

Court No. - 18

A.F.R.

Case :- WRIT - B No. - 739 of 1982

Petitioner :- Ram Dularey Singh And Others.

Respondent :- Deputy Director Consolidation And Others.

Counsel for Petitioner :- S.Mirza,Ashok Kumar

Verma,Jagdish,Nirmal Singh

Yadav,U.P.Srivastava,V.K.Singh,Vijai Bahadur Verma

Counsel for Respondent :- C.S.C,Ashok Kumar

Verma,Harguru Charan,K.P.Singh

Hon'ble Manish Kumar,J.

1. Heard learned counsel for the petitioners and Sri Ashok Kumar Verma, learned counsel for the private respondents and Sri Hemant Kumar Paney, learned Additional Chief Standing Counsel.

2. During the pendency of the present writ petition, after the demise of petitioner no. 1, his legal heir /representative has been substituted by Petitioner No. 1/1, after demise of Petitioner No.3 his legal heirs have been substituted by Petitioner No.3/1 and Petitioner No.3/2 and after the demise of Petitioner No.3/1 his legal heir has been substituted by petitioner No.3/1/1. Similarly after the demise of respondent nos. 5 and 8, their legal heirs have been substituted as 5/1 to 5/3 & 8/1 to 8/2 respectively, whereas Respondent Nos.6 and 7 have died issueless.

3. The present writ petition has been preferred for quashing of the impugned appellate order dated 3.2.1981 passed by the Settlement Officer, Consolidation and the revisional order dated 16.01.1982 passed by the Deputy Director of Consolidation.

4. Learned counsel for the petitioners has submitted that Gata Nos. 210, 211, 212/1, 212/2, 214, 215, 216, 248, 249, 250, 251 and 252/1 situated at Village - Pooremani, Pargana - Surajpur, Tehsil - Ramsanehi Ghat, District - Barabanki is under dispute between the parties. It is further submitted that initially the

lease of Gata Nos. 123, 210, 211 and 251 was in favour of Sheo Charan Singh, who had expired in the year 1915. The petitioners are grandson of Sheo Charan Singh i.e. son of his eldest son Harnam Singh. The respondents are the great grandson of Sheo Charan Singh being son of Awadhraj, who was son of Markandey Singh and Markandey Singh was the second son of Sheo Charan Singh.

5. It is further submitted that after the demise of Sheo Charan Singh in the year 1915 the fresh lease was granted by the zamindar in favour of father of the petitioners Harnam Singh of Gata Nos.210, 211, 212/1, 212/2, 214, 215, 216, 248, 249, 250, 251 and 252/1 including Gata Nos. 210, 211 and 251 except Gata No. 123 which were initially leased in favour of Sheo Charan Singh. After a fresh lease executed in favour of Harnam Singh, the father of the petitioners, it could not be said to be ancestral property on the basis of which the respondents could claim their co-tenancy in the same.

6. It is further submitted that the holding had not come down and intact in the identical form it was resettled in favour of Late Harnam Singh the father of the petitioners.

7. It is further submitted that the finding given in the appeal by the Settlement Officer, Consolidation that the respondents have co-tenancy right in Gata No.210, 211 and 251. The original gatas which were leased in favour of Sheo Charan Singh and also held that the respondents are having co-tenancy rights in Gata No.212/1, 212/2, 214, 215, 216, 248, 259, 250 and 252/1, newly leased in favour of the petitioners, as the same has been acquired from the ancestral property without their being any evidence that the newly leased gatas had been acquired out of the funds of ancestral property.

8. The revisional court without appreciating this submission advanced by the learned counsel for the petitioners had affirmed the order passed by Settlement Officer, Consolidation, feeling aggrieved by the same the present writ petition has been filed.

9. It is further submitted that after the demise of Sheo Charan Singh neither Markandey Singh nor Awadhraj Singh had never raised any claim on the said gatas newly settled with father of the petitioners as mentioned above, even after the resettlement

in favour of Harnam Singh the ancestor of the petitioners, thus it is clear that the ancestors of the present respondents had never laid any claim in respect of the newly settled gatas consisting of 12 gatas.

10. It is further submitted that in other villages the petitioners had not raised any objection at the time of entry of names of the respondents in the revenue records but only in the present village it has been opposed.

11. On the other hand Sri Ashok Kumar Verma, learned counsel for the private respondents has submitted that it is an ancestral property and name of Harnam Singh was entered in representative capacity being 'Karta' of the family.

12. It is further submitted that the grandfather of the respondents expired in the year 1919 and the father of the respondents expired in the year 1955, at that time the respondents were minor and living with Harnam Singh father of the petitioners, who was taking care of the respondents, so they were living jointly and jointness of family is proved from the said fact.

13. It is further submitted that the statement were given by the witnesses adduced by the respondents that it is a joint family and the property acquired by the joint family and being the eldest son name of Harnam Singh was entered in the revenue record in a representative capacity, so there is no illegality in the orders passed by the Settlement Officer, Consolidation and the Deputy Director of Consolidation.

14. It is further submitted that the respondents had established by the evidence that the landlord had settled the land with late Harnam Singh in the representative capacity for all other members of the family as well and that all the member of the joint family come into possession over the land which is blended and treated as Joint Hindu Family property. In support of his submission, learned counsel for the respondents has relied upon the judgement of this Court passed in the case of ***Jagdamba Singh and others vs. Dy. Director of Consolidation and others*** reported in ***1984 (2) LCD page 398***, the relevant para relied by the learned counsel for the respondent is quoted hereinbelow:

"27. The acquisition of land in the representative capacity either by the Karta or a member of joint family can be established by the evidence led directly to establish the fact that the landlord had settled the land with him in the representative capacity for all the other members of the family as well and that all the members of the joint family came into possession over the land which was blended and treated as joint family property. The evidence establishing the fact about joint possession of all the members of the joint family, on the land of holding till it remained undivided or over specific plots of the holding by members of the family to the extent of their respective shares, by way of mutual partition in the event of separation in the family and the payment of land revenue by them either directly to landlord or through the recorded person, would, no doubt, be very material circumstance and a piece of admissible corroborative evidence to establish the fact regarding acquisition of land in the representative capacity by the recorded person. It may, however, be expressed to clarify that merely by being in possession over certain plots would alone be not enough to establish that the land was acquired by the recorded tenant in the representative capacity because no amount of common living and the use and enjoyment of the land jointly or severally would make the claimant a co-sharer in the holding or for treating it to be joint family property acquired in representative capacity. It has to be established by cogent evidence that the land was, in fact, acquired by the recorded person as Karta in the representative capacity for the benefit of all the members of the joint family and it was blended and always treated as joint family property by the recorded persons without any objection by the landlord to it and that the claimants have remained in possession over the land of the holding to the extent of their share in it and paid its rent. It be also shown that the possession of claimants over the land of the disputed holding was in their own right and not by way of any arrangement as licensee on behalf of the recorded tenant or for any other consideration on his behalf."

15. In reply, learned counsel for the petitioners has also relied upon the same judgement as relied by the learned counsel for the respondents and drawn attention of this Court to Para 15 of the judgement passed in the case of **Jagdamba Singh and**

others (Supra), which is quoted hereinbelow:

"15. In all the aforesaid decisions it has been consistently held that in order to uphold the claim of co-tenancy rights on the ground of land being ancestral, it is essential that the entire land of the holding of the common ancestor must have come down in the identical form as it must have remained unchanged and intact. It would, however, be correct to say that where as a result of survey made during settlements, the area of some plots might have decreased or increased or that some plot or plots are eliminated for some explained reason from the holding in question viz. having fallen in the bed of river due to the alluvial and deluvial action of the river or by the construction of the canal etc., then in such event it cannot be said that there is break in the identity of the holding in dispute. The slight change like elimination of certain plot or the increase or decrease in the area of certain plots, for the aforesaid reasons shown, would not operate to destroy the identity of the holding coming down in identical form in the family from the time of common ancestor. But in order to uphold the claim of co-tenancy rights on the ground of land being ancestral it must be established by the claimant that the holding has come down intact and in identical form that it has not been sub-divided or resettled with one or some of the heirs or with the strangers. Thus, where the disputed holding has not come intact in the identical form and only some of the plots of the holding belonging to common ancestor are found included as in the present disputed holding it would not make it ancestral holding so as to give a share in it to the claimants on that ground nor it would be permissible to pick up those plots from the holding and declare them to be ancestral property and give a share in those plots to the claimant."

16. After hearing the learned counsel for the parties and going through the record of the case the dispute is with regard to the gata numbers as mentioned in the preceding paragraphs. The issue which is to be decided by this Court is whether the gata numbers mentioned above could be treated as an ancestral property for the purpose of giving right of co-tenancy to the respondents or not and whether apart from the gata numbers which were originally leased in favour of Sheo Charan Singh whether in that the respondents have any co-tenancy right or

not.

17. It is an admitted case between both the parties that the lease which was granted in favour of Sheo Charan Singh was with regard to Gata Nos.123, 210, 211 and 251 and after his demise in the year 1915 the resettlement was made in favour of Harnam Singh for Gata Nos.210, 211, 251 (original gatas for which the lease was in favour of Sheo Charan Singh), leaving out Gata No.123 which was also in original lease. The new lease included 9 more new gatas alongwith 3 old gatas i.e. Gata Nos.212/1, 212/2, 214, 215, 216, 248, 249, 250 and 252/1.

18. Learned counsel for the petitioners has submitted that by the resettlement the identity of holding has been changed and it is not the same which was at the time of earlier lease in favour of Shiv Charan Singh, so the settlement cannot be said to be in the representative capacity of the joint family.

19. Learned counsel for the respondents has very fairly submitted that the respondents are not in a position to dispute the change of the identity of the holdings as record speaks from itself. It is also very fairly submitted by Sri Ashok Kumar Verma that the respondents are not disputing the resettlement in favour of Harnam Singh but the only thing is that the said settlement is for the whole family and the name of Harnam Singh was entered in the representative capacity of the joint family.

20. The judgement which has been relied by the learned counsel for the parties i.e. the Case of Jagdamga Singh (Supra), wherein it has been held that in order to uphold the claim of co-tenancy right on the ground of being a common ancestor, it must be established by the claimant that the holdings has come down intact and in identical form.

21. The undisputed fact between the parties that the identity of the holdings has been changed and it was not in the identical form as it was at the time of common ancestor and admitting the resettlement then it cannot be said that the entry was made in favour of Harnam Singh in the representative capacity of his joint family.

22. The finding given by the appellate court that 9 gata numbers as discussed above was acquired from the proceeds of original

gatas leased in favour of Sheo Charan Singh for admitting the case of the respondents of co-tenancy could also not sustained for the reason that the re-settlement of all the gatas in a one go. It is not the case that initially the gata numbers which were leased in favour of Sheo Charan Singh was leased in favour of Harnam Singh, thereafter the nine other gatas were acquired subsequently.

23. Once the identity of the holding has completely changed, more particularly one Gata No.123 which was originally leased in favour of Sheo Charan Singh was not part of the resettlement in favour of Harman Singh alongwith new gatas, it could not be said that it is a property of common ancestor.

24. The respondents though examined witnesses in their favour, who had given statements but none of the statements supported by any documents, rather it is an undisputed case, even on the part of the respondents that the identity of the holdings has been changed and the fresh resettlement was made.

25. The findings of jointness would not lead to inference that the property is ancestral property as it has been held by Hon'ble Supreme Court as well as by this Court in catena of decisions. In the case of **Jai Narain v. D.D.C. & others reported in (1979) RD 198**, it was held that the presumption is only in respect of jointness and not that any property acquired by members of the family is a joint family property and this is a matter of evidence and not of presumption. In the present case, the respondents have failed to adduce any evidence that the property is a joint family property.

26. In the case of **Bodh Raj v. Joint Director of Consolidation Faizabad and Others, in Writ Petition No.676 of 1980** connected with **Writ Petition No.23 of 1980, decided on 22.09.1995**, wherein it has been held that there is a presumption with respect to the jointness of family and if it is shown or proved to the satisfaction of the Court then property inherited from a common ancestor will be deemed to be a joint property of all. It is also clarified in the said judgement that joint family funds must be used for purchase of the property in order to make it joint and property is entered in the name of one person then it has to be proved by other party, who claims to be a joint property that it was acquired by the joint family funds, which

the respondents have failed to establish.

27. As far as submission of learned counsel for the petitioners that in other villages, the petitioners had not objected when the names of respondents were entered into revenue records but only in the village of Pooremani, the objection has been raised. It infers that where the respondents have their lawful claim, the respondents had not objected and where they are not entitled to get the right of co-tenancy, it has been objected.

28. Under these circumstances, the appellate order and the revisiaonal order are not sustainable and are liable to be quashed.

29. Accordingly, the writ petition is allowed.

30. The impugned appellate order dated 3.2.1981 passed by the Settlement Officer (Consolidation) and the revisional order dated 16.01.1982 passed by the revisional court are set aside.

Order Date :- 9.5.2024

S. Kumar