

SUPREME COURT OF INDIA

Subba

Vs.

Debiya

C.A.No.361 of 2009

(S.B. Sinha, Lokeshwar Singh Panta and B. Sudershan Reddy JJ.)

22.01.2009

JUDGMENT

B.Sudershan Reddy, J.

1. Leave granted.
2. This appeal is directed against the judgment and order of Allahabad High Court dated 3.7.2006 in CMWP No. 5813/85 setting aside the judgment and order of Revisional Court .
3. The facts leading to filing of this appeal are: one Smt. Sonia resident of village Chhibab was married in Zari with Mengi. Only two daughters namely Bhagwania and Maiki were born out of the wedlock.

“The appellants herein Subba and Sudish are the sons of Maiki. After the demise of Mengi, Sonia inherited the property in question from the deceased Mengi. It is alleged that after the death of Mengi one Teni who was working for Sonia as labourer developed illicit relations with Sonia as a result one son Debiya respondent herein was born. Be it noted, as per the version of the appellants Debiya is not the legal son of Sonia and Mengi, therefore, he could not be the legal heir to succeed the inherited property of Sonia. Teni died in the year 1956. Sonia died in April, 1977. In the year 1978, the appellants herein filed objections under the provisions of *U.P. Consolidation Holdings Act, 1953* before the Assistant Consolidation Officer, Zari, District Banda for declaration as legal heirs of Sonia and their names to be recorded in the revenue records in place of Sonia. Debiya also filed his objections whereunder he claimed that the disputed property was self-acquired property of his father Teni. The Consolidation Officer vide order dated 7.7.1980 declared Debiya to be the sole legal heir of Sonia and Teni. The appellants herein being aggrieved by the said order filed Appeal No. 1838 before the Assistant Settlement Officer Consolidation, Jhansi Camp-Banda which was dismissed vide order dated 25.9.1980. Thereafter the appellants filed revision no. 1656 which was allowed by the Assistant Director Consolidation vide order dated 19.4.1985 setting aside the judgment and order of

Settlement Officer Consolidation and directed the names of the appellants to be recorded in respect of the said property left behind by Sonia. Being aggrieved by the revisional order Debiya-the respondent herein filed writ petition before the High Court. The High Court while allowing the writ petition quashed the judgment and order of Assistant Director Consolidation and restored the order of Consolidation Officer and Settlement Officer Consolidation. Hence this appeal.

4. We have elaborately heard the learned counsel for the parties and perused the impugned judgment and the material made available on record.

5. The High Court mainly relied upon the admission stated to have been made by the appellants herein in their objections to the effect that the respondent was born out of "illegal relationship of Teni and Sonia." The whole conclusion of the High Court and its decision to reverse the order of the Revisional Court is based upon the said admission.

6. The question that arises for consideration in this appeal is as to whether the High Court committed any error apparent on the face of the record in coming to such conclusion that the respondent herein was born out of the relationship between Teni and Sonia? Secondly, whether the evidence available on record supports the conclusion reached by the High Court in a proceeding under *Article 227 of the Constitution of India*? Thirdly, whether is there any such admission at all made by the appellants herein in their objections?

7. The evidence adduced on behalf of the respondent herein is not clear as regards the birth of Debiya out of the relationship between Teni and Sonia. No doubt the entries in the voter list of the year 1959 as well as 1975 the name of the respondent was shown as son of Teni but that evidence of respondent itself is not of any assistance to arrive at any conclusion that he was born out of the relationship between Teni and Sonia. He expressed his ignorance as to when and where Teni died.

8. So far as the evidence of the appellants is concerned, the witnesses examined on their behalf in clear and categorical terms stated that Teni did not belong to their village Zari but he came to that village in search of work along with the respondent and he was engaged to work as labourer by Sonia.

9. There is no dispute whatsoever that entries in the revenue records before the commencement of lis between the parties were in the name of Sonia and Mengi in respect of the property in question. It is also not in dispute that Sonia was the legally wedded wife of Mengi. It is out of the wedlock of Sonia and Mengi, two daughters namely Bhagwania and Maiki were born. The appellants are the sons of Maiki - the deceased daughter of Sonia.

10. In the circumstances it becomes difficult to accept the case set up by the respondent herein that he inherited the property after the death of Sonia. There is no acceptable evidence that he was born out of the relationship between Sonia and Teni. In order to overcome this difficulty Debiya appears to have set up altogether a different case that the possessory right

of land was acquired from one Bhagwat Prasad Zamindar. But there is no acceptable evidence except the assertion of the respondent.

11. We have perused the objections filed by the appellants herein before the authority in which there is no such admission to the effect that the respondent was born out of the "illegal relationship between Teni and Sonia" or any such admission in the evidence of the appellants. It is in the evidence of the appellant that Mengi died about 55 years ago as told to them by none other than Sonia. It is also in their evidence that the respondent herein is the son of Teni and not of Sonia. Teni was merely cultivating the land on behalf of the appellants. It is also in their evidence that Sonia and respondent both lived separately and never lived together. The other witnesses on behalf of the appellants reiterated and supported the version given by the appellants that Teni does not belong to their village but came to the village in search of the work along with Debiya. It is in their evidence that after the death of Mengi, Sonia did not give birth to any child/children.

12. That so far as the evidence produced on behalf of the respondent to the effect that Sonia and Mengi did not have any issues at all out of their wedlock does not inspire any confidence. It is a self-serving statement which cannot be accepted. No evidence has been produced by the respondent that the property was acquired by Teni from one Bhagwat Prasad Zamindar as claimed by him. There is no record to that effect maintained by the revenue administration. On the contrary, the entries made in Khasra 1333 and 1334F in respect of the land in question support the case of the appellants inasmuch as the name of Sonia has been recorded in the said documents.

13. That the Revisional Court after elaborate consideration of the matter and upon appreciation of the evidence available on record in categorical terms found that even during the lifetime of Teni and for a very long time the name of Sonia has been continuously recorded in all the revenue records. It is for that reason the Revisional Court found that the plea set up by the respondent herein that the property in question was that of self-acquired property of his father Teni was not acceptable. The Revisional Court also found that the name of the respondent herein had never been entered in any of the records after the death of his father Teni. The Revisional Court found that had it been self-acquired property of Teni the name of the respondent would have been found place in the revenue records after the death of Teni.

14. For all the aforesaid reasons it is clear from the evidence and material available on record that the appellants herein never made any admission that the respondent was born out of the illegal relationship of Teni and Sonia nor there is any such admission made by them in their evidence. The finding recorded by the Revisional Court that the property was always held and possessed by Sonia as her absolute property does not suffer from any error. The finding that the appellants herein are the sons of Maiki - the deceased daughter of Sonia also does not suffer from any error as the same is based upon proper appreciation of evidence available on record. There is no evidence whatsoever to arrive at any proper conclusion that respondent herein was born out of the wedlock/relationship between Sonia and Teni.

15. In our considered opinion, the High Court ought not to have interfered in exercise of its jurisdiction under Article 227 of the Constitution of India with the decision of the Revisional Court which does not suffer from any factual and legal infirmities.

16. For all the aforesaid reasons, the impugned order is set aside. The appeal is accordingly allowed with no order as to costs.