

PETITIONER:
KOMAL & ANOTHER

Vs.

RESPONDENT:
DEPUTY DIRECTOR OF CONSOLIDATION, DEORIA & OTHERS

DATE OF JUDGMENT: 25/07/2000

BENCH:
S. RAJENDRA BABU., & SHIVARAJ V. PATIL.

JUDGMENT:

SHIVARAJ V. PATIL J.

Leave granted.

Briefly stated, the facts leading to the filing of this appeal are the following.

The property in dispute relates to Khata Nos. 22 and 142 of village Kermen Premwalia, Distt. Deoria. The respondents 3 to 7 and one Smt. Samundri filed objections before the Assistant Consolidation Officer and prayed that the name of the recorded tenure holders be expunged and their names may be recorded contending that one Smt. Rojhani was the tenure holder of the disputed property; she died in the year 1966 and they were entitled to the said property by succession. There was no dispute between parties that the properties belonged to Ram Subhag. The said property was recorded in his name in Khatauni of 1332 Fasali. The appellants contested the claim of Respondents 3 to 7 and Smt. Samundri on the ground that after the death of Smt. Rojhani in the year 1966, Mahaveer and Udit became entitled to succession under Section 171 of Uttar Pradesh Jamindari Abolition and Land Reforms Act, 1953 (for short the Act). In the said proceedings before the Assistant Consolidation Officer, the respondents examined Shanker and one Kuber Pandey in support of their claim. The Appellant No. 1 himself entered into witness box to support his claim and one Sudendar was also examined as DW-2. The Appellants contended that Mahadev, the husband of Smt. Rojhani died after the death of Ram Subhag, hence succession to Smt. Rojhani was governed by Section 171 of the Act. The Consolidation Officer by his order dated 3.5.1979 allowed the objections of the Respondents and granted relief. The appellants filed an appeal challenging the said order before the Assistant Settlement Officer, Consolidation. The said appeal was allowed on 2.8.80 and the order of the Assistant Consolidation Officer was set aside. This time the respondents filed a revision before the Deputy Director of Consolidation, questioning the validity and correctness of the order dated 2.8.80 passed by the Assistant Settlement Officer, Consolidation. The Deputy Director, on detailed examination of respective contentions in the light of the material placed on record, came to the conclusion that the order passed by the Assistant Settlement Officer, Consolidation, in appeal was not sustainable. In the view he took, the revision petition was allowed and the Order dated 2.8.80 passed in the appeal by the Assistant Settlement Officer, Consolidation, was set aside and the order dated 3.5.1979 of the Consolidation Officer was confirmed.

Aggrieved and dissatisfied by the said order dated 30.3.1981 passed in revision, the appellants filed Civil Misc. Writ Petition No. 9716/81 in the High Court of Judicature at Allahbad. The High Court after examining the rival submissions made, dismissed the writ petition finding no merit in it. Hence this appeal.

Having regard to the contentions raised and the nature of the dispute, it is necessary to look to the pedigree of the family of Ram Subhag, given below:-

Ram	Subhag	/
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Mahadev Mahaveer Udit / / /	Rojhani (widow) Komal Ram Chandra /	/
Samundri	Devi	(daughter)
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Shanker Aaras Satya Narain Kapil Dev Prabhu Nath		

In the order dated 30.3.1981 of the Deputy Director of Consolidation, it is recorded thus:-

"Both the parties admit that if Mahadev died during the life time of Ram Subhag and the name of Rojhani was however recorded during the life time of Ram Subhag, then it will be deemed to be self-acquired and after the death of Rojhani, it will not be decided under Section 171 but under Section 174 and in case Mahadev died after Ram Subhag, then it will be decided under Section 171 after the death of Rojhani."

Before us also, the legal position as indicated above was not disputed by the leaned counsel for the parties but they contested only with regard to the aspect whether Mahadev died during the life time of Ram Subhag or later. Hence, the decision in the case essentially depended on the finding of fact as to whether Mahadev died during lifetime of Ram Subhag or he survived Ram Subhag. In this view it is considered unnecessary to refer to the decisions cited.

Learned Senior Counsel for the appellants contended that Smt. Rojhani when examined in the suit filed under Section 176 of the Act stated that Mahadev died after the death of Ram Subhag; Shanker the respondent No. 3 also stated that Mahadev died after the death of Ram Subhag and one Kuber Pandey examined in the mutation case had also stated that Mahadev died after the death of Ram Subhag. According to the learned Senior Counsel, this evidence was binding on the respondents. He added that the copy of the death certificate of Mahadev filed at later stage was forged and fictitious.

Per contra, the learned counsel for the contesting respondents submitted that the Assistant Consolidation Officer (the original authority) and the Deputy Director of Consolidation (the revisional authority), looking to the evidence placed on record, both oral and documentary, were right and justified in accepting the case of the respondents. He added that the High Court also did not find any merit in the writ petition and as such the same was dismissed by the impugned order.

As can be seen from the order dated 30.3.1981 passed by the Deputy Director of Consolidation in revision, he has examined all aspects in considerable details. He has referred to statement of Mahaveer in which he had stated that Ram Subhag died after Mahadev; Komal also has said in his statement that Mahadev died during the life time of Ram Subhag; the oral evidence according to him, lead by parties on either side was general. In the circumstances, the oral evidence consistent with the documents was accepted and rightly so. Reference is made to Khatauni of Mahadev from which it was established that he died in 1920. It was clear from Khatauni of 1333 that Ram Subhag was alive till 1929, which is equivalent to Khatauni 1333. It was also noticed that there was no evidence to show that name of Mahadev was ever recorded in respect of the disputed land. If Mahadev had died after Ram Subhag, his name should have been recorded in respect of the disputed property. Referring to the judgment dated 19.2.1970 of the Member of Revenue Board it was taken as proof that Mahadev died during the lifetime of Ram Subhag. In the said order passed in the revision, it is also stated thus :-

"Therefore the name of Rojhani remained recorded without any authority and her ownership was admitted by the opposite parties in the case under Section 176 and thus this will be treated as self acquired property because neither the opposite parties took any proceedings for removal her name, nor it will be admitted on the basis of the entries that the opposite parties had taken some proceeding for removal of her name and neither the other two opposite parties admitted them as co- partners and thus after the death of Rojhani, the sons of her daughter have become heirs of her under Section 174 of the Succession Act."

From the translated copies of statements of Smt. Rojhani, Shanker and Kuber Pandey, filed along with the S.L.P. it cannot be said that their evidence is clinching on the point whether Mahadev died during the life time of Ram Subhag or he survived him. On the other hand, their statements are vague and general. Smt. Rojhani has only stated thus:-

"Ram Subhag and Mahadev both died in the same year due to (Cholera), Mahadev suffered (Cholera) first but the old person Ram Subhag died first. My husband Mahadev died thereafter six months. The last rituals of both the persons were together."

In his statement, Shanker has stated thus:-

"I did not see Ram Subhag. I did not see Mahadev also. Earlier the Khata of all these were joint. I do not know whether the name of Mahadev was recorded in the Khata. The name of Smt. Rojhani was recorded 40-45 years back and I do not know what time has passed away the death of Mahadev. Rojhani was 70-80 years old at the time of her death. I do not know whether Mahadev died during the life time of his father or when he died."

Kuber Pandey has stated thus:-

"I had not seen Mahadev. First of all Ram Subhag died and Mahadev died after him."

The High Court, having considered rival submissions, rightly did not find any merit in the writ petition, having regard to the material placed on record and the reasons recorded in the order

of the Deputy Director, Consolidation based on evidence. This being the position, in our view, the impugned order does not call for interference. Hence the appeal is dismissed. However, there will be no order as to costs.

JUDIS