

Neutral Citation No. - 2024:AHC-LKO:25372

Reserved

Court No. - 8

Case :- WRIT - B No. - 20437 of 2019

Petitioner :- Smt. Jagrani @ Ram Jiyayi

Respondent :- D.D.C. Shrawasti And Anr.

Counsel for Petitioner :- Ashish Raman Mishra, Ashish Raman Mishra, Brijesh Kumar Kuldeep, Rajeiu Kumar Tripathi

Counsel for Respondent :- C.S.C., Mahendra Kumar Sharma

Hon'ble Jaspreet Singh, J.

1. Heard Shri Brijesh Kumar Kuldeep, learned counsel for the petitioner and Shri Mahendra Kumar Sharma, learned counsel for the private respondent no.2.

2. This Court is pained to note that the matter was heard on 11.03.2024 and it was fixed for further hearing on 12.03.2024 only for the reason that the learned counsel appearing for both sides were unable to make any clear and cogent arguments. It was expected that they would come prepared on the next date but however even on the next date i.e. on 12.03.2024 both the learned counsel for the respective parties were absolutely ill prepared and could not answer the query of the Court. It is in the aforesaid circumstances when there was practically no assistance from the counsel for either sides that the Court had to reserve the judgment.

3. The instant petition had been filed by Smt. Jagrani alias Ram Jiyayi, daughter of Balbhadra assailing the order passed by the Deputy Director of Consolidation, Srawashti dated 09.05.20219.

4. During the pendency of the instant petition, Smt. Jagrani was reported to have died and one Shyam Lal, son of Lakhan had moved an application seeking substitution, condonation of delay in moving an application for substitution and sought his impleadment in place of Smt. Jagrani on the basis of registered Will said to have been executed by Smt. Jagrani in his favour dated 24.09.2015. The said applications are bearing C.M. No.53887 of 2020 and 53888 of 2020. Objections were filed to the said application by the private respondent no.2 stating that since Shyam Lal was seeking his substitution on the basis of Will but he could not succeed to the estate of Smt. Jagrani as he was a murderer and he was involved in the murder of Bachowa (the original tenure holder) and thus the application was liable to be rejected and since there was no other heir except the private respondent no.2, who was the cousin brother of Bachowa, the petition deserves to be abated and could not be decided on merits.

5. This Court has perused the record meticulously and upon examination of the matter certain facts have unraveled which indicates that the instant petition involves certain peculiar facts and circumstances which has defined the course of the instant judgment.

6. Certain facts giving rise to the instant petition are being noticed first.

7. It is undisputed that the property in question was recorded in the name of Bachowa, son of Balbhadra. He had his property in two villages i.e. Plots No.290 and 208 relating to village Laxmanpur Bhagwanpur and

village Dayali respectively. It is also not disputed that Bachowa was issueless and his wife had predeceased him. Smt. Jagrani (original petitioner of this petition) claims to be the real sister of Bachowa whereas the private respondent no.2 claims himself to be the cousin brother (son of the brother of Balbhadra).

8. The dispute for the first time erupted when Smt. Subhaga wife of Lakhan had claimed rights in the property of Bachowa on the basis of a sale deed dated 24.12.2000. Bachowa in his life time contested the said proceedings before the Consolidation Officer and by means of judgment dated 30.01.2006 the Consolidation Officer held that the sale deed upon which Smt. Subhaga was claiming rights was fraudulent and the same was set aside and Bachowa was held to be the title holder. Smt. Subhaga challenged the said order by filing an appeal before the Settlement Officer of Consolidation which also came to be dismissed on 28.04.2021⁶ as such the order of Consolidation Officer upholding title, rights and interests of Bachowa was confirmed.

9. Significantly the order passed by the Consolidation Officer and the Settlement Officer of Consolidation in the dispute raised by Smt. Subhaga was not assailed any further and the litigation came to an end at this stage.

10. The village of Laxmanpur Bhagwanpur and Dayali were denotified under section 52 of the U.P. Consolidation of Holdings Act, 1953 on 31.03.2008. At this point of time, in the year 2016, the private respondent no.2 Raja Ram moved an application under Section 12 of the U.P. Consolidation Holdings Act, 1953 before the Consolidation Officer

seeking his mutation in place of Bachowa on the ground that upon the death of Bachowa, Raja Ram being his cousin brother was entitled to get his named mutated as the nearest heir and consequently Plot No.290 of gram Laxmanpur Bhagwanpur village and Plot No.208 of gram Dayali village be recorded in his name.

11. The Consolidation Officer by means of order dated 08.11.20216 allowed the said application and ordered the name of Bachowa be scored of and name of Raja Ram be incorporated. The application moved by Raja Ram under Section 12 is dated 14.07.2015 and a copy has been brought on record as annexure no.2.

12. Smt. Jagrani being aggrieved against the order passed by the Consolidation Officer dated 08.11.2016 filed an appeal before the settlement Officer of Consolidation on 18.01.2017. In the said appeal a two pronged attack was made: **(i)** It was stated that Smt. Jagrani being real sister of Bachowa was entitled to succeed to the estate of Bachowa, hence her name ought to have been recorded rather an *ex parte* order was passed by the Consolidation Officer and that too based on insufficient material and as such the same was bad; **(ii)** It was also stated that once the village was denotified on 31.03.2008, the application under Section 12 filed at the behest of Raja Ram on 14.07.2015 was not maintainable. Consequently, the order passed by the Consolidation Officer dated 08.11.2026 was *per se* without jurisdiction.

13. Considering the aforesaid submissions, the Settlement Officer of Consolidation vide his judgment dated 28.09.2017 allowed the appeal of

Smt. Jagrani and set aside the order of Consolidation Officer dated 08.11.2016. Raja Ram being aggrieved against the order passed by the Settlement Officer of Consolidation filed a revision before the Deputy Director of Consolidation, who allowed the revision on 09.05.2019 and remanded the matter to the Consolidation Officer. Being aggrieved, Smt. Jagrani laid a challenge to the order of Deputy Director of Consolidation.

14. In the aforesaid backdrop, it is noticed that Smt. Jagrani has expired and Shyam Lal, son of Lallan has moved an application seeking his substitution in place of Smt. Jagrani on the basis of registered Will said to have been executed by Smt. Jagrani in his favour.

15. What assumes significance is the fact that Smt. Subhaga wife of Lallan, is the mother of Shyam Lal, who seeks his substitution in place of Smt. Jagrani. It is also be seen from the material available on record that a First Information Report was lodged at the behest of Raja Ram against Smt. Subhaga, Shyam Lal, Bhusaili and Munshi (sons of Lakhan), stating that they have conspired to get sale deed executed, fraudulently, and later they were responsible for murdering Bachowa. The said first information report was registered as Case Crime No.39 of 2013 and after investigation, a charge-sheet bearing No.66 of 2013 under Sections 302, 328, 419, 420 IPC was filed in the Court against Shyam Lal, Bhusaili and Munshi (sons of Lakhan and Smt. Shubhaga wife of Lakhan).

16. This Court while exercising powers under Article 226 of the Constitution of India is not required to enter into the disputed questions of fact especially when they were require leading of evidence. It is quite

strange that Smt. Jagrani who claims to be the real sister of Bachowa, the original tenure holder, would definitely, must have known that her real brother Bachowa had been contesting the proceedings against Smt. Subhaga who was trying to usurp the property of Bachowa on the basis of fraudulent sale deed in his life time and Bachowa had succeeded.

17. It is also quite strange that Smt. Jagrani must have known the fact that her brother was murdered and an First Information Report in this regard was lodged by Raja Ram in the year 2013 yet Smt. Jagrani would execute a registered Will in favour of Shyam Lal who is accused of murdering Bachowa and is also the son of Smt. Subhaga from whom Bachowa in his life time had been protecting his property.

18. In the aforesaid factual backdrop, though Shyam Lal had moved an application stating that Smt. Jagranj had expired and she has executed registered Will in his favour but the fact remains that merely by moving the said application the Will not having been proved before any competent court, cannot *per se* be taken as the basis for permitting Shyam Lal to be impleaded/substituted in place of Smt. Jagrani in the instant case especially when at the behest of the private respondent no.2 ample material has been brought before this Court which *prima facie* establishes that Shyam Lal is an accused in a case relating to murder of Bachowa. Even in terms of Order 22 Rule 5, this Court is entitled to remit the matter to the competent court for the limited purposes of permitting the parties to lead evidence to ascertain the validity or contention regarding substitution between two contesting legal representative of the deceased party.

19. This Court could have adopted the aforesaid view of remitting the matter for getting the Will proved but for certain redeeming features which are writ apparent on the face of the record of this petition, the Court does not deem fit to remit the matter for a limited purpose.

20. It is now too well settled to be disputed that in terms of U.P. Consolidation of Holdings Act, 1953, the consolidation operations commenced with the notification issued under Section 4 of U.P. Consolidation of Holdings Act, 1953. The aforesaid section is being reproduced hereinafter for ready reference:-

"4. Declaration and notification regarding consolidation.—

(1)(a) The State Government may, where it is of opinion that a district or part thereof may be brought under consolidation operations, made a declaration to that effect in the Gazette, whereupon it shall become lawful for any officer or authority who may be empowered in this behalf by the District Deputy Director of Consolidation—

(i) to enter upon any survey, in connection with rectangulation or otherwise and to take levels of any land in such area;

(ii) to fix pillars in connection with rectangulation; and

(iii) to do all acts necessary to ascertain the suitability of the area for consolidation operations.

(b) The District Deputy Director of Consolidation shall cause public notice of the declaration issued under clause (a) to be given at convenient places in the said district or part thereof.

(2)(a) When the State Government decides to start consolidation operations, either in an area covered by a declaration issued under sub-section (1) or in any other area, it may issue a notification to this effect.

[(b) Every such notification shall be published in the Gazette and in a daily newspaper having circulation in the said area and shall also be published in each unit in the said area in such manner as may be considered appropriate.]"

21. Similarly, Section 52 of the Act of 1953 clearly provides that upon the denotification of the village under Section 52 of the Consolidation operation come to end and thereafter no Consolidation Authorities have

been conferred with the powers to entertain or deal with the matter unless as provided in Section 52 itself and in order to appreciate it Section 52 is being reproduced hereinafter for ease of reference:-

"52. Close of consolidation operations.—

(1) As soon as may be, after fresh maps and records have been prepared[under sub-section (1) of Section 27], the State Government shall issue a notification in the Official Gazette that the consolidation operations have been closed in the[unit and the village or villages forming a part of the unit] shall then cease to be under consolidation operations]:

[Provided that the issue of the notification under this section shall not affect the powers of the State Government to fix, distribute and record the cost of operations under this Act.]

[(1-A) The notification issued under sub-section (1) shall be published also in a daily newspaper having circulation in the area and in such other manner as may be considered proper].

[(2) Notwithstanding anything contained in sub-section (1), any order passed by a Court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases of proceedings pending under this Act on the date of issue of the notification under sub-section (1), shall be given effect to by such authorities, as may be prescribed and the consolidation operation shall, for that purpose, be deemed to have not been closed].

[(3) Where the allotment or lease of any land made before the Consolidation Scheme becomes final under Section 23, is cancelled by an order under sub-section (4) of Section 198 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951) and such order becomes final, then notwithstanding anything contained in the provisions of this Act, such order shall be given effect to by such authorities, as may be prescribed, in the following manner; and the consolidation operation shall, for that purpose, be deemed to have not closed, namely --

(a) the value of the land which was the subject-matter of such allotment or lease shall first be ascertained in the manner prescribed;

(b) the value referred to in clause (a) shall be deducted from the total value of land allotted to the tenure-holder concerned during consolidation proceedings;

(c) the tenure-holder shall be entitled, during consolidation proceeding, to land equivalent in valuation to the said land]."

22. In light of the aforesaid and considering the facts which are before this Court which are apparently not disputed, are that, villages in question were denotified on 31.03.2008, accordingly no Consolidation Authorities could have entertained any application under the Act after the date of the denotification.

23. Another fact which is not disputed is that Raja Ram made his application under Section 12 of the Act on 14.07.2015 as evident from annexure no.2, hence the said application having been moved after the date of denotification was *per se* not maintainable and the Consolidation Officer was denuded of all jurisdictions to have passed any order thereon. Thus, the order passed by the Consolidation Officer dated 08.11.2016 was *per se* inherently without jurisdiction and *void ab initio*. Though the said order was assailed by Smt. Jagrani in an appeal before the Settlement Officer of Consolidation who allowed the appeal on 28.09.2017 but the fact remains that once the order of the Consolidation Officer after denotification were *void ab initio* for the same reason, the Settlement Officer of Consolidation was also denuded of jurisdiction to have passed the order. It was actually a fit case for Smt. Jagrani to have assailed the order of Consolidation Officer straight away by filing writ petition before this Court but nevertheless the said course was not adopted.

24. Be that as it may, the Deputy Director of Consolidation by means of the impugned order dated 09.05.2019, which is under challenge in the instant petition, while dealing with the issue of jurisdiction of the consolidation courts vis-a-vis entertaining an application under Section 12 after denotification opined that since the proceedings were being

contested by Bachowa in his life time against Smt. Subhaga who had set up rival title on the basis of the sale deed and even though the said proceedings were decided by the Consolidation Officer in favour of Bachowa on 30.01.2006 and this order was challenged by Smt. Subhaga in appeal before the Settlement Officer of Consolidation which came to be dismissed on 28.04.2016 i.e. after the date of denotification and later when Bachowa expired Raja Ram moved an application for mutation in the year 2015, this should be treated as an application in appeal preferred by Smt. Subhaga to be pending and as such the matter could be entertained and taking this view the Deputy Director of Consolidation remanded the matter to the Consolidation Officer directing the parties to lead evidence and get their lis adjudicated.

25. Having considered the aforesaid issue, this Court is of the clear opinion that this reasoning of the Deputy Director of Consolidation is also *per se* bad in the eyes of law; inasmuch as the dispute between Bachowa and Smt. Subhaga came to an end on 28.04.2016 with the appeal of Smt. Subhaga being dismissed. Even though Bachowa expired in 2013 but the fact remains that the application under Section 12 was not moved in the said appeal rather it was filed as a separate case seeking mutation and that too in the year 2015. That could not have been taken to be a continuation of the appeal filed by Smt. Subhaga and thus the benefit of Section 52 sub-section (2) could not have been extended in the aforesaid fashion as done by the Deputy Director of Consolidation.

26. The issue of mutation or succession to the estate of Bachowa either could have been substantively raised in the appeal of Smt. Subhaga where

Bachowa was the respondent but it was not done. The appeal came to be dismissed and it was never carried forward, hence all rights relating to Bachowa and Smt. Subhaga came to an end and since the sale deed was found to be fraudulent, hence the right, title and interest of Bachowa was upheld and he continued to be recorded as the original tenure holder.

27. Raja Ram had initiated proceedings under Section 12 as a fresh cause of action under Section 12 of the U.P. Consolidation of Holdings Act which conferred a fresh cause of action and since the village had already been denotified on 31.03.2008, hence the said application, as already observed above, was not maintainable and the Consolidation Authorities were denuded of all rights to adjudicate or pass any orders thereon.

28. It is in light of the aforesaid discussions, this Court finds that on one hand, applicant Shyam Lal who seeks his substitution in place of Smt. Jagrani on the basis of Will, who in turn claims herself to be the real sister of Bachowa is an indirect method of contesting and claiming³ title to the property of Bachowa especially when Shyam Lal himself is an accused alongwith his mother Smt. Subhaga and two brothers in the murder as well as fraudulent execution of the sale deeds and also keeping in mind that Smt. Subhaga had already lost her case against Bachowa in his life time.

29. On the other hand, Raja Ram seeks mutation in respect of the property of Bachowa after denotification of the village of 31.03.2008 by moving an application under Section 12 of the U.P. Consolidation

Holdings Act, 1953 whereupon the order dated 08.11.20216 has been passed by the Consolidation Officer.

30. In light of the aforesaid, this Court is of the clear view that the proceedings after denotification as initiated by Raja Ram were wholly without jurisdiction and all the orders passed by the Consolidation Officer dated 08.11.2016, the order passed by the Settlement Officer of Consolidation dated 28.09.2017 and the order impugned dated 09.05.2019 passed by the Deputy Director of Consolidation are all without jurisdiction and *void ab initio*.

31. Attempt of Shyam Lal to seek a substitution on the basis of Will in proceedings under Article 226 where the impugned orders are *per se* without jurisdiction, hence this Court does not permit Sham Lal to be impleaded. For the aforesaid reason this Court finds that the entire proceedings initiated at the behest of Raja Ram by filing an application under Section 12 of the U.P. Consolidation Holdings Act, 1953 to be without jurisdiction and are quashed and all impugned orders i.e. 08.11.2016 passed by the Consolidation Officer, 28.09.2017 passed by the Settlement Officer of Consolidation and 09.05.2019 passed by the Deputy Director of Consolidation shall also stand quashed. The parties shall be at liberty of getting their rights adjudicated before the competent revenue court who shall consider and decide the title to the estate of Bachowa on the basis of contested plea by the respective parties and for the said purpose all plea are left open for the parties to be raised and decided by the Revenue Courts.

32. It is made clear that any observations made in this judgment may not be taken as a expression of opinion on merits in so far as the title claimed by the contesting parties to be estate of Bachowa is concerned. The only issue decided by this Court is regarding the maintainability of Section 12 proceedings under the U.P. Consolidation Holdings Act, 1953 after the village was denotified.

33. With the aforesaid liberty, the writ petition is disposed of.

Order Date :- March 22, 2024
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