

Shreedhar And Another vs Deputy Director Of Consolidation And ... on 1 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. 2025:AHC:45166

Court No.50

WRIT B No. - 8805 of 1983

Petitioners :-	Shree Dhar and Another
Respondent :-	Deputy Director of Consolidation
Counsel for Petitioner:-	Mr. Rishi Kant Rai, Mr. Shriprakash
Counsel for Respondent :-	Mr. Rahul Srivastava
Hon'ble Chandra Kumar Rai,J.	

Re: Civil Misc. Modification Application No.7/2022.

1. No case for modification is made out.
2. Application is rejected.

Order on Writ Petition

1. Heard Sri Rishi Kant Rai, holding the brief of Mr. Shriprakash Rai, learned counsel for the petitioners, Mr. Rahul Srivastava, learned counsel for private respondent and learned standing counsel for the state respondents.
2. Brief facts of the case are that in the basic year of the consolidation operation, khata no.87 situated in village Bagheli Tappa Netwar, Pargana Binayakpur, Tehsil Naugarh, District Basti was recorded in the name of deceased respondent no.2/Smt. Sarju Dei. Against the entry of the basic year, an objection under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "U.P. C.H. Act") was filed on behalf of the petitioners which was registered as Case

No.185, under Section 9-A(2) of the U.P. C.H. Act. In the aforementioned objection, 4 issues were framed and parties have adduced oral as well as documentary evidences in support of their cases. The Consolidation Officer vide order dated 4.2.1975 directed to record the names of the petitioners over khata in question after expunging the names of respondent no.2/Sarju Dei. Against the order of the Consolidation Officer dated 4.2.1975, appeal under Section 11(1) of the U.P. C.H. Act was filed by respondent no.2 which was registered as Appeal No. 4844, under Section 11(1) of the U.P. C.H. Act. The aforementioned appeal was heard by the Assistant Settlement Officer of Consolidation and the same was dismissed vide order dated 13.11.1975. Against the appellate order dated 13.11.1975, revision under Section 48 of the U.P. C.H. Act was filed by respondent no.2 which was registered as Revision No.74, under Section 48 of the U.P. C.H. Act. The aforementioned revision was heard and allowed by the Deputy Director of Consolidation vide order dated 30.4.1983, setting aside the order of the Consolidation Officer dated 4.2.1975 and that of the Assistant Settlement Officer of Consolidation dated 13.11.1975 as well as maintaining the basic entry of khata no.87. Hence, this writ petition for the following reliefs:-

"(a) Issue a writ of certiorari, quashing the order of Deputy Director of Consolidation dated 30.4.1983.

(b) Issue any writ, order or direction which this Hon'ble Court may deem fit."

3. This Court admitted the writ petition on 9.9.1983 and stayed the dispossession of the petitioners from the plot in question in pursuance of the impugned revisional order.

4. Counsel for the petitioner submitted that against the basic year entry of khata in question, title objection was filed by the petitioners and the Consolidation Officer after framing issues and giving parties to lead evidence in accordance with law, has allowed the title objection and directed to record the name of the petitioners over the plot in question. He further submitted that the title appeal filed by respondent no.2, has been dismissed recording finding of fact that petitioners are the legal heirs of Murali Prasad, as such, they are entitled to be recorded over the property belonging to Murali Prasad rather deceased respondent no.2/Sarju Dei. He further submitted that will deed has not been filed before the Consolidation Officer nor has been proved in accordance with law, as such, no right will accrue in favour of Shiv Karan for executing the sale deed in favour of deceased respondent no.2. He also submitted that in respect to another village, namely, Khardiha, the plot of khata no.59 was ordered to be recorded in the name of petitioners vide order dated 8.12.1973, passed by the Assistant Consolidation Officer in case No.5454 and no challenge has been made to the order dated 8.12.1973 directing to record the name of the petitioners as the legal heirs of Murali Prasad in respect to village Khardiha. He submitted that the Deputy Director of Consolidation has exceeded his revisional jurisdiction without reversing the finding of fact recorded by the Consolidation Officer and the Assistant Settlement Officer of Consolidation in accordance with law. He submitted that petitioners are still in possession over the plot in question. He also submitted that the impugned revisional order should be set aside and the order passed by the Consolidation Officer and the Assistant Settlement Officer of Consolidation should be affirmed.

5. On the other hand, learned counsel for the private respondent submitted that in the basic year of the consolidation operation, respondent no.2/Smt. Sarju Dei was rightly recorded on the basis of the sale deed executed by Shiv Karan. He further submitted that Shiv Karan was recorded on the basis of will deed in the proceeding under Section 33/34 of the U.P. Land Revenue Act and no challenge was made either with regard to the mutation order passed in favour of Shiv Karan or the sale deed executed in the year 1971 in favour of deceased respondent no.2-Sarju Dei. He submitted that for the first time, the objection under Section 9-A(2) of the U.P. C.H. Act has been filed when the village came under consolidation operation. He submitted that the finding of fact has been recorded by the Deputy Director of Consolidation while allowing the revision to the effect that the petitioners cannot be recorded over the plot in question as no challenge has been made to the will deed, mutation order passed on the basis of will deed as well as the sale deed dated 19.7.1971 in favour of deceased respondent no.2. He submitted that no interference is required against the revisional order passed by the Deputy Director of Consolidation and the writ petition is liable to be dismissed. He also submitted that the order dated 8.12.1973 passed in respect to the property situated in village Khardiha will not come in the way of the contesting respondent to claim the right in the village Bagheli as the will deed initially was executed in favour of Shiv Karan and subsequently Shiv Karan executed sale deed in favour of respondent no.2 which has not been cancelled by any court of law, as such, there is no illegality in the order passed by the Deputy Director of Consolidation.

6. I have considered the arguments advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that in the basic year of the consolidation operation, khata no.87, situated in village Bagheli was recorded in the name of deceased respondent no.2-Sarju Dei. There is also no dispute about the fact that the title objection filed by the petitioners was allowed by the Consolidation Officer and the order was maintained in title appeal filed by deceased respondent no.2. There is also no dispute about the fact that the title revision filed by respondent no.2, has been allowed and basic year entry has been maintained.

8. In order to appreciate the controversy involved in the matter, the perusal of the issues framed in the suit will be relevant which are as under:-

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9. The finding of fact recorded by Consolidation Officer on Issue No- 1 to 4 will be also relevant for perusal which are as under:-

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10. The Consolidation Officer has considered the evidence adduced by the parties and has held that in respect to the property situated in village Khardiha, petitioners were ordered to be recorded in Case No.5454 vide order dated 8.12.1973 and no challenge has been made by the contesting respondent with respect to the entry made in village Khardiha. The Consolidation Officer has also recorded a finding that the petitioners were minor when the mutation proceeding was conducted and the name of the other side was recorded accordingly the Consolidation Officer directed to record the name of the petitioners over the plot of khata No- 87 after expunging the name of deceased respondent no.2. The order of the Consolidation Officer has been maintained in appeal by the Assistant Settlement Officer of Consolidation. In the revision, which was filed in the year 1975, but was decided on 30.4.1983, the orders of the Consolidation Officer and that of the Assistant Settlement Officer of Consolidation were set aside on the ground that the order of mutation passed on the basis of will deed as well as the sale deed, has not been challenged in proper manner, as such, the basic year entry cannot be expunged by way of title objection filed by the petitioners.

11. The finding of fact recorded by the Consolidation Officer as well as Assistant Settlement Officer of Consolidation demonstrate that in respect to another village Khardiha, the petitioners have been recorded as legal heirs of deceased Murali Prasad and no challenge has been made by the contesting respondent, as well as petitioners were minor when the name of Shiv Karan was ordered to be recorded in the summary proceeding, as such, the revisional order passed by the Deputy Director of Consolidation, cannot be sustained in the eye of law as petitioners are challenging the basic year entry by way of title objection under Section 9-A(2) of the U.P. C.H. Act which has been decided by the Consolidation Officer after considering the oral and documentary evidence adduced by the parties coupled with the fact that the issues were framed and discussed by the Consolidation Officer.

12. Considering the entire facts and circumstances of the case, the impugned revisional order dated 30.4.1983 passed by the Deputy Director of Consolidation/respondent no.1 cannot be sustained in the eye of law and the same is hereby set aside.

13. The writ petition stands allowed and the order dated 4.2.1975 passed by the Consolidation Officer is hereby affirmed.

14. No orders as to cost.

Order Date :- 1.4.2025 C.Prakash (Chandra Kumar Rai, J.)