioners to carry out the necessary amendment during the course of the day.

16. During the pendency of the instant writ petition, certain subsequent events occurred which have been brought on record by the learned counsel for the petitioners by filing supplementary-affidavit. The impact of the aforesaid subsequent events shall be considered while dealing with the issue in the body of his judgment.

17. Suffice to state that the facts which were brought on record by the aforesaid supplementary-affidavit have not been controverted by the counsel for the private respondent.

18. Another fact which needs to be noticed at this stage is that during the pendency of the proceedings, Ram Ashish is said to have executed a sale deed and transferred his share in favour of one Smt. Taramati. An application was filed in the instant writ petition by Smt. Taramati to seek her impleadment in place of Ram Ashish. This was disputed by Ram Ujagar by filing his objections and he has stated that he is the biological

brother of Ram Ashish and the share of Ram Ashish would devolve on him.

19. Shri Moti Chand Yadav, learned counsel representing the respondent no.1 has filed his Vakalatnama on behalf of Ram Ujagar. None has put in appearance on behalf of Smt. Taramati to press her application for impleadment and even otherwise the very fact is that upon the death of Ram Ashish, an application was moved by Ram Ujagar and it is in this context the substitution of Ram Ashish was carried out which came to be allowed by means of order dated 07.05.2024 on C.M.Application No.93396 of 2013 and this is how Ram Ujagar has come to be substituted in place of Ram Ashish. It is also pertinent to mention that for the ease of reference, this Court shall be referring to the parties as they impleaded in the consolidation proceedings.

20. Ms. Atiya Abid, learned counsel for the petitioners has submitted that the decision rendered by the Deputy Director of Consolidation is *per se* erroneous. It is urged that certain undisputed facts which emerges from the record are that the property in question was initially that of Panchu. Upon the

death of Panchu, the property devolved on his three sons, namely, Algoo, Muneshwar and Jageshwar.

21. It has further been submitted that undisputedly Algoo died first in point of time, hence his share in the property would devolve on his two brothers, namely, Muneshwar and Jageshwar. Thereafter Muneshwar died and his share devolved on Smt. Phekna his widow. Smt. Phekna in the year 1961 executed a sale deed in favour of Hausala who was her son-in-law. Subsequently, upon the death of Jageshwar in the year 1963, the share of Jageshwar also devolved on Smt. Phekna and in this view of the matter, the property vested solely with Smt. Phekna.

22. It is further urged that Ram Ashish was not the adopted son of Jageshwar and it has been pointed out that the Consolidation Officer while upholding the finding on adoption of Ram Ashish did not consider the evidence available on record in the correct perspective. The original adoption deed did not see light of the day during the entire proceedings. A defence was taken by Ram Ashish that he had filed the adoption deed but the same was not mislaid from the Court file and in light thereof a photocopy of the adoption deed was

placed on record which was proved including by examining an officer who was summoned from the office of Sub Registrar to prove the adoption deed. Certain other witnesses including the testimony of the biological father of Ram Ashish was put on record to prove the adoption. The priest (Panditji) who had officiated the adoption ceremony was examined and also Nau (barber) who was also present in the ceremony followed by a feast meal which was organized to celebrate the adoption.

23. Learned counsel for the petitioners further submits that the Settlement Officer of Consolidation had meticulously considered the evidence of the witnesses and it recorded the discrepancies in the statement of such witnesses including that of the biological father of Ram Ashish and then recorded a clear finding that the adoption was invalid.

24. The Settlement Officer of Consolidation further recorded a finding that as far as the status of Smt. Phekna is concerned, it was duly proved that she was the widow of Muneshwar and this fact was also corroborated by the documentary evidence filed which inter alia included the statement of Jageshwar himself which was recorded in contemporaneous proceedings.

25. It was also submitted that once this fact was proved that Smt. Phekna was the widow of Muneshwar and the adoption of Ram Ashish was not proved, hence the only inescapable conclusion which could be drawn was that Smt. Phekna would be the exclusive tenure holder except to the extent of her share which she had sold in favour of her own son-in-law.

26. Learned counsel for the petitioners further submits that the Deputy Director of Consolidation in a cursory manner reversed the findings of the Settlement Officer of Consolidation and even while reversing the findings it did not meet the reasons recorded by the Settlement Officer of Consolidation while upholding the status of Smt. Phekna as the widow of Muneshwar and also that Ram Ashish was not the adopted son of Jageshwar. It is thus urged that it was the clear case when the Deputy Director of Consolidation had misread the evidence and reversed a finding recorded by the Settlement Officer of Consolidation which was based on proper appreciation of evidence, hence the order of the Deputy Director of Consolidation was bad in the eyes of law.

27. Learned counsel for the petitioners had also argued that Smt. Phekna died during the pending proceedings before the

Deputy Director of Consolidation. However, in simultaneously instituted civil suit between the contesting parties which was pending since 1966 wherein Ram Ashish was also a party and he contested the said litigation, hence he could not plead that he did not know that Smt. Phekna had expired but in the civil proceedings upon the death of Smt. Phekna her daughter had been substituted but Ram Ashish in his revision before the Deputy Director of Consolidation did not bring on record the heirs of Smt. Phekna, hence the judgment passed by the Deputy Director of Consolidation against a dead party was a nullity.

28. Learned counsel for the petitioners has further submitted that with reference to this Suit No.46 of 1966 which was instituted in the year 1966 by Smt. Phekna wherein Ram Ashish was a contesting defendant and in the said suit on issue was framed regarding the validity of adoption of Ram Ashish. The civil suit came to be decided by means of judgment and decree dated 01.06.1981 by the Additional Munsif, Akabarpur, District Faizabad. It is stated that in the said suit issue no.6 was framed whether Ram Ashish was the adopted son of Jageshwar and it was answered in the negative.

29. It has further been submitted that the judgment of the trial court dated 01.06.1981 was challenged in Civil Appeal No.353 of 1981 which was connected with the Civil Appeal No.366 of 1981 and the cross objection filed by Ram Ashish were also connected as he was aggrieved by the finding recorded in the suit regarding his adoption.

30. It has also been pointed out that the appeals bearing No.366 of 1981, 353 of 1981 and the cross objection of Ram Ashish were dismissed by means of judgment and decree dated 08.09.1998 passed by the 7th Additional District Judge, Faizabad.

31. It has also been pointed out that a second appeal was filed before this Court, however, the same was dismissed for want of prosecution in the year 2023 and till the date of hearing i.e. 25.07.2024 no application for restoration had been filed nor the second appeal has been restored. It is thus submitted by the learned counsel for the petitioners that the Settlement Officer of Consolidation had rightly held that Ram Ashish was not the adopted son of Jageshwar and this finding has also attained finality in light of the Suit No.46 of 1966. Accordingly, the findings of the Deputy Director of

Consolidation reversing the finding of the Settlement Officer of Consolidation in a cursory manner is not just and proper and the decision of the civil suit which was brought on record by means of a supplementary-affidavit has not been controverted by the respondents and for all the aforesaid reasons, the writ petition deserves to be allowed.

32. Shri Moti Chand Yadav, learned counsel for the private respondent has urged that the issue of adoption was rightly considered and upheld by the Consolidation Officer which was erroneously reversed by the Settlement Officer of Consolidation by taking recourse to selected reading of evidence and this aspect has been rightly appreciated by the Deputy Director of Consolidation who has restored the finding of the Consolidation Officer.

33. It is further submitted that Smt. Phekna herself did not establish her own right being the widow of Muneshwar, rather she was married to one Ramanand of village Keshwapur, District Azamgarh. It is further urged that Basanta was the daughter of Smt. Phekna from her first marriage with Ramanand and that upon the death of Muneshwar the property could not devolve on Smt. Phekna rather it was succeeded by

Jageshwar the adoptive father of Ram Ashish. In the aforesaid circumstances, both the Consolidation Officer and the Deputy Director of Consolidation has rightly held that the property belongs to Ram Ashish and these are the pure findings of fact which are not liable to be disturbed in exercise of jurisdiction under Article 226 of the Constitution of India and for the aforesaid reasons, the writ petition deserves to be dismissed.

34. The Court has heard the learned counsel for the parties and also perused the record including the written submissions filed by the respective parties.

35. The undisputed facts which emerge from the record are:-

(i) the property of Khata No.12 belonged to Panchu and after his death it devolved on his three sons, namely, Algoo, Muneshwar and Jageshwar; (ii) it is also not disputed that Algoo died first in point of time followed by Muneshwar and then Jageshwar, (iii) it is also not disputed that Smt. Phekna had executed a sale deed in favour of Hausala in the year 1961.

36. Once the aforesaid facts as mentioned in the preceding paragraph is admitted now it would be seen as to whether Ram Ashish was the adopted son of Jageshwar and whether

Smt. Phekna was the widow of Muneshwar. It is in the aforesaid backdrop, if the material on record is seen, it would be found that even though Ram Ashish had taken a plea that Smt. Phekna was not the widow of Muneshwar but the evidence available on record as noticed by the Settlement Officer of Consolidation that in the Khatauni relating to 1370 and 1373 fasli year the name of Smt. Phekna widow of Muneshwar stands recorded. Again in the Khatauni of 1373 to 1375 fasli year relating to another village Makrahi the name of Smt. Phekna as widow of Muneshwar is recorded. The voter list relating to 1960 also records the name of Smt. Phekna as widow of Muneshwar. Even in the Kutumb Register the name of Phekna as widow of Muneshwar is recorded. Certain proceedings which were initiated wherein Jageshwar himself had appeared and gave his statement that Smt. Phekna was the widow of Muneshwar and in light thereof it was held that Smt. Phekna was the widow of Muneshwar.

37. At this stage, it will also be relevant to notice the statement of Chetu who was contesting the proceedings as a guardian of Ram Ashish during his minority wherein he too stated that Smt. Phekna was the widow of Muneshwar. This

evidence clearly supports the findings recorded by the Settlement Officer of Consolidation in so far as the status of Smt. Phekna is concerned. The Deputy Director of Consolidation also in his judgment dated 15.12.1980 has affirmed the said findings, hence this issue relating to the status of Smt. Phekna being the widow of Muneshwar stands cemented. In this regard, if the finding of the Consolidation Officer is seen, it would reveal that on one hand, he held Smt. Phekna to be the wife of Ramanand and not Muneshwar yet he recorded a finding that the sale deed executed by Smt. Phekna in favour of Hausala was valid. This finding is apparently contradictory and could not be sustained. This is for the reason that in case if Smt. Phekna was not the widow of Muneshwar then she would not have inherited any share in the property which she could transfer to her own son-in-law Hausala. Thus, the judgment of the Consolidation Officer whereby he granted half share to Hausala and half share to Ram Ashish holding him to be the adopted son of Jageshwar suffers from an apparent error and is a contradictory finding which cannot be sustained.

38. Now the other issue relates to the adoption of Ram Ashish and in this regard both the Consolidation Officer and the Deputy Director of Consolidation has referred to certain evidence to indicate that the ceremonies which were held have been duly proved. Ram Ashish examined Matadeen, his biological father. The Priest, namely, Kanhaya was examined and another witness Baksis (the barber and washer man) were also examined who stated that they were present in the ceremonies and thus in light of the statement of such witnesses the adoption of Ram Ashish was established and even though the original adoption deed was lost the same was proved as per the evidence by the said witnesses including the copy of the adoption deed which was placed on record and moreover Ram Ashish had also summoned the official of the office of Sub Registrar alongwith register no.8 to prove that the adoption deed was duly registered in the office of Sub Registrar and taking a wholesome view the Deputy Director of Consolidation found the deposition to be valid and proved in law.

39. If the findings of the Deputy Director of Consolidation on the aforesaid issue are noticed, it will reveal that the Deputy

Director of Consolidation did not appropriately notice the testimony of Matadeen who was the biological father of Ram Ashish. As far as the copy of the adoption deed placed on record is concerned, it is not disputed by the parties that the certified copy was not brought on record, it was merely a copy.

40. Moreover, there was certain discrepancies in the copy of the adoption deed placed on record as it did not categorically indicate that both the biological parents of Ram Ashish had given their child in adoption to Jageshwar since the name of the biological mother of Ram Ashish was mentioned as Sukhma where she has been shown as wife of Chetu and at one place as wife of Matadeen. This has been taken by the Consolidation Officer and the Deputy Director of Consolidation to be a clerical error. However, for proving the ceremony and giving and taking of a child in adoption, Matadeen was examined, Matadeen was the biological father of Ram Ashish. In his statement Matadeen stated that he was married while he was 6 to 7 years of age and that his Gauna (a tradition whereby the bride stays with her parents even after the wedding and later when the bride is sent to her matrimonial

home with reasonable pomp and show) was done after seven years that would relate when Matadeen must have attained the age of 14 to 15 years and it was further stated by Matadeen that Ram Ashish was born three years after his Gauna. He also stated that his wife was younger to him and taking note of this statement the Settlement Officer of Consolidation concluded that Matadeen could not have given his son Ram Ashish in adoption as he was a minor and even if at all Matadeen may have been major in age or just having turned 18 or so but since his wife was younger to him and a minor then she could not have joined in giving Ram Ashish in adoption and it is in the aforesaid circumstances, the Settlement Officer of Consolidation did not uphold the adoption.

41. The statement of the priest, namely, Kanihya also became doubtful as according to the Kanihya himself, he was a minor at the time when he had participated in the ceremony and moreover he for the first time had visited the place of ceremony which was organized by Matadeen and at that point of time he was about 14 years of age and a student.

42. Another witness was examined who stated that he had not playing a musical instrument in the ceremony of adoption whereas Matadeen in his statement stated that Naresh had played music during the feast. Thus, taking also holistic view of the matter, the Settlement Officer of Consolidation did not find that the adoption was proved.

43. The findings have been reversed by the Deputy Director of Consolidation without considering that even if at all any adoption deed was present yet the ceremonies ought to have been proved which in the aforesaid discussions was not proved and moreover the validity of the adoption was under a cloud as on the statement of the biological father who himself and his wife had not attained the age of majority and that too gave their only male child in adoption which is quite unnatural. Hence, the finding of the Consolidation Officer and the Deputy Director of Consolidation on the point of adoption is erroneous.

44. There is another way to look at this issue and i.e. that right from 1966 Smt. Phekna had instituted a suit wherein the issue relating to the adoption of Ram Ashish was in question. Even though during the proceedings before the Settlement

Officer of Consolidation and Deputy Director of Consolidation, the said judgments of the civil court were not placed on record which only came to be filed before this Court with a supplementary-affidavit in the year 2013 and even thereafter up-til now i.e. almost in these 11 years, the private respondent did not dispute the fact.

45. In the said suit, the adoption of Ram Ashish was not found proved and even the cross objection filed by Ram Ashish in appeal was turned down. Even though a second appeal was filed but again as a matter of fact, the said appeal stood dismissed for want of prosecution and till the date when this writ petition was heard in July 2024, no restoration was moved.

46. Needless to say that these subsequent events were important and could have a direct impact on the out come of the case and even though the same could not be placed before the Consolidation Authorities as the decision of the trial court is dated 01.06.1981 i.e. after the decision of the Deputy Director of Consolidation which is dated 15.12.1981, accordingly this Court while exercising powers under Article 226 of the Constitution of India can take notice of the said

judgments which throw light on the issue of adoption and the said proceedings were duly contested by Ram Ashish and another fact that adoption did not find favour with the trial court and the District Appellate Court and the second appeal also stood dismissed which clearly give an indication regarding the fact that the adoption was not proved. This is a merely an additional circumstances but even from the evidence which was held before the Consolidation Authorities it has been noticed by the Settlement Officer of Consolidation the adoption was not proved and in the aforesaid circumstances, the evidence returned by the Deputy Director of Consolidation cannot be sustained.

47. Another aspect which needs to be seen is that after the death of Ram Ashish there are two sets of persons who claimed rights. One by Taramati who claims that she had a sale deed from Ram Ashish. The sale deed in question becomes a little doubtful and this is being observed by this Court only for the reason that while this petition was filed in the year 1981 and this Court had passed an interim order dated 20.04.1981 and later by another order dated 20.05.1981 the operation of the order passed by the Deputy Director of

Consolidation dated 15.12.1989 was stayed and status quo as regards possession was directed to be maintained by the parties.

48. In this view of the matter, once the order of the Deputy Director of Consolidation was stayed, naturally the only order which was effective was the one passed by the Settlement Officer of Consolidation and even otherwise once possession in terms of status quo was preserved by the order of this Court, the sale deed the possession or the execution of the sale deed in favour of Taramati comes under cloud and moreover none has put in appearance to press the application moved by Taramati or to contest her claim.

49. On the other hand, Ram Ujagar who is the biological brother of Ram Ashish has sought his substitution/impleadment which as noticed above was allowed by the order dated 07.05.2024 by a Co-ordinate Bench of this Court and in this context, it would be relevant to notice that upon the death of Matadeen, the name of Ram Ashish alongwith Ram Ujagar was also recorded in the property and a estate left behind by Matadeen. If the adoption as alleged was made and Ram Ashish would be the adopted son of Jageshwar then in such

circumstances his name would not have been recorded as an heir of Matadeen alongwith his biological brother Ram Ujagar. All these are additional facts which supporte the view that Ram Ashish was not the adopted son of Jageshwar.

50. It is also not disputed by the learned counsel for the private respondent regarding the institution of the suit of the year 1966 which came to be allowed in favour of Smt. Phekna wherein the adoption of Ram Ashish was turned down and the fact that his cross objection in the first appeal was also turned down and so also the second appeal.

51. Taking the overall view, this Court finds that the findings returned by the Deputy Director of Consolidation are not based on proper appraisal of the evidence and rather no cogent reasons have been given to reverse the findings recorded by the Settlement Officer of Consolidation. In such circumstances, this Court is of the view that the decision of the Deputy Director of Consolidation cannot be maintained and is accordingly set aside.

52. The writ in the nature of certiorari is issued quashing the judgment dated 15.12.1980 passed by the Deputy Director of Consolidation and the judgment dated 18.05.1972 passed by

the Settlement Officer of Consolidation is affirmed.
Consequence to follow. Accordingly, the writ petition is
allowed. Costs are made easy.

[Jaspreet Singh, J]

Order Date :- August 14, 2024
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