

Court No. - 18

Case :- WRIT - B No. - 694 of 2012

Petitioner :- Jageshwar And Another

Respondent :- Deputy Director Consolidation Lucknow And Others

Counsel for Petitioner :- Piyush Chandra Agarwal, Abdul Shadab Khan, Abhinav Trivedi, Durgesh Kumar Rajput, Jay Prakash Singh, Paresh Mishra, Parijat Mishra Belavra, Pradeep Kumar Singh, Rajendra Pratap Singh, Ravi Prakash Mishra, Sameer Kumar, Satyendra Kumar Tiwari

Counsel for Respondent :- C.S.C., Amit Tripathi, Anand Mani Tripathi, Mohd. H.U. Ansari, Shashendra Pratap Singh, Sher Bahadur Yadav

Hon'ble Manish Kumar, J.

1. Heard Shri Abhinav Trivedi, learned counsel for the petitioners, Shri Hemant Kumar Pandey, learned Standing Counsel and Shri Anand Mani Tripathi, learned counsel for the respondent no. 4 assisted by Shri P. Venkatesh, Advocate. However, as far as respondent nos. 5 to 10 are concerned, it is mentioned in the service report dated 23.10.2013 that notices were issued to them by speed post but neither any undelivered cover received back as yet and none appear for their behalf. It has also been apprised to this Court that Shri Sher Bahadur Yadav had filed vakalatnama on 17.05.2023 on behalf of respondent no. 4 but due to some inadvertence, respondent no. 6 was mentioned in place of respondent no. 4.

2. Present petition has been preferred for quashing of the judgment and order of the revisional Court dated 20.09.2012 passed by the Deputy Director Consolidation i.e. respondent no. 1 under Section 48 of the Consolidation and Holdings Act, 1953 (hereinafter referred to as, the Act, 1953) and the impugned

judgment and orders dated 02.07.2010 and dated 31.10.2005 passed by the Settlement Officer (Consolidation). Quashing of the impugned judgment and order dated 28.07.2005 passed by the respondent no. 3-Consolidation Officer as well as the impugned order dated 04.07.2005 i.e. the order of remand passed by the Consolidation Officer have also been challenged.

3. At this stage, learned counsel for the petitioners has submitted that the petitioners may be permitted not to press the prayer made in the present petition as far as it is related to the quashing of the impugned orders dated 28.07.2005 and 04.07.2005.

4. As prayed, the petition is dismissed as not pressed as far as it is related to prayers whereby quashing of the impugned orders dated 02.07.2005 and 04.07.2005 has been challenged.

5. Learned counsel for the petitioners has submitted that Village Sarawan, Pargana, Tehsil and District Lucknow had undergone in consolidation proceedings vide notification issued under Section 4(2) of the Act, 1953 on 31.01.1970 and the notification under Section 52 of the Act, 1953 was issued on 11.02.2006.

6. The dispute in the present petition is with regard to the plot No. 194, which was recorded in the name of late Maika-wife of i.e. the grand mother of the petitioners.

7. It is further submitted that the petitioners being the grand son of late Maika moved an application under Section 12 of the Act, 1953 before the Consolidation Officer for taking decision on matters relating to changes and transactions affecting the rights or interest recorded in the revised records. The said application preferred by the petitioners were allowed by order dated 17.07.2004.

8. Against the order dated 17.07.2004, an appeal was preferred by late Ram Khelawan before the Settlement Officer (Consolidation) under Section 11 of the Act, 1953 stating

therein that his objection under Section 12 was pending and without deciding the same, the application of the petitioners were allowed by order dated 17.07.2004. The appeal preferred by late Ram Khelawan was allowed and remanded the matter to the Consolidation Officer.

9. It is further submitted that the Consolidation Officer had allowed the application of respondent no. 4-Bhuinyadeen and rejected the application filed on behalf of late Ram Khelawan-the predecessor of respondent nos. 5 to 10, without deciding the application of the petitioners under Section 12 of the Act, 1953. Even the issues were not framed for determining the rights of the petitioners. It was treated that the order passed in favour of the petitioners dated 17.07.2004 had already been set aside by the Settlement Officer (Consolidation) while deciding the appeal by its judgment and order dated 04.07.2005.

10. It is further submitted that aggrieved by the order of the Consolidation Officer, the petitioners had preferred an appeal which was dismissed by the Settlement Officer (Consolidation) by its judgment and order dated 31.10.2005 without discussing the issues raised by the petitioners in appeal and determined the rights of the respondent no. 4 and predecessor of respondent nos. 5 to 10.

11. It is further submitted that feeling aggrieved by the appellate order, the petitioners had preferred a revision under Section 48 of the Act, 1953 which was also dismissed by the impugned order dated 20.09.2012 by giving contradictory finding that at one place in the earlier part of the judgment admitting the petitioners as grandsons of late Nanhe-husband of late Maika by giving a finding that there is no dispute about the same and on the other hand a contradictory finding has also been given that the revisionist has failed to establish that the father of petitioners late Dhani was son of late Nanhe, who was the

husband of late Maika whereas in the earlier part of the judgment discussed all the evidences led by the petitioners.

12. The Revisional Court has rejected the claim of predecessors of respondent nos. 5 to 10-late Ram Khelawan as the will in his favour was not proved and found to be suspicious and for the respondent no. 4, the revisional Court had not considered the fact that late Maika had been wrongly shown as issue-less in the pedigree of the family given by the respondent no. 4 in his application under Section 12 and thus, being a brother-in-law, he is entitled for the property in the name of late Maika.

13. On the other hand, Shri Amar Mani Tripathi, learned counsel for the respondent no. 4 has submitted that the claim of the petitioners had already been rejected by the appellate Court hence, there is no occasion to consider their case when the matter was remanded to the Consolidation Officer by the Settlement Officer (Consolidation) by its order dated 04.07.2005.

14. It is further submitted that there was no need to frame any issue for determining the rights of the petitioners after the remand.

15. It is further submitted that the respondent no. 4 being a brother-in-law of late Maika is entitled for the property in the name of late Maika.

16. It is further submitted that the petitioners were failed to establish the pedigree as they have claimed in their application under Section 12 hence, there is no illegality in the findings given by the revisional authority in its judgment and order dated 20.09.2012.

17. On the other hand, learned Standing Counsel has very fairly submitted that after the remand, the Consolidation Officer had to frame the issues for determining the rights of the petitioners and by not doing the same, they deprived the petitioners from

their alleged lawful claim over the property of their grand mother late Maika.

18. After hearing learned counsel for the parties and going through the record of the case, the position which emerges out in the present case is that it is an admitted fact between the petitioners and the respondents that plot no. 194 was in the name of late Maika. The petitioners are claiming their rights on the above mentioned property on the basis of succession. Late Maika was the grand mother of petitioners. The respondent no. 4 was claiming his right on the property entered in the name of late Maika being a brother-in-law and shown late Maika as issueless in his application preferred under Section 12 of the Act, 1953 before the Consolidation Officer while respondent nos. 5 to 10 had claimed their rights on the basis of Will which they had failed to prove and there is a finding in the orders that the Will appears to be suspicious.

19. The respondent nos. 5 to 10 had contested the case up to the stage of revision and after the passing of the impugned revisional order dated 20.09.2012, they had not challenged the same by filing the writ petition before this Court.

20. The appellate order dated 04.07.2005 passed under Section 11 of the Act, 1953 clearly shows that the order passed on 17.07.2004 in Case No. 275 i.e. objections preferred by the petitioners under Section 12 was set aside and the matter was remanded to the Consolidation Officer to decide the same on merits after hearing the parties. The relevant extract of the said judgment is quoted hereinbelow:-

"अपील स्वीकार की जाती है। आदेश वाद संख्या 275/17-7-04 निरस्त किया जाता है। पत्रावली च०अ० सदर को इस आशय से प्रत्यावर्तित की जाती है कि वे साक्ष्य व सुनवाई का अवसर देकर पक्षों को गुणदोष के आधार पर वाद का निस्तारण करे। पक्ष च०अ० सदर के न्यायालय में 21-7-05 को उपस्थित हो। पत्रावली वाद अनुपालन दाखिल दफ्तर हो।"

21. The Consolidation Officer while deciding the matter after the remand by its judgment and order dated 28.07.2005 had framed three issues and the family tree/pedigree given by the respondent no. 4 in his objections under Section 12 had been relied and neither even a single issue as far as it is related to the present petitioners had been framed nor the pedigree mentioned by the petitioners in their application under Section 12 had been considered and decided the matter between the respondent no. 4 and late Ram Khelawan-the predecessor of the respondent nos. 5 to 10. Meaning thereby, the Consolidation Officer while deciding the matter after the remand had not considered the case of the petitioners under the presumption that the remand is only for determining the rights between the respondent nos. 4 and 5 treating that the rights of the petitioners had already decided in the appeal by order dated 04.07.2005 by which the order was remanded.

22. Against the order dated 31.10.2005, the petitioners had preferred a revision which was also dismissed by the revisional authority by its judgment and order dated 20.09.2012. While deciding the revision, the revisional Court had mentioned the case of the petitioners alongwith their family pedigree but thereafter started determining and discussing the rights between the predecessor of the respondent nos. 5 to 10 and respondent no. 4. In the end relied upon the documents filed by the petitioners i.e. Voter I.D. Card, Medical Praman Patra and Kishan Bahi to establish their rights in the property of late Maika, where the petitioners were entered as son of Dhani. Dhani was the son of late Nanhe and late Nanhe was the husband of late Maika. It is accepted by the revisional Court by giving a finding that there is no dispute but at the same time a contrary finding was given by the revisional Court that the property is of late Maika and the petitioners have failed to

establish that they are the son of late Dhani, who was the son of late Nanhe, who was the husband of late Maika by not filing the parivar register. The revisional Court also erred in drawing inference that perhaps late Maika had no issue, merely because a will was there relied upon by Ramkhelavan, which has also been held to suspicious and not proved as held by the Courts below. The relevant portion of the impugned revisional order dated 20.09.2012 is quoted hereinbelow:-

"निगरानीकर्तागण अपने को विवादित आराजी जो स्व० मैका के नाम अंकित थी पर अपना नाम बतौर वारिस अंकित किये जाने हेतु आकार पत्र 11 खाता 241 व आकार पत्र 23 भाग-1 चक संख्या 80 की छाया प्रति निगरानी के साथ दाखिल किया है जिसमें उक्त खाता धानी पुत्र नन्हे के नाम अंकित है। इस क्रम में अपने को धानी का पुत्र साबित करने के लिए मतदाता पहचान पत्र दिनांक 22-3-09 व मेडिकल प्रमाण पत्र मेडिकल आफिसर दिनांक 2-7-08 बावत् राजाराम पुत्र धानी व किसान वही दिनांक 3-9-02 बावत् जागेश्वर पुत्र धानी दाखिल किया है और यह दर्शाने का प्रयास किया है कि वह नन्हें मृतक की बेवा स्व० मैका के पुत्र धानी के पुत्र होने के कारण विवादित आराजी के हकदार है। यहाँ यह उल्लेख आवश्यक है जो भी धानी पुत्र नन्हे के नाम अंकित है उस पर जागेश्वर आदि का जो नाम आया है, उसपर विवाद नहीं है। विवाद स्व० मैका के नाम अंकित समपत्ति का है। निगरानीकर्तागण यह साबित करने में असफल रहे हैं कि वह स्व० मैका के पति नन्हे के पुत्र धानी के पुत्र है क्योंकि इस क्रम में कोई परिवार रजिस्टर की नकल आदि दाखिल नहीं है। कथित वसीयत का प्रकास में आना भी इस बात का संकेत है कि स्व० मैका के शायद औलाद नहीं थी। इस प्रकार स्व० मैका के नाम अंकित भूमि पर अपने को हकदार सिद्ध करने में निगरानीकर्तागण सफल नहीं रहे हैं। मेरे विचार से चकबंदी अधिकारी व बन्दोबस्त अधिकारी चकबंदी ने जो आदेश दिनांक 28-7-05 व 31-10-05 पारित किया है वह उचित है। इस आलोक में आदेश दिनांक 2-7-10 में भी हस्तक्षेप की आवश्यकता नहीं है।

जहाँ तक राम खेलावन की निगरानी का प्रश्न है, अवर न्यायालयों ने विस्तार से विवेचना करते हुये उनके पक्ष में स्व० मैका द्वारा की गयी पंजीकृत वसीयत को प्रमाणित होना नहीं पाया है। इसका मुख्य कारण

गवाहों के बयानों में विरोधाभास बताया है। पत्रावली के अवलोकन से अवर न्यायालयों द्वारा दिये गये अभिमत से मैं सहमत हूँ।

उपर्युक्त तथ्यों के प्रकाश में तीनों निगरानियां निरस्त होने योग्य हैं।

आदेश

उपर्युक्त विवेचना के आधार पर तीनों निगरानियां निरस्त की जाती हैं।

पत्रावलियां वाद अमलदरामद दाखिल दफ्तर हो।"

23. As per the law settled that the revisional Court is not supposed to decide the matter by appreciating the evidence and by substituting the finding by its own findings as the Hon'ble Supreme Court in the case of **Ram Dular Vs. Deputy Director of Consolidation, Jaunpur and Ors.** reported in **Suppl. (2) SCC 198** has held that Deputy Director Consolidation cannot assume to itself the jurisdiction of the original authority. It had to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the root of the matter, had been committed in recording the finding.

24. The proposition of law laid down by Hon'ble Supreme Court in the case of **Ram Dular (supra)** has been followed by this Court in the cases of **Smt. Baijnath and Anr. Vs. Deputy Director of Consolidation, Varanasi and Ors.** reported in 1997 **RD 433** and **Ram Prasad and others Vs. Deputy Director of Consolidation, Pratapgarh and others (Consolidation No. 2205 of 1980)** judgment and order dated 15.03.2019 wherein it has been held that the Deputy Director Consolidation in exercise of powers under Section 48 of the U.P. Consolidation of Holdings Act, 1953 can interfere with the findings of fact recorded by the authorities below and can set-aside the said findings if they are found to be erroneous, perverse not based on any evidence or illegal, but he can not substitute his own

findings after reappraisal of the evidence on the records. The Deputy Director of Consolidation could at the best remand the case to the Settlement Officer, Consolidation or the Consolidation Officer, as the case may be, for decision afresh.

25. The relevant extracts of the judgment authored by Hon'ble Apex Court in the case of **Ram Dular (supra)** is reproduced hereinbelow:-

" It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact-finding authority by appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the root (sic root) of the matter, had been committed in recording the order or finding."

26. The revisional authority was supposed to examine whether Rule 26(2) of the U.P. Consolidation of Holdings Rules, 1954 (hereinafter referred to as, the Rules, 1954) has been complied with by the subordinate Courts or not.

27. For convenience, Rule 26 (2) of the Rules, 1954 is quoted hereinbelow"

" 2) On the date fixed under sub-rule (2) of Rule 25-A, or any subsequent date fixed for the purpose, the Consolidation Officer shall hear the parties, frame issues on the points in dispute, take evidence, both oral and documentary, and decide the objections"

28. The sub-Rule 1 and 2 of Rule 25 A of the Rules, 1954 is quoted hereinbelow:-

" 25-A(1) The Assistant Consolidation Officer shall, as far as possible, deal with all the objections filed by a tenure-holder with regard to matters referred to in clause (i) of sub-section

(1) of Section 9-A and sub-Section (1) of Section 9-B in village itself. In deciding disputes on the basis of conciliation in terms of sub-Section (1) of Section 9-A, he shall record the terms of conciliation in the presence of at least two members of the Consolidation Committee of the village. These terms shall then be read over to the parties concerned and their signatures or thumb impressions obtained. The members of the Consolidation Committee present shall also sign the terms of conciliation. The assistant Consolidation Officer shall then pass orders deciding the dispute in terms of conciliation specifying the precise entries to be made in the records. Details of the operative part of the orders passed by the Assistant Consolidation Officer shall be noted in the Misilband Register. No ex parte order or orders in default shall be passed by the Assistant Consolidation Officer."

(2) In all cases in which the Assistant Consolidation Officer sends a report, under the provisions of Sub section-2 of Section 9-A, or sub-section (1) of Section 9-B to the Consolidation Officer for disposal, he may fix a date and place for the disposal of the cases by the Consolidation Officer and communicate the same to the parties present before him and issue notices in C.H. Form 6-A to the parties not so present. The report of the Assistant Consolidation Officer in such cases clearly brings out the points in dispute between the parties and the efforts made by him to reconcile them."

29. Rule 30 (b) of the Rules, 1954 provides for applicability of the same procedure for deciding the matter raised before the Assistant Consolidation Officer under Section 12. For convenience, the Rule 30 (b) of the Rules, 1954 is quoted hereinbelow:-

" (b) The procedure laid down in Rules 25-A to 27 and 29 shall, mutatis mutandis be followed in deciding matters raised before the Assistant Consolidation Officer under Section 12.

30. From conjoint reading of Rule 26(2) to Rule 25 A(2) and Rule 30 (b), it is clear that for determination of rights/disputes between the parties, the Consolidation Officer is supposed to fix a date and place for disposal of cases, frame the issues on the points in dispute, take evidence both oral and documentary and decide the objection.

31. Since the very beginning all the authorities whether it is

Consolidation Officer, Settlement Officer or the Deputy Director of Consolidation / Revisional Authority had failed to comply with the statutory provisions as at no stage any issue was framed regarding the claim of the petitioners for the property in dispute, opportunity was given to adduce any evidence either oral or documentary regarding the claim of the petitioners and decided the matter against the procedure prescribed under the law and deprived the petitioners from their lawful claim to get the property of their grandmother-late Maika. The revisional authority had failed to consider that the respondent no. 4 as alleged by the petitioners had given a wrong family tree/pedigree by showing late Maika as issue-less just to grab the property of late Maika being her brother-in-law.

32. All these questions are disputed questions of fact and as per the statutory provisions mentioned above, the issues are to be framed, evidences are to be led both oral and documentary and only thereafter, the objection could be decided which had not been followed in the present case. The rights of the petitioners had not been decided by any authority as mentioned above by treating that the initial order under Section 12 dated 17.07.2004 passed in favour of the petitioners had already been set aside by the Settlement Officer in its appellate order dated 04.07.2005 and that is why no issues were framed for determining the claim of the petitioners.

33. In view of the facts, circumstances and discussion made hereinabove, it is held that Rule 30 of the Rules, 1954 provides for procedure laid down in Rules 25-A to 27 and 29 shall mutatis mutandis be followed in deciding matters raised before the Assistant Consolidation Officer/Consolidation Officer under Section 12, which is the procedure provided for deciding the application under Section 9 A but the same has not been followed in the present case while deciding the case of the

petitioners as discussed hereinabove, thus, impugned orders dated 20.09.2012 passed by Deputy Director Consolidation and the judgment and orders dated 02.07.2010 as well as 31.10.2005 passed by respondent no. 2-Settlement Officer Consolidation, Lucknow are hereby set aside.

34. It is true that Settlement Officer, Consolidation has set-aside the order passed by the Consolidation Officer in favour of the petitioners under Section 12 but the authorities failed to consider and appreciate that by the same order, the matter was remanded again for consideration to the Consolidation Officer, therefore, the Consolidation Officer should have given the proper opportunity of hearing, according to provisions of law to the petitioners also. The authorities erred in considering the case of the petitioners shut and close by order dated 31.10.2005 passed by the Settlement Officer, Consolidation by which the matter was remanded, as discussed above.

35. The matter is remanded to the Consolidation Officer to take a decision on the applications preferred by the petitioners and respondent 4, as the respondent nos. 5 to 10 have not challenged the revisional order as it became final against them.

36. The Consolidation Officer-respondent no. 3 is directed to decide the matter expeditiously by following the procedure as provided under the statute and by framing issues regarding the claim of petitioners as well and provide opportunity to adduce oral and written evidence to the petitioners and respondent no. 4/1- Becha Lal (legal heirs of late Bhuinyadeen-respondent no. 4), who was substituted after the demise of respondent no. 4, being an old case of the year 1985, as far as possible within a period of one year from the date of production of certified copy of this order without giving any unnecessary adjournment to any of the parties.

37. Writ petition is ***allowed***.

Order Date :- 8.4.2024

Ashish