

Court No. - 8

Case :- WRIT - B No. - 994 of 1980

Petitioner :- Sukhraj And Three Others

Respondent :- D.D.C. Faizabad And Four Others

Counsel for Petitioner :- Ravindra Kumar

Sinha,Jagdish Kumar Agarwal,Ravindra Kr.

Sinha,Ravindra Kumar Sinha,Rijuta Bajpai,Saryu

Prasad Tiwari

Counsel for Respondent :- Ram Krishna,Ram

Krishna,S.P. Pathak,Suresh Chandra Verma

Hon'ble Jaspreet Singh,J.

1. Heard learned counsel for the petitioners, learned Standing Counsel for the State-respondents and Shri S.C.Verma, learned counsel appearing for the private respondents.

2. Under challenge is the judgment passed by the Consolidation Officer dated 16.06.1976 whereby the objections preferred by the private respondent seeking a claim of co-tenancy was allowed. The petitioners thereafter assailed the same in an appeal which also came to be partly allowed by means of judgment dated 22.06.1976 and further being aggrieved the petitioners preferred a revision before the Deputy Director of Consolidation which has been dismissed by means of order dated 21.03.1980.

3. Learned counsel for the petitioners while assailing the impugned orders submits that the property in question is relating to Khata No.262, situate in village Ashrafpur Bhuwa, Pargana Surharpur, Tehsil Akbarpur, District Faizabad, measuring 6 bighas, 5 biswa and 5 biswansi. It is the case of the petitioners that the property in question was recorded in the name of Udit, son of Dukhi since the basic year. Upon commencement of consolidation operations in the village, the private respondent Raghuveer who claimed right of co-tenancy stating that initially the property belonged to Dukhi and thereafter Dukhi was survived by his two sons Udit and Raghuveer.

Since Udit was the elder son hence the property came to be recorded in his name but nevertheless Raghuveer also would have a right and accordingly he claimed half share in respect of the plots of Khata No.262.

4. Learned counsel for the petitioners further submits that since the private respondent was seeking case of co-tenancy, the burden was on him to establish the fact and having failed to do so two courts relying upon inadmissible evidence has granted the rights to the private respondent which is apparently erroneous and this aspect has not been considered either by the Settlement Officer of Consolidation or Deputy Director of Consolidation appropriately, hence the impugned orders are bad in the eyes of law and deserves to be set aside.

5. Shri S. C. Verma, learned counsel appearing for the private respondent submits that the record would indicate that in the Khatauni of 1328 fasli year certain plots which comprised of Khata No.263 was in the exclusive name of Raghuveer. The petitioners had disputed the right of Raghuveer being the son of Dukhi, thus this aspect was to be proved by the petitioners, they failed to do so and since the property was recorded in the name of Dukhi since 1314 fasli, hence being the son of Dukhi, the private respondents have a right and this has been noticed by two courts after considering the evidence on record and such findings are pure findings of fact recorded by the two courts after appraising the evidence and drawing inferences which necessarily also is the finding of fact. Thus, for the aforesaid reason, the writ petition deserves to be dismissed.

6. Shri Verma has further submitted that the petition itself was defective; inasmuch as the 3rd party had filed the affidavit and even later the affidavit which has been filed on behalf of the petitioners is also of a 3rd party, who is not a party to the writ petition. Consequently, the petition being defective is liable to be dismissed on this ground alone.

7. The Court has considered the rival submissions

and also perused the material on record.

8. The core controversy which is involved in the instant petition is in respect of the rights claimed by the private respondents on the basis of co-tenancy. The record would further indicate that in so far as the predecessor-in-interest of the petitioner is concerned, his name has been recorded in the revenue records right from 1329 fasli. It was also recorded in 1356 fasli and at the time of commencement of consolidation operations, the name of Udit was recorded in the base year Khatauni.

9. It is further seen from the impugned order that Raghuveer had taken a stand that he was the younger son of Dukhi and for the certain reason he had left the village for vocational purposes and was in Calcutta from where he used to send Money-Order to his uncle (Udit) and thus though he had a share but the name of Udit continued in the revenue records, thus the right and claim of the private respondent cannot be defeated merely because the revenue entries were in the name of Udit.

10. At the outset, it will be relevant to notice that the private respondent relied upon a solitary Khatauni of 1328 fasli which relates to the year 1921. Moreover, there is another controversy; inasmuch as in the impugned judgments the said Khatauni is described as a copy. Learned counsel for the petitioners submits that since it was a copy and it was not a certified copy, hence the same was not admissible in evidence and the courts having taken note of the same and gave a finding on inadmissible document which cannot be held in accordance with law.

11. Be that as it may, the fact still remains that apart from this solitary Khatauni the private respondent could not indicate as to when his name was first recorded. Moreover, there is nothing to indicate that after 1328 fasli, the name of Raghuveer was carried forward in any of the subsequent record of right.

12. On the other hand, the name of Udit was

recorded in 1329 fasli year and 1356 fasli year it continued even up to the commencement of consolidation operations. Thus, in so far as the entries are concerned, they were particularly in the name of Udit the Predecessor-in-interest of the petitioners. In case if the private respondent had a right, he could only acquire it either by way of succession where he could claim co-tenancy or in case if he confined his claim only to certain plots which were as indicated in the Khatauni of 1328 years fasli then he ought to have indicated and proved two additional facts:-(i) regarding the original acquisition of the said plots; (ii) regarding the continuity of the entries in the name of Raghuveer after 1328 fasli. Unfortunately either on the two occasion, there is no material evidence led either by the respondents. Moreover, the issue of co-tenancy if claim is to be proved in accordance with certain settled criteria which was noticed by this Court in the case of **Jagdamba Singh Vs. D.D.C., 1984 (2) LCD 398 (LB)**. This has been consistently followed by this Court even in the case of **Lalta Prasad and others Vs. Haunsla Prasad and others, 2021 (9) ADJ 1670 [LB]**.

13. Thus the basic criteria which claimed co-tenancy was neither pleaded nor adequately proved either by oral or documentary evidence, hence this Court is of the considered opinion that the three courts have not appropriately dealt with the issue of co-tenancy as raised by the private respondents.

14. The contention put forward by the private respondent do not find support from the material available on record and even the reasoning given by the Consolidation Officer, the Settlement Officer of Consolidation and the Deputy Director of Consolidation are also contrary to the settled legal proposition which have been followed by this Court consistently regarding the claim of co-tenancy as noticed above.

15. Since the name of the predecessor-in-interest of the petitioners continued since 1356 fasli hence in absence of any contrary evidence led by the private respondent to establish against the co-tenancy, the same could not have been ignored.

The reliance placed upon the solitary Khatauni of 1328 fasli in order to grant the right of co-tenancy to the private respondent is not in sound exercise of jurisdiction by the Consolidation courts.

16. In so far as the submission made by the counsel for the private respondent regarding the defective affidavit is concerned, it would be seen that liberty be granted to the petitioners by means of order dated 16.08.2021 whereby the petitioners were permitted to file a fresh affidavit which has been done. In view thereof, the said technical objection raised by the private respondent also pales into insignificance.

17. In view of the aforesaid, the impugned orders dated 16.06.1976, 22.06.1976 and 21.03.1980 are set aside. The writ petition is allowed. consequence to follow. Costs are made easy.

Order Date :- 8.1.2024

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