

Court No. - 8

Case :- WRIT - B No. - 6413 of 1985

Petitioner :- Hari Bansh Singh And Others

Respondent :- A.D.C. Kheri And 5 Others

Counsel for Petitioner :- S.K. Gupta, Devendra Pratap Singh, Dheeraj Srivastava, H.S. Sahai, J.C. Srivastava, U.S. Sahai, V.K. Pandey, Vijay Kumar Pandey

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

Hon'ble Jaspreet Singh, J.

1. This matter was taken up by this Court on 09.12.2024, on which date, the following order was passed which reads as under:-

"Shri Rajendra Singh, who is the son of the petitioner No.1, was present in the Court Room and during the course of submissions being advanced by Shri V.K. Pandey, learned counsel for the petitioners, he had made ruckus in the Court Room.

Shri Pandey, learned counsel for the petitioners was put to the notice upon which he stated that he does not know the client rather his co-counsel namely Shri D.P. Singh must have got the pass made.

The Court had required the co-counsel, namely, Shri D.P. Singh and he submits that he has not signed the pass form for Shri Rajendra Singh to attend the Court proceedings.

At this stage, Shri Rajendra Singh has provided a Daily Entry-Pass Bearing No.38234/2024, dated 09.12.2024 which indicates that it has been issued under the authority of Shri Devendra Pratap Singh, Advocate.

At this stage, Shri Devendra Pratap Singh submits that he has not signed the form and in case, if there is signature, the same is forged.

This is a serious matter where any person may

come and enter in the Court Room while the learned counsel appearing for the petitioners submits that he has not signed any form permitting Shri Rajendra Singh to come as a party to the Court Room.

Let the Senior Registrar of this Court shall look into the matter and take appropriate steps for the security of the Court. The original pass (bearing No.38234/2024, dated 09.12.2024) of Shri Rajendra Singh, who is legal heir of the petitioner No.1, has been taken on record and it shall be forwarded to the Senior Registrar, who shall look into the matter.

A perusal of the record indicates that the petition is of the year 1985, despite the same, the petitioners have also died and their substitution application was moved and allowed, but the necessary amendments have not been incorporated.

Learned counsel for the petitioners shall carry out necessary amendment in the memo of petition by tomorrow.

Put up tomorrow i.e. 10.12.2024 for further hearing. "

2. Today, learned counsel for the petitioners Shri V. K. Pandey has carried out the necessary amendment in the memo of parties. He has also pointed out that while the application for substitution relating to the petitioner no.1, namely, Har Bans Singh was allowed by the Court on 12.11.2010 but in the meantime one heir of the deceased Har Bans Singh could not have brought on record i.e. Guruvindar Singh who is grand son of Har Bans Singh.

3. It has been submitted by him that a subsequent application was moved by the counsel for the petitioners bearing No.9 of 2023 which is supported by an affidavit of Guruvindar Singh stating that upon the death of Har Bans Singh he was survived by his widow i.e. the petitioner no.2 Surjeet Kaur and apart from Rajendar Singh another son namely Sukhvindar Singh who had

died and in his place Guruvindar Singh being the grand son also needs to be incorporated.

4. At the outset having considered the aforesaid submissions, this Court finds that there is a discrepancy in the statement; inasmuch as while moving the application bearing nos.90620 of 2010, 90624 of 2010 and 90626 of 2010 which were allowed by the Court on 12.11.2010 and the same is accompanied by an affidavit of Rajendar Singh who is the son of Har Bans Singh and the said affidavit indicates and upon the death of Har Bans Singh the petitioner no.1 he was survived by his widow Surjeet Kaur who is already on record as petitioner no.2 and their only son Rajendar Singh is required to be impleaded. It has not been explained that once such an affidavit has been filed by Rajendar Singh. There appears to be a deliberate concealment regarding the other heirs of Har Bans Singh.

5. Be that as it may, even if the application bearing no.9 of 2023 seeking impleadment by Guruvindar Singh is taken at its face value even then it does not clearly indicate as to when Sukhvindar Singh father of Guruvindar Singh (son of Har Bans Singh) died. It has also not been indicated that under what circumstances Rajendar Singh claiming himself to be the sole heir apart from his mother who is the petitioner no.2 did not disclose the name of Sukhvindar Singh.

6. The purpose of substitution is only to enable the courts to decide the proceedings on merits and that the matter can be taken to its logical conclusion. In terms of Order 22 CPC, the principles thereof governs the writ petitions which is also the Rules of the Court 1952 which makes Order 22 CPC applicable. Even otherwise where even one heir is on record the proceedings cannot abate and any dispute inter se between the heirs of the petitioners can be considered in appropriate proceedings hence this Court cannot be stopped from proceedings on merits.

8. A specific query was put to the learned counsel for the petitioner regarding the petitioner no.2 regarding her whereabouts since her age at the

time of filing of the petition was to be 50 years (about 40 years ago).

9. Learned counsel for the petitioners Shri V. K. Pandey could not give a categorical reply but since the matter is of the year 1985, this Court is not inclined to adjourn the matter any further as the hearing was already done yesterday and because of this technical glitch the matter had to be posted for today.

10. Since it is not disputed that Rajender Singh is one of the son of Har Bans Singh and Surjeet Kaur is representing the estate of the deceased, consequently it may not have an impact of abating the proceedings. In this view of the matter, the Court has proposed to hear the matter.

11. On the merits, the orders dated 21.11.1978 passed by the Consolidation Officer rejecting the objections of the petitioners in under challenge which was assailed in appeal before the Settlement Officer of Consolidation who also dismissed the appeal on 13.11.1980 and the revision preferred before the Deputy Director of Consolidation was also dismissed on 03.08.1985. Hence the aforesaid three orders were put to challenge.

12. Submission of the learned counsel for the petitioners is that the property in question initially belonged to one Pritam Singh and Nazir Singh. It is the case of the petitioners that Pritam Singh and Nazir Singh had executed a power of attorney and the property came to be sold through the power of attorney holder in favour of Bal Kisan and Prem Chand on 07.07.1967. Soon thereafter Bal Kisan and Prem Chand also through their power of attorney holder transferred the property to the original petitioners on 25.05.1968. The property in question was for an area of around 18 acres.

13. Upon the commencement of consolidation proceedings, two sets of objections were filed one by the Gaon Sabha whereas the second was filed by the petitioners who claimed their rights over the property in question on the basis of the sale deed dated 25.05.1968.

14. The Consolidation Officer after considering the objections framed two issues. The first one related to the validity of the sale deed dated 25.05.1968 and the other issue as to whether the land in question was required to be vested with the Gaon Sabha.

15. The second issue regarding vesting of the property with Gaon Sabha arose on account of the fact that in the revenue records it was noticed that Pritam Singh and Nazir Singh were not traceable and in their absence for a period which was reasonable and no person had heard of them, hence their land holding may vest in the Gaon Sabha. Another issue that arose was regarding the validity of the sale deed dated 25.05.1968 and two other deeds.

16. It is in this context that the petitioners have led their evidence and had examined the Pradhan. The Pradhan had made a statement that he had seen Pritam Singh and Nazir Singh cultivating the said field and the presumption of death was required in terms of Section 107 of the Indian Evidence Act to declare civil death but the said provisions are not attracted.

17. This aspect, as per the petitioners, was not appropriately considered and the findings recorded by the Consolidation Officer to the effect that since the sale deed dated 25.05.1968 purchased by the present petitioners namely Har Bansh Singh and Surjeet Kaur (who were husband and wife) and being in excess of 12 and a half acres, the sale deed was treated to be void and in such circumstances by means of impugned order dated 21.11.1978, the land vested with the Gaon Sabha.

18. The petitioners being aggrieved preferred appeal before the Settlement Officer of Consolidation. Before the Settlement Officer of Consolidation, the petitioners allegedly filed an affidavit indicating that the petitioners no. 1 and 2 were not husband and wife and therefore relying upon the same, the Settlement Officer of Consolidation formed an opinion that the sale deed dated 25.05.1968 could not be bad for being in excess of 12.5 acres rendering it void but

nevertheless it looked into the revenue records and noticing that there was an endorsement that the original tenure holders namely Pritam Singh and Nadir Singh were not traceable and in such circumstances how the said property came to be transferred to Bal Kisan and Prem Chand and through them in the hands of the petitioners was doubted and it was also noticed that Pritam Singh and Nazir Singh were not found to be in possession of the property rather the possession was recorded that of one Sri Dugendra Singh in terms of Column 9. With the aforesaid finding, the appeal was dismissed by means of order dated 13.11.1980.

19. This was further escalated and assailed before the DDC who also after taking note of the records including the decisions passed by the Consolidation Officer and the Settlement Officer of Consolidation dismissed the revision by means of order dated 03.08.1985.

20. The submission of learned counsel for the petitioners is that first and foremost, the petitioners nos. 1 and 2 were not related to each other as husband and wife, therefore, the findings recorded by the Consolidation Officer that the sale deed was hit being in excess of 12 and a half acres, consequently was bad and this finding did not find favour with the Settlement Officer of Consolidation and it put this aspect to rest.

21. It is further urged that the other reasoning taken by the Settlement Officer of Consolidation and the Deputy Director of Consolidation to the effect that the property was recorded in the names of Pritam Singh and Nazir Singh, who were found to be absconding/missing and they were not seen or heard was not appropriately incorporated after following the due procedure as provided in para 85 of the Land Record Manual.

22. It is further urged that even if at all any presumption had to be drawn in terms of Section 107 of the Indian Evidence Act, even that required a procedure which was not followed, coupled with the fact that the petitioners had examined the Pradhan who had categorically stated that he had seen Pritam Singh and Nazir Singh cultivating the

fields and to that extent the findings recorded by the Settlement Officer of Consolidation as well as the Deputy Director of Consolidation are bad in the eyes of law.

23. It is thus urged that the findings recorded by the Settlement Officer of Consolidation as well as the Deputy Director of Consolidation including the findings recorded by the Consolidation Officer is apparently bad.

24. In support of his submissions, the learned counsel for the petitioners has relied upon a decision of a Division Bench of this Court in ***Desh Raj Vs. Lal Sahai Singh; 1974 RD, page 92, Durga Prasad Vs. DDC; 1988 (2) LCD 185, 2014 (3) ADJ 176, Goharwa Kukkut Palan Sahkari Samiti Ltd. Banda Vs. Board of Rervenue, Allahabad and others and Jagat Narain Vs. Laljee; 1964 RD 332.***

25. None has put in appearance on behalf of the private respondents nor on behalf of the Gaon Sabha.

26. Having heard the learned counsel for the petitioners and from the perusal of the material on record, few undisputed facts which emerge are:-

(i) That admittedly as per the case of the petitioners, the property in question belonged to Pritam Singh and Nazir Singh;

(ii) The revenue entries which were placed on record indicated that against the names of Pritam Singh and Nazir Singh, it was endorsed that they were missing;

27. It is urged by learned counsel for the petitioners that the entries and incorporating the the endorsement of missing was not in accordance with para 85 that the Land Revenue Manual.

28. Another undisputed fact is that the petitioners derived title to the property in question by means of the sale deed dated 25.05.1968 which was executed in their favour by Sri Bal Kishan and Prem Chand through their power of attorney holder.

29. Another undisputed fact is that Bal Kisan and Prem Chand had also purchased the property through a power of attorney holder allegedly belonging to Pritam Singh and Nazir Singh by means of a sale deed dated 07.07.1967.

30. Another undisputed fact is that neither the sale deeds dated 07.07.1967, 31.08.1967, 25.05.1968 have been brought on record. Neither the two power of attorneys have been brought on record.

31. In light of the aforesaid undisputed facts and taking note of the evidence given by the Pradhan indicating that he had seen Pritam Singh and Nazir Singh cultivating the fields does not inspire confidence for the reason that he had given a statement that the petitioner nos. 1 and 2 namely Har Bansh Singh and Surjeet Kaur are not husband and wife. This has been taken note of by the Consolidation Officer.

32. It will be relevant to notice that on one hand an attempt was made by the petitioners to conceal the relationship between the petitioner nos. 1 and 2 and in order to support that concealment, a statement of the Pradhan was recorded. Even though, the statement of Pradhan was not relied upon/accepted by the Consolidation Officer yet it recorded that petitioners no.1 and 2 were husband and wife and accordingly their sale deeds being in excess of 12.5 acres was hit by the provisions of Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950.

33. Once, the petitioners filed an appeal before the Settlement Officer of Consolidation, they went on to furnish some affidavits indicating that they are not husband and wife and relying upon the affidavits, the Settlement Officer of Consolidation has given a finding that the petitioner nos. 1 and 2 were not related and therefore their sale deed was not hit being in excess of 12.5 acres. This appears to be a deliberate attempt to misguide the Consolidation Authorities and if the affidavits were filed, they were apparently false with deliberation and it can be inferred as both the petitioners no.1 and 2 knew the fact that they were the husband and wife yet they went on the records that and to

file the affidavits before the Settlement Officer of Consolidation to the said effect.

34. This Court is sorry to note that a limb of argument was raised on behalf of the petitioners that the petitioners no.1 and 2 were not husband and wife but what is more sorry to note is the fact that upon the death of petitioner no. 1, his own heir namely Rajendra Singh had filed an affidavit in support of the application for substitution wherein he admitted the relationship of the petitioners as being with their father and mother.

35. In light of the affidavit filed by Sri Rajendra Singh himself the submission made by the learned counsel for the petitioners trying to overcome the order passed by the Consolidation Officer pales into insignificance.

36. This being so, the learned counsel for the petitioners could not indicate that once the relationship of the petitioners was that of the husband and wife and the sale deed in their favour dated 25.05.1968 was in excess of 12.5 acres then under what circumstances, the sale deed could survive as it would be hit by Section 167 of U.P. Z.A. & L.R. Act

37. To that extent, the findings which have been recorded by the Consolidation Officer does not suffer from any error rather it gets fortified by the very fact that Rajendra Singh has already admitted the petitioners no.1 and 2 to be his father and mother respectively.

38. In so far as the entry being contrary to para 85 of the Land Record Manual is concerned, suffice to state that any entry recorded in the revenue records would have a presumption of its genuinity and in case if a party disputes the same, the burden is on the said party to show as to how the said entry was not correct.

39. Taking this aspect a little forward, it would reveal that even though this was an issue before the Consolidation Officer but apart from the statement of the Pradhan, there was no worthwhile evidence to rebut the fact that Pritam

Singh and Nazir Singh were not absconding or missing.

40. Reference to para 85 of the Land Record Manual, if taken into consideration would only show that this burden was on the petitioners but no evidence worth its while was led either before the Consolidation Officer or before the Settlement Officer of Consolidation or Deputy Director of Consolidation to rebut the same.

41. The only evidence in this regard was by examining the Pradhan, which would be of no impact for the reason that his statement regarding the petitioners no.1 and 2 not being the husband and wife already was false and no reliance could have been placed upon such a witness.

42. Even otherwise, if the issue as to whether Pritam Singh and Nazir Singh were missing, the best evidence could have been of the power of attorney holder in whose favour Pritam Singh and Nazir Singh is said to have executed a power of attorney on 07.07.1967. It is on the strength of this power of attorney that the sale deed in favour of Bal Kishan and Prem Chand came to be executed on 31.08.1967 i.e. after a month and half and soon thereafter within ten months, the property changed hands in favour of the present petitioners on 25.05.1968.

43. The petitioners also did not examine Bal Kishan and Prem Chand who otherwise being the purchasers of the property from Pritam Singh and Nazir Singh could have deposed as necessarily the sale consideration would have been paid to the vendor.

44. In absence of bringing the best evidence on record, merely to suggest that the entries in the revenue records relating to the endorsement that Pritam Singh and Nazir Singh were missing and it was not done in accordance with law pales into insignificance as the petitioners did not bring on record the best evidence to prove it nor it was indicated as to how the said entry was bad.

45. Lastly, looking into the facts and

circumstances, in either situation, even if for a moment, the sale deed of the petitioners is taken into consideration, there was no explanation as to how it would survive in light of the embargo that it was in excess of 12.5 acres and in favour of the petitioner who were husband and wife.

46. In this regard, the decisions cited by the learned counsel for the petitioners do not apply as first and foremost the petitioners themselves did not lead appropriate evidence to rebut the presumption. There was a deliberate concealment on their part to give an impression that the petitioners nos. 1 and 2 were not husband and wife and it is on the aforesaid premise that the submissions were also made before this Court yesterday.

47. Thus, for all the aforesaid reasons also noticing that both the Consolidation Officer, Settlement Officer of Consolidation and the Deputy Director of Consolidation have considered the matter in the correct perspective and have given findings based on the material on record which are pure findings of facts to which this Court is loath to intervene in terms of exercise of powers under Article 226 of the Constitution of India.

48. Accordingly, the petition is without merits and is **dismissed** with a cost of Rs. 5,000/- to be deposited with the District Legal Services Authority within a period of one week from today.

Order Date :- 10.12.2024

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