

CASE NO.:
Appeal (civil) 186 of 2008

PETITIONER:
Mazhar Hassan

RESPONDENT:
Gangu Singh & Ors.

DATE OF JUDGMENT: 09/01/2008

BENCH:
Arijit Pasayat & Aftab Alam

JUDGMENT:
J U D G M E N T
[Arising out of SLP) No.25863/2005]

AFTAB ALAM, J.

Leave granted.

This appeal is directed against the judgment and order dated July 20, 2005 passed by the Allahabad High Court in Civil Misc.Writ Petition No.3620 of 1979 (connected with Writ Petition No.4216 of 1979). By the impugned order the High Court set aside the orders passed by the Deputy Director of Consolidation and the Consolidation Officer and restored the order of the Settlement Officer, Consolidation. The order of the Settlement Officer, Consolidation, dated September 12, 1978, had, in turn, set aside the order of the Consolidation Officer and had directed for entering the names of the respondents in the revenue records in respect of the disputed pieces of land. The dispute relates to plot Nos.960/1, 971/1, 973/1, 982/2, 988/1, 989, 1008/2, 1010/1, 1010/2, 1011 and 1013 situate in village Dhampur District Bijnor in the State of Uttar Pradesh.

The material facts read and may be stated thus. One Hetram was the original tenure holder of the disputed plots. His heirs Smt.Ram Murti Devi and her four sisters were able to obtain a decree of eviction against the respondents in a suit (being Suit No.161) filed by them under Section 209 of the U.P.Z.A. & L.R.Act. The decree insofar as the disputed plots are concerned, was affirmed up to the High Court in Second Appeal and a cross appeal filed by the parties. The decree holders filed an execution application on May 21, 1965, which was registered as execution case No.21/69. The application was, however, dismissed by order, dated July 26, 1969 because the decree was put to execution beyond the period of limitation. After the rejection of their execution application, Smt.Ram Murti Devi and others executed a sale deed, dated April 13, 1970 of a number of plots including the disputed plots in favour of one Ali Hasan (the deceased father of the present appellant). On the basis of the sale deed, Ali Hasan was able to get his name mutated in the revenue records by an order passed ex-parte. Later on, there were disputes between Ali Hasan and the respondents in regard to possession over the disputed plots and the dispute gave rise to proceedings under Sections 145 and 146, Cr.P.C. Those proceedings were concluded by order, dated September 11, 1972 by which the disputed plots were released in favour of the respondents.

In the meantime, consolidation operations commenced in the village and the respondents made an objection under Section 9-A(2) of the U.P.Consolidation of Holdings Act to expunge the name of Ali Hasan and to enter their names in his

place, claiming ownership of the disputed land by virtue of adverse possession. The Consolidation Officer dismissed the objection filed by the petitioner by order dated July 5, 1978 holding that they had not acquired Sirdari rights over the disputed plots by adverse possession. Against the order of the Consolidation Officer, the respondents filed an appeal which was allowed by the Settlement Officer Consolidation by order, dated July 12, 1978. The Settlement Officer held and found that the petitioners had perfected Sirdari rights over the land in dispute by adverse possession as the execution case filed by Smt. Ram Murti Devi and the other decree holders was dismissed as being barred by limitation. Aggrieved by the order of the Settlement Officer, both Smt. Ram Murti Devi and her sisters and Ali Hasan filed separate revisions before the Deputy Director of Consolidation who by a common order, dated January 18, 1979, allowed the revisions and set aside the order of the Settlement Officer. The respondents then moved the High Court in two writ petitions arising from the two revisions. The writ petitions, as noted above, were allowed by a learned Single Judge; the orders passed by the Deputy Director of Consolidation and the Consolidation Officer were set aside and the order of the Settlement Officer was restored.

We have heard counsel for the parties and perused the materials on record, including the High Court order coming under appeal and the three orders passed by the consolidation authorities besides the earlier orders passed in the suit under Section 209 of the U.P.Z.A. & L.R. Act and the execution proceeding arising from it. We find that the High Court noticed the provision of Section 210 of the U.P.Z.A. & L.R. Act that reads as follows :

\023Consequences of failure to file suit under Section 209. If a suit for eviction from any land under Section 209 is not instituted by a bhumidar or asami, or a decree for eviction obtained in any such suit is not executed within the period of limitation provided for institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall \026

(a) where the land forms part of the holding of a bhumidar with transferable right, become a bhumidar with transferable rights of such land and the right title and interest of an asami, if any, in such land shall be extinguished.\024

The High Court correctly noticed that two conditions are required to be fulfilled if the decree holder of a decree obtained in a suit under Section 209 of the U.P.Z.A. & L.R. Act has to lose his rights; first, he should fail to execute the decree within the prescribed period of limitation and secondly, the person (claiming adverse rights) should take or retain possession of the disputed land. Having thus noticed the requirement of law, the High Court framed the following question that arose for its consideration :

\023Short question which arises for adjudication in the two writ petition is whether the petitioners perfected rights by adverse possession and have become sirdar by virtue of Section 210 of U.P.Z.A. & L.R. Act on the ground that decree for eviction passed in earlier suit was not executed and was dismissed as barred by limitation. Section 210 of the U.P.Z.A. & L.R. Act reads as under.\024

It then went on to answer the question in favour of the

respondents (petitioners before the High Court) primarily relying upon the fact that the execution application filed by the decree holders (Smt.Ram Murti Devi and her sisters) was dismissed as being barred by limitation.

Though, it was contended before the High Court that after the decree was affirmed by the High Court the judgment-debtors (the present respondents) had voluntarily handed over possession of the disputed plots to the decree holders and the object of execution stood fulfilled and it was for that reason that the decree was not put in execution in time and was allowed to become time barred, the High Court brushed aside the contention without any proper consideration. In this regard, the High Court observed as follows :

\023Even this fact is not there in the pleadings of the parties before the Consolidation Authorities. It appears that this plea has been raised for the first time in the writ petition and there is no material on record to substantiate the same. In absence of any material to show that such a plea was ever raised before the courts below, the respondent cannot be permitted to raise a new plea, touching factual aspect of the matter, for the first time in the writ petition.\024

It further observed as under :

\023In the absence of any material to establish that Smt.Ram Murti Devi and others who are the vendor of Ali Hasan came into the possession over the plots in dispute after the decree of eviction. Provision of Section 210 of U.P.Z.A. & L.R. Act are applicable with full force as the decree of eviction could not be executed and was dismissed as time barred. Thus the right of Smt.Ram Murti Devi and others in the plot in dispute stood extinguished. Once they were left with no right in the plots in dispute, no right would accrue in favour of Ali Hasan on the strength of any sale deed executed by them. On the contrary the petitioners perfected their rights in accordance with Section 210 of the U.P.Z.A. & L.R.Act.\024

We are afraid the High Court was in serious error in making the above quoted observations and not giving a proper consideration to the plea raised by the appellant. We find that the order of the Consolidation Officer is totally based on the issue of possession of the disputed plots by the contending parties. The issue was not only raised before the consolidation authorities but it formed the core of the dispute. Both sides produced documentary evidences in respect of their claim of possession over the disputed plots and the Consolidation Officer, on a careful examination of the materials produced before him, came to find and hold that the respondents were unable to prove their continuous possession over the disputed land for 12 years and on the contrary it was the appellant who was in possession of the disputed plots. The relevant extract from the order of the Consolidation Officer is as follows :

\023From the side of plaintiff, land revenue receipt has been filed, which is neither goes to prove the plaintiff as sirdars nor bhumidar. Against this, from the side of defendant, copy of extract of we years KHASRA from: 1368F to 1380F, khasra extract of 1378F, 1380F, 1370F, 1371F, 1372F, 1373F, 1374F, 1375F, 1376F, 1377F have been

filed, which goes to show that the continuous 12 years, possession of plaintiff, Gangoo Singh & others over the disputed land is not proved. To the contrary defendants are recorded bhumidar or the disputed plots of Khata no.9, name of defendant Ali Hasan has been recorded on the basis of sale deed dated 13.4.70 executed by defendants Ram Moorti & others against which, there is no evidence of plaintiff Gangoo Singh and others, which could confer bhumidar right over the disputed land in favour of Gangoo Singh and others. In support of his case, Gangoo Singh has recorded his own statement but no other independent witness was produced to prove their possession. Hence in this way the plaintiff has been fully failed to prove their 12 years continued unauthorized possession. Therefore, plaintiff has not been able to prove as bhumidars of the disputed land. The defendant Ram Moorti and others have been proved as bhumidars of the disputed Khata No.65 and the defendant Ali Hasan as bhumidars of the disputed Khata No.9 issue nos. 1 & 2 are decided accordingly.\024

The finding of possession recorded by the Consolidation Officer was conclusive to the dispute and the High Court was in error in overlooking this finding and holding that the respondents would be deemed to be in possession simply because the execution application filed by Smt.Ram Murti Devi and other decree holders was rejected as being time barred.

In light of the discussions made above, we find that the order of the High Court is quite unsustainable. We accordingly set aside the order of the High Court and restore the orders passed by the Deputy Director of Consolidation and Consolidation Officer. The appeal is allowed but with no order as to costs.