

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7254 OF 2008

(Arising out of S.L.P. (C) No.17352 of 2007)

Nageshwar & Anr.

...Appellant(s)

Versus

Dooiji & Anr.

...Respondent(s)

O R D E R

1. Leave granted.

2. This appeal is directed against order dated 4.7.2007 of the learned Single Judge of Allahabad High Court, whereby he declined to interfere with order dated 22nd February, 2007 passed by the Deputy Director (Consolidation), who dismissed revision filed by the appellants under section 48 of the U.P. Consolidation of Holdings Act, but, at the same time, set aside the orders dated 5.6.1984, 23.9.1991 and 14.3.1991 passed by the Consolidation Officer.

3. The dispute relates to plot nos. 170 and 171 situated in village Ludohi, Pargana and Tehsil Ghosi, District Mau, U.P. By an order dated 5.6.1984, the Consolidation Officer directed that the disputed plots be recorded as 'abadi samil jot' in the names of the appellants. Thereafter, mutation was effected in the name of the appellants on 23.9.1991 and 14.11.1991 by expunging the existing entry of 'Navin Parti'.

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4. The appeal preferred by respondent no.1 against order dated 23.9.1991 was allowed by the Settlement Officer (Consolidation), Mau, vide his order dated 10.8.2005. He set aside order dated 5.6.1984 of the Consolidation Officer and remanded the case to the concerned Officer with the direction to trace out the file of the case and decide it on merits after affording opportunity of hearing to the parties.

5. The appellants challenged the appellate order by filing revision under section 48 of the Act. The Deputy Director of Consolidation dismissed the revision but, at the same time, set aside the orders dated 5.6.1984, 23.9.1991 and 14.11.1991 passed by the Consolidation Officer and as also the order dated 10.8.2005 passed by the Settlement Officer (Consolidation) and directed that the disputed land be recorded as 'Navin Parti'.

6. The appellants challenged that order in writ petition no. 29336/2007, which was dismissed by the learned Single Judge. Hence, this appeal by special leave.

7. We have heard learned counsel for the parties and perused the record.

8. In our opinion, after having come to the conclusion that the revision filed by the appellants did not merit acceptance, the Deputy Director (Consolidation) was not justified in setting aside the orders dated 5.6.1984, 23.9.1991 and 14.11.1991 passed by the Consolidation Officer and order dated 10.8.2005 passed by the Settlement Officer (Consolidation), more so, because those orders were not even under challenge and, so far as the order dated 5.6.1984 is concerned, the same had already been set aside by the Settlement Officer (Consolidation). In any case, after setting aside those orders, the Deputy Director (Consolidation) should have remanded the matter to the Consolidation Officer for a fresh decision on the application

...3/-

filed by the appellants and there was no warrant for issuing a direction that the disputed land be recorded as 'Navin Parti'. Unfortunately, High Court ignored this glaring infirmity in the order of the Deputy Director and dismissed the writ petition.

9. Accordingly, the appeal is allowed in part and the order of the High Court is set aside. The direction contained in the order dated 22nd February, 2007 passed by the Deputy Director (Consolidation), to record the disputed land as 'Navin Parti', is set aside and the matter is remitted to the Consolidation Officer to trace out the file of the main case and decide the same on merits, after giving opportunity of hearing to the parties. No costs.

[B.N. AGRAWAL]J.

[G.S. SINGHVI]J.

New Delhi,
December 12, 2008.