

Sanwat

Vs

Deputy Director of Consolidation and Others

Civil Appeal No. 518 of 1971

(D. A. Desai, A. N. Sen, R. B. Misra JJ)

29.03.1984

ORDER

1. This appeal arises out of a proceeding for consolidation of holdings commenced under U. P. Consolidation of Holdings Act, 1954 in respect of Khata No. 23 in village Rasulpur Mafi in District Moradabad in the State of U. P. The dispute is whether Smt. Hardai respondent 2 had inherited the share of her husband and was entitled to retain it as a co-sharer. Mr. Sanwat, the present appellant filed an objection in consolidation proceedings urging that Smt. Hardai was not entitled to a share in the land because on the death of her husband Darya who was admittedly a co-sharer she had contracted a kareva form of marriage with one Govinda. After a remand at one stage, it was ultimately held that the present appellant had failed to prove that after the death of Darya, the first respondent, Smt. Hardai had ever contracted Kareva form of marriage. This finding led to the upholding of the right claimed by Smt. Hardai that she had a share as co-sharer in Khata No. 23. The present appellant filed Writ Petition No. 4217 of 1965 in the Allahabad High Court questioning the correctness of the decision of Deputy Director of Consolidation exercising revisional power that Smt. Hardai was a co-sharer as the widow of Darya. A Division Bench of the High Court dismissed the petition in limine observing that "neither a question of law nor an error in exercise of jurisdiction was brought to the notice of the an error in exercise of jurisdiction was brought to the notice of the High Court". But as the valuation of the land involved in the dispute was over Rs. 20,000, this appeal was filed by certificate under Article 133(1) (a) granted by the High Court on the basis of valuation of the property first involved in the dispute and continued to be the same till the matter reached this Court.

2. Mr. D. D. Sharma, learned counsel for the appellant drew our attention to a statement purporting to be in the name of Smt. Hardai dated August 24, 1967 and urged that a certified copy of the statement was annexed to the petition for obtaining certificate and that once the statement is taken into consideration it is satisfactorily established on the admission of Smt. Hardai is dated August 24, 1967. The writ petition was dismissed in limine by a Division Bench of the High Court on January 6, 1966. During the initial journey of the proceedings on the first occasion and second journey after the remand till its culmination in the dismissal of the writ petition in limine the statement now relied upon did not see the light of the day. The explanation for production at a very late stage is that the appellant did not know about the existence of the statement. This does not carry conviction because the appellant has been contending that Smt. Hardai cannot claim to be a co-sharer since the inception of the proceedings for consolidation somewhere in 1960. It is not possible to believe that he would have no inkling of other proceeding in which Smt. Hardai had to appear and give her statement. This is one of the reasons for which we are not inclined to look into the statement. Additionally there are numerous infirmities in the statement which leave us guessing about the genuineness of the statement. To start with the first infirmity which flies in the face is that the

statement appears to have been recorded in a court proceeding but in the cause title the name of the court or its place of sitting is kept blank. Further while recording the statement there is blank in the first line about the caste of Smt. Hardai. It appears that she was permitted to be cross-examined by the learned advocate for the plaintiff. Then follows the cross-examination on behalf of the defendants. Was she a court witness? How can both sides enjoy the privilege of cross-examining her unless she was declared hostile. The cause title of the statement shows that the proceeding was between Mallu and Attar Singh. But no attempt is made to connect them or either of them with the parties to the present proceedings. Further this statement appears to have been recorded by one Baldev Singh, whose status and designation are initially recorded as a peon. The question is whether a peon was entitled to administer the oath and record the statement. At the foot of the statement there is an endorsement :

"Recorded on my dictation in open court."

Below the endorsement it is stated that it was signed by the persons whose signature, designation and status are illegible. Smt. Hardai was admittedly illiterate. Her thumb-mark is also illegible. Who attested her thumb is not indicated. But the major infirmity is that Smt. Hardai was never confronted with her alleged statement and she was not given an opportunity to affirm, deny or explain the statement. When this was pointed out Mr. Sharma suggested a remand. After a quarter of a century during which these proceedings are pending we consider the request unjust and unfair and reject it.

3. If all the infirmities enumerated here are summed up, it would be impossible to place any reliance on this so-called statement of Smt. Hardai which contains an admission. We, therefore, propose to place no reliance on it.

4. Now if the alleged statement of Smt. Hardai is excluded from any or further consideration no case is made out for interference with order under challenge. Accordingly, this appeal fails and is dismissed with no order as to costs because unfortunately the other side has not appeared.

</html