

Hasan Ali and Others

Vs

State of U. P. and Others

Civil Appeal No. 8386 of 1983

(K. N. Saikia, S. C. Agarwal JJ)

27.07.1990

ORDER

1. This appeal is from the judgment of the High Court of Judicature at Allahabad, Lucknow dated August 20, 1980 in Writ Petition No. 648 of 1978. The High Court allowed the writ petition setting aside the concurrent orders of all the three consolidation authorities holding that the writ petitioners, respondents 5 and 6 herein, were entitled to get back possession.

2. The disputes plots were entered in the basic year in the name of respondents 5 and 6, Yar Mohammed and Iqbal Mohammed and on publication of basic year records, the appellants Hasan Ali, Nazar Ali and Maqbul Ali filed objections claiming the co-tenancy right in respect of Khata No. 365. They also claimed sirdari rights over one-third share of the plots in Khata No. 365 on the basis of possession. There being dispute between the parties the matter was referred to the Consolidation Officer before whom parties tendered oral and documentary evidence in respect of their cases. The Consolidation Officer rejected the claim of co-tenancy rights but allowed the claim as to sirdari rights on the basis of recorded possession. Against the said order, the respondents 5 and 6 filed appeal before Settlement Officer (Consolidation) and the same having been dismissed they filed a revision application which too was dismissed.

3. The High Court held that the view as to possession taken by all the three consolidation authorities was manifestly erroneous inasmuch as the possession could have been only permissive and not adverse. We have perused the orders of the two consolidation authorities namely, the Settlement Officer and the Deputy Director and find that the concurrent finding was based on correct appreciation of the records of right and of the evidence on record. The High Court itself observed that entries were found in the names of the appellants. On perusal of the impugned judgment of the High Court, we are of the view that the High Court, while exercising jurisdiction under Article 226 of the Constitution of India, was not justified in arriving at a contrary conclusion in face of the clear evidence of possession and entries in the records of right sufficiently discussed by the three consolidation authorities. We do not agree with the analysis of the High Court as to the nature of the appellant's possession. We, accordingly, set aside the impugned judgment of the High Court and restore that of the consolidation authorities.

4. There will be no order as to costs.

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