SUPREME COURT OF INDIA

Dharamraj

Vs.

Chhitan

C.A.No.7507 of 1997

(Arijit Pasayat and Tarun Chatterjee JJ.)

06.11.2006

JUDGMENT

TARUN CHATTERJEE,J.

This appeal is directed against the judgment and order dated 12th March 1987 passed in W.P. No. 2736/1976 by the High Court of Judicature at Allahabad (Lucknow Bench) whereby the Writ Petition filed by Chhitan, Chandrika and Karia, a minor son of Jai Ram, represented by his mother and guardian Smt. Sonara being respondent Nos. 1 to 3 in this appeal were allowed and decision of the consolidation authorities were set aside. By allowing the said Writ petition, the appellants were deprived of their alleged shares in ancestral tenancy and giving sole tenancy rights to respondent Nos. 1 to 3 over the land of Khata No.111 in Village Balrampur, Pargana and Tehsil Tanda, District Faizabad (hereinafter referred to as the "said land"). We are not concerned with the other plots relating to Khata No.13 as the disputes raised in this case appeal does not relate to the said land. Therefore, we restrict ourselves in this appeal in respect of the dispute only relating to the said land. Objections filed under section 9A(2) of the U.P. Consolidation of Holdings Act 1953 (in short "the Act") by the parties in this appeal in respect of the entries in Khata No.111 and 13 relating to basic year 1378 Fasli were referred to the Consolidation Officer for adjudication. We may reiterate, as noted herein earlier, that in this appeal the questions need to be decided only in respect of the lands in Khata No.111 and not Khata No.13. It is not in dispute that the lands relating to Khata No.111 in the basic year were recorded in the name of Saltanati. Subsequently, in the year 1338 F this land was recorded in the name of Adhin by way of settlement. On the death of Adhin the said land was recorded in the name of Jabbar and then subsequently in the name of Jai Ram. Since Jai Ram was not traceable in his place Smt. Sonara his wife and minor son Karia had represented the estate as the legal heirs and representatives of Jai Ram. Smt. Sonara entered into a settlement with Chittan son of Dubri, Chandrika son of Sripat. Thereby the minor Karia represented by his mother Smt. Sonara agreed to have co- tenancy rights in respect of Khata No.111, with Chittan and Chandrika. On the other hand, the appellants representing Daya Ram and others jointly claimed co- tenancy rights in respect of the said land on the ground that the said lands were acquired by their ancestor Saltanati and thereafter Jokhan son of Adhin was recorded in the representative capacity. According to the appellants, the family remained joint till some time when the land was recorded in the name of Adhin. Binda and Sanehi on the death of Salatanati separated from their joint family and Adhin separated with his nephews Bhulai and Dukhi. In this manner, the said land of Jokhan and Salatanati

were distributed in the joint family and the shares were divided equally. However, the said lands continued to be recorded in the name of Adhin. After some time, Bhulai and Dukhi, who were joint with Adhin also separated from him and by partition the lands were divided. In the same manner, Binda and Sanehi lived jointly for some time and thereafter separated by partition. The entire lands of Khata No.111 continued to remain recorded in the name of Adhin, even though Dukhi, Bhulai, Binda and Sanehi cultivated their lands separately. After the death of Adhin, the said lands came to be recorded in the name of his son Jabbar and thereafter on the death of Jabbar the same was recorded in the name of his son Jai Ram. At this stage, to understand the Pedigree of the parties, it would be appropriate to give a Pedigree chart herein now which is not now in dispute as was given by the appellants.

The Pedigree chart which was set up by the appellants is given below:-

The Consolidation Officer by his order dated 6th June 1972 declared the appellants or their predecessor in interest as co-tenure holders in respect of the said land along with Jai Ram and determined the share on the basis of the Pedigree, as noted above.

Aggrieved by the order dated 6th June 1972 of the Consolidation Officer respondent Nos. 1 to 3 filed an appeal whereas Daya Ram and others preferred an appeal also. However, the appeals filed by the parties before the appellate authority i.e. Assistant Settlement Officer were dismissed. Revisions were filed by the parties before the Deputy Director, Consolidation which were disposed of by allowing the same partly and the following order was passed :

"It is ordered that over the basic year in Khata No. 13 the names of Chhitan (respondent No.1), Jai Ram (Respondent No.2) and Chandrika (Respondent No.3) alone shall be entered. In Khata No.111 over plot Nos. 152, 154, 161, 425, 435, 442, 475, 481, 465 and 511 also the names of the respondent Nos. 1 to 3 shall only be entered. Over the remaining plots of Khata No.111 in accordance with the orders of Consolidation Officer and Assistant Settlement Officer, Consolidation, the names of both the parties shall be entered as co-tenants."

At this stage, let us take up the question of accepting the Pedigree chart set up by the contesting parties. It was the case of Daya Ram and others (appellants herein) that Bekaru was the son of Jokhan whereas the case of respondent Nos. 1 to 3 was that Bekaru was the son of Saltanati. However, the respondent Nos. 1 to 3 had failed to prove that Bekaru was the son of Saltanati. On a finding of fact arrived by the consolidation authorities particularly the revisional authorities, it is not in dispute now that Bekaru was the son of Jokhan and therefore the Pedigree set up by the appellants must be accepted.

As quoted herein above, the Deputy Director, Consolidation held that in Khata No.111 plot Nos. 152, 154, 161, 425, 435, 442, 475, 481, 465 and 511 the names of Chittan, Jai Ram and Chandrika be entered and over the remaining plots of Khata No.111 the findings of the Consolidation Officer and the Assistant Settlement Officer were accepted by him. That is to say in respect of the remaining plots in Khata No.111, the respondent shall be entered as co-tenure holders in respect of the remaining plots of Khata No.111.

It is this order of the revisional authority passed in the aforesaid revision cases Daya Ram and others filed a writ application in the High Court of Allahabad, which came to be registerd as W.P. No.2838/1976. It was, inter-alia, the case made out by Daya Ram and others in the aforesaid writ

application that the Deputy Director of Consolidation acting as revisional authority had erred in not holding the appellants who ought to have been held as co-tenure holders of the said land along with respondent Nos. 1 to 3 and also remaining plots of Khata No.111. On the other hand, the respondent Nos. 1 to 3 also filed a writ application being W.P. No. 2736/1976 against the order passed by the Deputy Director, Consolidation in revision cases challenging the order of the Deputy Director, Consolidation on the ground that in the admitted facts of the present case respondent Nos. 1 to 3 ought to have been held to be sole tenure holders in respect of the said lands.

By the impugned judgment, the High Court after hearing the parties disposed of the aforesaid two writ petitions by passing the following order: "In the result, the writ petition No.2838/76 filed by Daya Ram and others is dismissed being devoid of merits and writ petition No. 2736/76 filed by Chitan and others is hereby allowed and the order dated 13.8.1976 passed by Deputy Director, Consolidation in so far as it relates to ten plots of Khata No.111 mentioned in the said order by which Daya Ram and others have been given co-tenancy rights is hereby quashed and the petitioners Chitan, Chandrika and Karia under guardianship of Smt. Somura are directed to be recorded as sole tenure holders to entire land of Khata No.111 and also Khata No. 13 of village Balrampur, Tehsil and Pargana Tanda, District Faizabad. No order as to costs."

While disposing of the writ petitions, the High Court held in substance as under:-

A. The land in dispute did not devolve upon Adhin from Saltanati.

B. The land in Khata No.111 was resettled by then landlord giving certain parts to Adhin and certain other plots to others. Therefore, it was a fresh settlement and there was no continuity in the identity of the holding.

C. Accepting the findings arrived at by the consolidation authorities or on the admitted facts, the High Court held that the disputed holding did not come in tact in the identical form and only some of the plots of the holdings belonging to common ancestral were found included in the disputed holding and therefore that would not make an ancestral holding so as to give a share in it to the appellants on that ground nor it would be permissible to pick up those plots from the holding and declare them to be the ancestral property and give a share in those plots to the appellants. It is this order of the High Court, which is under challenge before us in respect of which leave was granted. We have heard the learned counsel on either side and examined carefully all the orders of the Consolidation authorities and finally the impugned judgment of the High Court.

It must be brought on record that before us, no submission has been made in respect of the appeal filed by Daya Ram and others challenging the portion of the order which had gone against them. We restrict ourselves only on the question whether the claims of respondent Nos. 1 to 3 in respect of Khata No.111 were justified or not as granted by the High Court. On behalf of the appellants, the main contention of Dr. R.G. Padia, learned senior counsel appearing for them was to the effect that it was not open to the High Court to set aside the findings of fact arrived at by the consolidation authorities in the exercise of its extra ordinary jurisdiction under Art. 226 of the Constitution. It was, however, not the submission of Dr. Padia that it was not open to the High Court to exercise its jurisdiction when the consolidation authorities had erred in deciding a question of law on the facts admitted or proved by the parties before them. Dr. Padia thus contended that the High Court erred in setting aside the finding of fact of the consolidation authorities by substituting its own views on the question of fact under Art. 226 of the Constitution.

Secondly, it was contended by Dr. Padia that since two of the co-tenure holders were not made parties in the writ application who are appellant Nos. 13 and 14 in the appeal, the writ petitions heard and disposed of in their absence could not be said to be maintainable in law.

The aforesaid two-fold submissions of Dr. Padia were, however, contested by Mr. O.P. Sharma, the learned senior counsel who appeared for the respondent Nos. 1 to 3. Let us therefore examine the main question, as raised by the learned counsel for the parties and noted herein earlier in detail. We have already discussed the impugned judgment of the High Court and the order of all the three consolidation authorities. It is now well settled law that in the exercise of its extra ordinary writ jurisdiction High Court is not supposed to interfere with the findings of fact arrived at by the consolidation authorities unless and until High Court concludes that such findings of fact are either perverse or based on no evidence. It may also be kept in mind that Mr. Sharma appearing for the respondent Nos. 1 to 3 also had not advanced any submission to the extent that the findings of fact of the authorities in the facts and circumstances of the case could at all be said to be perverse or based on no evidence. It was the submission of Mr. Sharma that on the admitted fact and the findings arrived at by the consolidation authorities the High Court has only declared the law on such admitted and proved facts.

It is well settled position of law by catena of decisions of this Court that in the writ jurisdiction of the High Court, it is always permissible for it to correct the decision of the consolidation authorities or to declare the law on the basis of facts and proof of such facts. For this proposition, we may usefully refer to a decision of this Court in the case of Mukunda Bore vs. Bangshidhar Buragohain & Ors. reported in AIR 1980 SC 1524 in which this Court indicated as to when High Court can interfere with the orders of quasi judicial authority. This observation may be quoted which is as follows:

"While on facts the order of the Board under appeal is not impeccable, we must remember that under Art. 226 of the Constitution a finding of fact of a domestic tribunal cannot be interfered with. The High Court in the exercise of its special jurisdiction does not act as a Court of Appeal. It interferes only when there is a jurisdictional error apparent on the face of the record committed by the domestic tribunal. Such is not the case here. It is true that a finding based on no evidence or purely on surmises and conjectures or which is manifestly against the basic principles of natural justice, may be said to suffer from an error of law. In the instant case, the finding of the Board that the appellant does not possess the necessary financial capacity, is largely a finding of fact under Rule 206(2) of the Assam Excise Rules, an applicant for settlement of a shop is required to give full information regarding his financial capacity in the tender. Such information must include the details of sources of finance, cash in hand, bank balance, security assets, etc. Then, such information is verified by the Inquiry Officer."

(Underlining is ours)

In Syed Yakoob vs. K.S.Radhakrishnan & Ors. reported in 1964 (5) SCR 64 this Court observed as follows:-

"finding of fact cannot be challenged in a proceeding on the ground that the relevant and material evidence was insufficient to sustain the finding and that adequacy or sufficiency of evidence or an inference of fact to be drawn from the evidence or finding of fact are entirely within the jurisdiction

of the Tribunal."

Again in the case of State of West Bengal vs. A.K. Shaw reported in AIR 1990 SC 2205 this Court held that if the quasi judicial tribunal had appreciated the evidence on record and recorded the findings of fact, those findings of fact would be binding to the High Court. By the process of judicial review, the High Court cannot appreciate the evidence and record its own findings of fact. If the findings are based on no evidence or based on conjectures or surmises and no reasonable man would on given facts and circumstances come to the conclusion reached by the quasi-judicial authority on the basis of the evidence on record, certainly the High Court would oversee whether the findings recorded by the authority is based on no evidence or beset with surmises or conjectures.

In view of the law settled by this Court on the question under consideration, let us consider whether the High Court was justified in reversing the order of the consolidation authorities by declaring that the names of Respondent Nos. 1 to 3 should be entered as co-tenure holders in respect of the plots recorded in Khata No.111. It would be fruitful for us to look into the findings arrived at not only of the High Court but also of the consolidation authorities. The Consolidation Officer as the original authority under the Act on consideration of the material on record held the appellants to be co-tenure holders in respect of the said land with respondent Nos. 1 to 3. In appeal, the Assistant Settlement Officer held that the Consolidation Officer was justified in holding that the names of the appellants with respondent Nos. 1 to 3 should be entered in respect of the lands recorded in Khata No.111, i.e. the case made out by the respondent Nos. 1 to 3 that they may be declared as sole tenure holders in respect of Khata No.111 was not accepted. As noted herein earlier, the Deputy Director held the respondent Nos. 1 to 3 in this appeal to be exclusive tenure holders of ten plots and in respect of the remaining plots of this Khata, the Deputy Director, Consolidation directed the names of the appellants as well as the respondent Nos. 1 to 3 should be recorded as co-tenure holders.

We have already put on record that the High Court, however, reversed the findings and order of the Deputy Director, Consolidation by holding that the lands recorded in the entire Khata No.111 must be recorded in the names of respondent Nos. 1 to 3. It was the case of the appellants in this appeal before the High Court that since the lands recorded in Khata No.111 initially belonged to Saltanati and they represented his branch and that of Bekaru, son of Jokhan, they were entitled to get shares as per pedigree set up by the appellants. It was also contended before the High Court that the Deputy Director, Consolidation fell in error in holding the respondent Nos. 1 to 3 to be the exclusive tenure holders of ten plots of Khata No.111 which according to them belonged to Saltanati. On the other hand, it was the stand of the respondent Nos. 1 to 3 that the entire holding of the said Khata was acquired by Adhin and was recorded in his name in 1338 F. Therefore, lands recorded in Khata No.111 which initially belonged to Saltanati was resettled by the then landlord with Adhin and others. It was the stand of the respondent Nos. 1 to 3 that the lands recorded in the said Khata in the name of Adhin in the year 1338 F, certain other plots were also recorded therein. Accordingly, it was urged that the land in dispute was acquired by Adhin by way of settlement which continued to be in his possession and on his death it had devolved upon respondent Nos. 1 to 3 exclusively. The appellants cannot claim any right, title and interest in respect of entire Khata No.111 nor can they acquire co- tenure holders rights on the ground that the land was ancestral holding.

From the above discussion, it is therefore clear that although originally the said land had belonged to Saltanati but subsequent event had clearly indicated that it was recorded in the name of Adhin and therefore the respondent Nos. 1 to 3, admittedly the successors in interest of the estate of Adhin, were entitled to succeed. Accordingly, there cannot be any doubt that the identity of the said land

was changed from Saltanati to Adhin and thereafter to respondent Nos. 1 to 3. Even all the findings arrived at by the Deputy Director, Consolidation in respect of 10 plots in Khata No.111, as noted herein earlier, the names of respondent Nos.1 to 3 would exclusively be entered. At the same time, the Deputy Director, Consolidation had also held that the names of the appellants should be included in remaining plots of Khata No.111. From the above admitted fact, it is clear that the lands recorded in the said Khata were directed to be recorded in different names. From this it is apparent that the identity of the lands in Khata No.111 were directed to be changed which is not permissible in law. Such being the position, it must be held that the respondent Nos. 1 to 3 being the successors in interest from the side of Adhin whose name was duly recorded in respect of the said land were entitled to succeed to the said land on the basis of identity and resettlement of the same. If the identity of the land has been changed, the appellants could not get the property on the basis that originally this land had been recorded in the name of Saltanati and that the said land was their ancestral property. Therefore, the pedigree set up at the instance of the respondent Nos. 1 to 3, even if it cannot be relied on, the respondent Nos. 1 to 3 were entitled to succeed on the basis of the aforesaid fact.

We must also keep it on record that it was not disputed before the consolidation authorities nor it was disputed by the learned counsel for the appellants before us that the identity of the said land had changed in view of the resettlement in favour of Adhin. That being the position, we must hold that the appellants could not acquire any co-tenancy rights even if the appellants succeeded in proving the pedigree set up by them and also acquisition of the land by common ancestor. Accordingly, the Deputy Director of Consolidation was in error in giving co tenure holder rights to the appellants herein in some of the plots of Khata No.111 on the ground that those plots initially belonged to Saltanati and it was ancestral holding of appellants. In view of our discussions made herein above, we therefore come to the conclusion that the High Court while reversing the order of the Deputy Director, Consolidation had not set aside the findings of fact arrived at by them but on the other hand has declared the question of law on the admitted facts and the findings of fact arrived at by the consolidation authorities.

As noted herein earlier, Dr. Padia contended that since two of the co-tenure holders were not made parties in the writ application, who are Ram Bachan and Subhash Chandra appellant Nos.13 and 14 in this appeal, the writ petition ought to have been dismissed by the High Court solely on the ground that in their absence the writ petition could not be said to be maintainable in law. This submission of Dr. Padia cannot be accepted for the simple reason that Ram Bachan and Subhash Chandra appellant Nos. 13 and 14 claimed their share in the said land being descendants of Saltanati. In view of our findings made herein above that Saltanati had lost his right, title and interest in respect of the said land because of the fact that the said land was resettled and recorded in the name of Adhin, it cannot be said that Ram Bachan and Subhash Chandra, appellant Nos. 13 and 14, herein ought to have been made parties to the writ application as they were not found to be co-tenure holders in respect of the said land. Accordingly, for non- inclusion of Ram Bachan and Subhash Chandra appellant Nos. 13 and 14 in the Writ Petition filed before the High Court, it cannot be said that the writ petition was not maintainable in law. In view of the aforesaid finding, the question of abatement on the death of Siya Ram (father of Subhash Chandra) could not arise at all. Accordingly, in our view, Ram Bachan and Subhash Chandra appellant Nos.13 and 14 were not at all necessary parties to the Writ Petition No.2736/1976 and the question of non-maintainability of the writ petitions before the High Court in their absence could not arise. It is, therefore, not necessary to deal with the decisions cited by Dr.Padia in connection with the question of abatement on the death of Siya Ram and maintainability of the writ petition for their non- inclusion. Accordingly, this question is answered in the negative.

For the reasons aforesaid, this appeal fails and the same is dismissed without any order as to costs.