

Neutral Citation No. - 2024:AHC-LKO:46837

Court No. - 8

Case :- WRIT - B No. - 706 of 2024

Petitioner :- Ram Nayan And 3 Others

Respondent :- Deputy Director Of Consolidation Distt.

Sultanpur And 8 Others

Counsel for Petitioner :- Ravindra Pandey

Counsel for Respondent :- Anurag Pathak, J.P. Shukla, Mohan Singh

Hon'ble Jaspreet Singh, J.

Ms. Sonal Pandey learned counsel has filed vakalatnama on behalf of respondent no.5 and the same is taken on record.

Heard Sri Ravindra Pandey learned counsel for the petitioners. Notice on behalf of respondent nos.1, 2 and 3 has been accepted by the office of learned Chief Standing counsel. Sri J.P. Shukla learned counsel has put in appearance on behalf of caveator-respondent no.4. Sri Mohan Singh learned counsel has accepted notice on behalf of respondent no.9.

Under challenge is the order passed by the Deputy Director of Consolidation, (hereinafter referred to as D.D.C) dated 12.04.2024 whereby two revisions which were connected have been decided by the said common order and the revisions have been allowed setting aside the order dated 16.06.2009 passed by the Settlement Officer of Consolidation (hereinafter referred to as S.O.C.) and order dated 22.11.2018 passed by the Consolidation Officer in proceedings under Rule 109A of the Consolidation of Holding Rules 1954 (hereinafter referred to as the 'Rules').

In order to appreciate the controversy involved in the instant petition, certain facts are being noticed first.

The case of the petitioners was that Ram Nayan-petitioner no.1 and Mitthulal (father of the petitioner no.2 to 4) were the registered owners of the property-in-question bearing old plot no.2362 M (new plot no.585Ka). The grandfather of the petitioner no.1 and his brother Mitthulal, namely Rashi, executed a sale deed in favour of Ram Nayan and Mitthulal in the year, 1968.

During the minority of Ram Nayan and Mitthulal, their father and natural guardian namely Daya Ram sold the said property by means of a registered sale deed dated 27.08.1969 in favour of

the private respondent no.4-Raj Bahadur, respondent no.5-Babulal and Ram Aasrey (father and predecessor-in-interest of the private respondent nos.6 to 8).

The record reflects that the vendees of the sale deed of 1969 got their names mutated by the order passed by the C.O dated 28.02.1974. This order of 1974 was never challenged nor the sale deed dated 27.08.1969 was ever assailed, however, after the denotification of the village on 23.07.1988 under Section 52 of the U.P. C.H Act, 1953 the consolidation operation came to an end. Significantly, the petitioner no.1-Ram Nayan had attained the age of majority in the year 1980 itself.

Be that as it may, it was stated by the petitioner no.1-Ram Nayan and his brother Mitthulal that only on 30.05.2003 when there was a scuffle between the families of the petitioners and the private respondents that they became aware of the alleged sale deed said to have been executed by their father.

Having obtained the certified copies, the present petitioner filed a time barred appeal before the S.O.C. It had been the case of the petitioners that they were never aware of the sale deed and since no permission was taken from the District Judge as provided under Section 8 of the Hindu Minority and Guardianship Act, 1956 hence, the sale deed in favour of private respondents was invalid. Moreover, it was also stated that the said land-in-question was a grove land and in such circumstances, the order of mutation passed by the Consolidation Officer dated 28.02.1974 was liable to be set aside.

Upon hearing the parties, the S.O.C by means of his order dated 16.06.2009 took note of the fact since the sale deed was executed during the minority of the petitioner and his brother and they did not have any notice thereof coupled with the fact even though the appeal was filed after 29 years and the village had been denotified in terms of Section 52(1) of the U.P. C.H Act, 1953 hence, the case for condonation of delay was made out as it was further held that in case, if the indulgence is not granted to the petitioner then their rights shall be foreclosed for all times to come and Section 49 of the U.P. CH Act would also come into operation, hence it found that in order to do substantial justice the order dated 28.02.1974 was liable to be set aside after condoning the delay and the matter was remanded to the court of Consolidation Officer where the parties were directed to appear on 03.07.2009.

The private respondent being aggrieved against the order dated 03.07.2009 preferred the revision which came to be registered as Revision no.20 of 2024. In the aforesaid backdrop, the private respondents have also assailed the order passed under Rule 109A of the U.P.C.H. Rules of 1954 or Rules of 1954 and the said revision came to be registered as Revision no.262 of 2024. Since both the revisions were between the same parties and involving similar questions hence both were consolidated and have been decided by a common order dated 12.04.2024 which is under challenge in the instant petition at the behest of the petitioners.

Sri Ravindra Pandey learned counsel for the petitioners while attacking the aforesaid orders have been primarily raised a two pronged attack:-

(i) it is urged that since the sale deed dated 27.08.1969 had been executed by the father of the petitioner no.1 and his brother Mitthulal, without obtaining any permission from the principal Court of original civil jurisdiction i.e. District Judge, in terms of Section 8 of the Hindu Minority and Guardianship Act, hence, the said deed was void. The document which is void does not require to be set aside and it can be ignored by any of the authorities and in such circumstances, where the S.O.C had considered this aspect and has granted the liberty requiring the parties to adjudicate their rights before the Consolidation Officer such an order ought not to have been interfered with by the revisional court.

(ii) The other limb of the submission is that an order of remand generally is not liable to be interfered with and in such circumstances where the petitioners had amplified their sufficient cause before the S.O.C., hence, the revisional court had erred to interfere, thus, rendering the impugned order dated 12.04.2024 liable to be set aside in exercise of power of this Court in terms of Article 226 of the Constitution of India.

Sri J.P Shukla learned counsel for the respondent no.4, Ms.Sonal Pandey learned counsel for the respondent no.5 have opposed the aforesaid submissions and have urged that once the sale deed had been executed on 27.08.1969 and in pursuance thereof, the names of the private respondents have been mutated by means of the order dated 28.02.1974 which was very well in the knowledge of the petitioners including the fact that the petitioner no.1 had attained the age of the majority in the year, 1980, hence in light of Article 60 as mentioned in the Schedule appended to

the Limitation Act, 1963 any action to assail the sale deed could have been taken within 3 years from the date the petitioners had attained majority.

It is further urged that no such course of action was taken within 3 years of having attained majority and even till date the said sale deed has never been challenged before any competent court of law.

It is further urged that once the village was denotified in the year, 1988 hence what could not have been done directly now is sought to be done indirectly by preferring appeal before SOC in the year 2003 assailing the order of 1974 i.e. after 29 years. In light of such huge delay, it was incumbent on the petitioners to have properly explained the delay and merely by stating that they had attained knowledge on account of scuffle which took place, on 30.05.2003, the delay of 29 years could not be condoned in a casual manner. Thus, to this extent, the grant of condonation of delay by the S.O.C was not appropriate which has been rectified by the D.D.C in the impugned order dated 12.04.2024 and this order does not require any interference.

It is further urged that in any case the village had been denotified and after denotification the petitioners could have filed a suit which they failed to do and now in order to overcome the issue of limitation and the bar as provided in Article 60 as mentioned in the Schedule appended to the Limitation Act the appeal was preferred before the S.O.C.

This adventure of assailing the order through an indirect mode was also not permissible. Apart from the fact that even on the own showing of the petitioners while preferring the appeal before the SOC in para-3, it was categorically stated by the petitioners themselves that the land-in-question was a grove land hence it was beyond purview of consolidation authorities. Once such a stand was taken apparently S.O.C ought not to have proceeded and, thus, this aspect has been noticed by the D.D.C while allowing the revisions and this does not require any interference and as such the petition deserves to be dismissed.

The Court has heard learned counsel for the parties and perused the material available on record.

In so far as the jurisdiction of D.D.C is concerned, it is now well settled that it has the right to look into not only findings on issue of law involved but even findings on fact.

It is not disputed in the instant case that the sale deed by which the petitioners came to have obtained title was executed in the year, 1969. Admittedly, the petitioner no.1 and Mitthulal, his brother were minors and at the time of acquisition of the property in 1969 they did not have any individual source of income. Apparently, at the time the property was purchased then the sale consideration would have flown from the income in the hands of their father-Dayaram. It is not disputed that Dayaram did not have any conflict of interest with the present petitioner no.1 and his brother Mitthulal. Even though it is stated that no permission was taken from the District Court while executing the sale deed on 27.08.1969 but the fact remains that the sale deed is not rendered void rather it becomes a voidable document and this position of law cannot be disputed in light of Section 8(3) of the Hindu Adoption & Maintenance Act 1956.

It was always open for the petitioner no.1 and his brother Mitthulal to have assailed the said sale deed, however, the same was never done. It is also not disputed that Mitthulal was two years younger to the petitioner no.1 and in this way if the petitioner no.1 attained majority in the year, 1980, Mitthulal, his brother would have attained majority in the year, 1982. Thus, taking a best case scenario the limitation to assail the sale deed would commence in the year 1982 which would come to an end in the year, 1985.

At this stage, it will be relevant to notice the provisions of period of limitation regarding assailing decree or an instrument as provided under Article 60 as appended in the Schedule in the Limitation Act, 1963 and the same reads as under:-

60. To set aside a transfer of property made by the guardian of a ward—		
(a) by the ward who has attained majority;	Three years.	When the ward attains majority.
(b)by the ward’s legal representative—		
(i) when the ward dies within three years from the date of attaining majority.	Three years.	When the ward attains majority.
(ii) when the ward dies before attaining majority.	Three years.	When the ward dies.

This Court hastens to add that Section 3 of Limitation Act, 1963 creates an embargo on every Court seized with the matter from proceeding on merits and the Court is first required to look into the issue of limitation even though it may or may not be raised by any party as a defence.

From a conjoint reading of the Section 3 of Limitation Act with Article 60 as appended in the Schedule in the Limitation Act, 1963. The inescapable conclusion is that the decree or an instrument if executed by the guardian provides for limitation of 3 years to the ward to assail the said decree or instrument from the date of attaining majority. Admittedly, the same has not been done, merely to say that the petitioner got the information on 30.05.2003 which is not supported by any cogent explanation.

It become more burdensome on the petitioner no.1 to explain the delay in the sufficient particularity as it is not disputed that the petitioner no.1 was literate and was a Government servant having now retired. Be that as it may, ignorance of law can not be taken as a defence and even otherwise when the petitioner no.1 himself was a Government servant he cannot take a plea that he was not aware of law. No material has been brought on record to indicate that since 1980 how the petitioners came to know of the order in the year 2003 when admittedly it was a grove land and in any case the same was recorded in the revenue records in the name of the private respondents. Revenue records includes record of rights which is a public document and available for all and it has also not been shown as to how the petitioners were in possession and control despite the mango-grove being present and recorded in the names of the private respondents then how the petitioners were dealing with the same since 1982 onwards. Thus, a bald statement to state that they became aware of the sale deed only on 30.05.2003 does not inspire controversy.

Having known that the petitions had lost on account of bar of limitation to assail the sale deed, then on advice, it appears, that the petitioners then instituted the proceedings by filing an appeal before the S.O.C along with the application under Section 5 of the Limitation Act.

Considering this aspect and noticing para-3 wherein the petitioners have stated that the said land-in-question was a grove land and was outside the purview of the consolidation and the D.D.C would not have authority but that may not be entirely correct for the reason that insofar as a grove land is concerned

the consolidation authorities may not have the jurisdiction to include such land for the purposes of re-arrangement of the holding and it would be out of purview for the purposes of the making a valuation only. Even otherwise, if the submission is taken to discredit the order of the DDC then for this some reason and analogy the order of S.O.C also could not be sustained, hence, the argument does not help the petitioners in any case.

Another fact which is to be seen is that the village was denotified under Section 52(1) of the U.P. C.H Act, 1953 on 23.07.1988, thus, apparently the consolidation authorities had lost jurisdiction and if at all there was any grievance, it was open for the petitioners to have tried their chance before the appropriate civil court which has not been done. All the aspect have been considered by the D.D.C while allowing the revision and setting aside the orders passed by the S.O.C,. This Court does not find that there is any error in the reasoning except to a little extent which has been noticed by this Court in the previous paragraph. However, the findings recorded by the D.D.C in its order dated 12.04.2024 cannot be faulted.

Accordingly, for the reasons aforesaid the petition being devoid of merits is **dismissed** at the admission stage itself. Costs are made easy.

Order Date :- 10.7.2024/Harshita