

Reserved on 10.04.2025

Delivered on 09.05.2025

Court No. - 50

Case :- WRIT - B No. - 34959 of 2013

Petitioner :- Smt. Sahodra And 3 Others

Respondent :- D.D.C. And 3 Others

Counsel for Petitioner :- A.K.S. Bais

Counsel for Respondent :- Dharendra Kumar Srivastav, R C Singh, Rajesh Kumar Srivastava, Rakesh Singh

Hon'ble Chandra Kumar Rai, J.

1. Heard Mr. A.K.S. Bais learned counsel for the petitioner, Mr Dharendra Kumar Srivastava & Mr. Rajesh Kumar Srivastava, learned Counsel for respondent Nos.2 and 3 and learned Standing Counsel for the State-respondents.

2. Brief facts of the case are that respondent Nos. 2 and 3 (Ramesh Chandra and Virendra Kumar) claimed right on the basis of registered sale deed 10.4.1985 executed by respondent No.4-Kamlesh in favour of respondent Nos.2 and 3. Respondent No. 4 Kamlesh wife of Ashok Kumar filed a Civil Suit No.86 of 1988 for cancellation of registered sale-deed dated 10.4.1985. During pendency of the aforementioned Suit, village in question was brought under consolidation operation by way of notification issued under section 4 of U.P. consolidation of Holdings Act, 1953, (hereinafter referred to as U.P.C.H. Act). Against the basic year entry of plot in question, respondent Nos. 2 and 3 filed objection under section 9-A(2) of U.P.C.H. Act for recording of their names over the plot in question on the basis of registered sale deed 10.4.1985. Consolidation officer vide order dated 13.11.1997 decided the dispute under section 9-A (2) of U.P.C.H. Act for recording the name of respondent No.4-Kamlesh after expunging the name of deceased-Raghomal as well as declared 1/4 share of respondent No.4-Kamlesh wife of Ashok Kumar in

khata No.133 and for recording the names of petitioners Smt. Sahodara, Smt. Rajbala, Smt. Puspa, Smt. Sushila after expunging the name of deceased-Raghomal as well as declared 3/4 share of Smt. Sahodara and three others in respect to khata No.133. Consolidation Officer in another case vide order dated 21.6.1999 determined the share of respondent No.4-Kamlesh as 1/4. Against the order dated 13.11.1997 and 21.6.1999 passed by Consolidation Officer, contesting respondent Nos. 2 and 3 (Ramesh Chandra and Virendra Kumar) filed two appeals (appeal Nos.76 & 91) under section 11 (1) of U.P.C.H. Act along with the prayer of condonation of delay. The aforementioned appeals were heard by Settlement Officer Consolidation and vide order dated 15.10.2007 aforementioned appeals were dismissed. Against the appellate order dated 15.10.2007 passed in the aforementioned two appeals, revisions under section 48 of U.P.C.H. Act were filed by respondent Nos. 2 and 3 (Ramesh Chandra and Virendra Kumar) which were registered as Revision Nos.27 and 28. The aforementioned revisions were clubbed and heard together by Deputy Director of Consolidation/ Additional District Magistrate (F & R). The aforementioned revisions were allowed vide order dated 02.04.2013 setting the order dated 21.6.1999, 13.01.1997 and 15.10.2007 as well as remitted the matter back before Consolidation Officer to decide the dispute under section 9-A (2) of U.P.C.H. Act afresh on merit. Hence this writ petition for the following relief:

"(1). Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 02.04.2013 passed by the respondent No.1 in Revisions Nos.27 and 28/36 Ramesh Chandra and others versus Kamlesh and others, (Annexure No.1 to the writ petition).

(2). issue a writ order or direction in the nature of mandamus directing respondents concerned to not to proceed further pursuant to the impugned orders 02.04.2013 passed by the respondent No.1 in Revisions No.27 and 28/36 Ramesh Chandra and others versus Kamlesh and others, during the pendency of the present writ petition, so that justice may be done."

3. This Court entertained the matter on 2.7.2013 and stayed the effect and operation of the impugned order dated 02.04.2013.

4. In pursuance of the order dated 2.7.2013, parties have exchanged their pleadings.

5. Learned counsel for the petitioner submitted that respondent Nos.2 and 3 have colluded with respondent No. 4 in order to grab the property of the petitioner but Consolidation Authorities have failed to examine the matter in proper manner while passing the impugned order dated 02.04.2013. He further submitted that entire share of the father of respondent No.4 has been sold out to respondent Nos.2 and 3 and the share of father of respondent No.4 has been determined as 1/4 by Consolidation Officer as such respondent Nos. 2 and 3 are entitled to get only 1/4 share of the total area. He further submitted that before registration of sale deed dated 10.4.1985 father of respondent No.4 has sold 1/3rd share but share of father of respondent No. 4 was found to be 1/4 in total area, as such registered sale-deed dated 10.04.1985 was illegal. He further submitted that revisional court under the impugned order has remanded the matter back before Consolidation Officer for determination of share of the parties which is wholly illegal as the share of co-sharer has already been determined in accordance with law. He further submitted that respondent Nos. 2 and 3 are vendees of respondent No. 4 of the plot in question as such responding Nos. 2 and 3 have no right to question the share of co-sharer. He submitted that impugned order passed by Deputy Director of Consolidation dated 02.04.2013 should be set aside.

6. On the other hand, learned counsel appearing for respondent Nos. 2 and 3 submitted that in khatauni of 1363 fasli to 1366 fasli, the entire khata number 133 was recorded in the name of Raghomal son of Harna, Sughan Chand son of Dwarika Das & Mst. Bhagwati widow of Chhagoo which continued in 1366 fasli to 1370 fasli. The aforementioned entry demonstrate that initially land of khata No.133 was recorded in three names having 1/3 share each. He submitted that due to death of Bhagwati Devi wife of Chhagoo her share went to Sughan Chand as such Raghomal was having 1/3 share and Sughan Chand was having 2/3 share. He submitted that after execution of sale deed dated 10.4.1985 share in the khata would be changed accordingly. He submitted that in khatauni of 1398 fasli to 1403

fasli, land of khata No. 133 was recorded in the name of Raghomal and Sugan Chand but khata No.138 was recorded in exclusive manner in the name of Raghomal. He submitted that in khatauni 1366 to 1370 fasli plot No. 244/1 area 1-1-0 and 244/2 area 1-10-0 was recorded accordingly, which demonstrate that Mst. Bhagwati transferred her share of plot No.244/2 to Raghomal and rest plot No. 244/1 was transferred to Sugan Chand therefore plot No. 244/2 was recorded in exclusive manner in the name of Raghomal, which has become khata No.138. He submitted that khata No.138 has recorded in the name of Raghomal but due to mistake about area, Consolidation Officer has passed the order dated 3.8.1997 correcting the area of the plot. He submitted that petitioners have filed a time barred title objection claiming that khata No. 138 is wrongly recorded as plot No. 244/ 2 in the name of Raghomal as such name of Kamla Devi (petitioner's mother) be recorded over 3/4 share of plot in question. He submitted that answering respondents were not impleaded in the aforementioned title proceeding instituted by petitioners, therefore, they filed their impleadment application in the case No. 4473. He submitted that answering respondents have filed their own objection under section 9-A(2) of U.P.C.H.Act before consolidation officer on 21.4.1998 along with application under section 5 of Limitation Act. He submitted that consolidation officer passed the order without considering the impleadment application of answering respondents. He submitted that in case under section 9A (2) of U.P.C.H. Act Consolidation Officer passed the order in arbitrary manner declaring share of Sahodra as 3/4 and share of Kamlesh as 1/4 in respect to khata No. 138 and 133. He submitted that against the aforementioned order of Consolidation Officer, respondent Nos.2 and 3 have filed two appeals which were dismissed in arbitrary manner by the Settlement Officer of Consolidation. He submitted that Deputy Director of Consolidation has rightly exercised the revisional jurisdiction setting aside the order of Consolidation Officer as well as Settlement Officer Consolidation and remitted the matter back before Consolidation Officer to decide the entire dispute afresh on merit. He further submitted that Civil Suit No. 86 of 1988 filed by respondent No. 4- Kamlesh, a

compromise has taken place between the parties accepting the sale deed dated 10.04.1985 as genuine and correct accordingly compromise decree dated 1.7.2010 was passed by Civil Court. He submitted that Revisional Court has found that no proper opportunity has been afforded to respondent Nos. 2 and 3 to adduce the evidence and contest the proceeding in the title case under Section 9-A (2) of U.P.C.H. Act, as such, Revisional Court has rightly remanded the matter back before Consolidation Officer. He submitted that no interference is required against the remand order passed by Deputy Director of Consolidation under section 48 of U.P.C.H. Act remanding the matter back before Consolidation Officer to decide the entire dispute afresh.

7. I have considered the argument advanced by learned counsel for the parties and perused the records.

8. There is no dispute about the fact that in the proceeding under section 9A (2) of U.P.C.H. Act, Consolidation Officer has decided the share of the parties. There is also no dispute about the fact that two title appeals filed by respondent Nos. 2 and 3 have been dismissed by Settlement Officer of Consolidation but in title revisions filed by respondent Nos. 2 and 3, the order passed by Consolidation Officer as well as Settlement Officer of Consolidation have been set aside and entire dispute has been remanded back before Consolidation Officer to decide the title proceeding afresh.

9. In order to appreciate the controversy involved in the matter, the perusal of section 48 of U.P.C.H. Act will be relevant which is as under:-

"Section 48. Revision and reference. - (1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order] [other than an interlocutory order] passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit.

(2) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).

(3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1).

[Explanation-] [(1)] For the purposes of this section, Settlement Officers, Consolidation, Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation.

Explanation (2) - For the purposes of this section the expression 'interlocutory order' in relation to a case or proceeding, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect to finally disposing of such case or proceeding.

[Explanation (3) - The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re-appreciate any oral or documentary evidence."

10. This Court in the case reported in 2020 (148) RD 114 Smt. Lakshmania (dead) through LRs Vs. Deputy Director of Consolidation Deoria and others has considered the scope of section 48 of U.P.C.H. Act. Paragraph No.44 of the judgment rendered by this Court in the **Lakshmania (supra)** will be relevant which are as under:-

"44. In this case, the objections were filed in the year 1981, and, therefore, the amended provisions of Section 48, operative retrospectively, would squarely apply. Under the amended statute, the Revisional Court has been conferred with unique powers by virtue of the added Explanation 3 to go into the correctness, legality or propriety of an order passed by an Authority below, whether on fact or law, and includes the powers to appreciate any oral or documentary evidence. Thus, to the understanding of this Court, in view of the added Explanation by U.P. Act no. 3 of 2002, retrospectively w.e.f. 10.11.1980, the Revisional Court is in no manner inhibited from examining any question of fact or law, or appreciating evidence whether documentary or oral, virtually like any other Court of fact and law. It is a unique

position that the Revisional Authority enjoys, under Section 48 of the Act, conventionally not associated with the exercise of revisional jurisdiction."

11. In the instant matter two sets of title objections were filed one set of objection by respondent Nos.2 & 3 and another set of objection was filed by predecessor of petitioners which were decided by Consolidation Officer by two separate orders and the orders of Consolidation Officer which were maintained in two title appeals filed by respondent nos.2 and 3 as such remand order passed by Deputy Director of Consolidation is abuse of process of law rather Deputy Director of Consolidation should himself decide the entire dispute under Section 48 of U.P.C.H. Act in accordance with law.

12. Any finding on merit of the case will prejudice the claim of the parties as entire matter require fresh consideration by Deputy Director of Consolidation on merit in light of the provisions contained under Section 48 of U.P.C.H. Act.

13. Considering the entire facts and circumstances of the case, the impugned revisional order dated 02.04.2023 passed by respondent No.1/Deputy Director of Consolidation in revision Nos.27 and 28 are liable to be set aside and the same are hereby set aside.

14. **The writ petition stands allowed in part** and matter is remitted back before respondent No.1/Deputy Director of Consolidation to restore the Revision Nos. 27 & 28 on their original number and decide the same afresh on merit expeditiously preferably within a period of **three months** from the date of production of certified copy of this order before him after affording proper opportunity of hearing to the parties.

15. No order as to costs.

Order Date :- 9.5.2025

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