

CASE NO.:
Appeal (civil) 6602-6603 of 2001

PETITIONER:
Udai Raj Singh & Ors

RESPONDENT:
Hari Ram & Ors

DATE OF JUDGMENT: 21/04/2008

BENCH:
Arijit Pasayat & P.Sathasivam & Aftab Alam

JUDGMENT:
J U D G M E N T
NON-REPORTABLE

CIVIL APPEAL NOS.6602-6603 OF 2001

AFTAB ALAM, J.

1. These two appeals, one against the judgment of the Allahabad High Court in the main Writ Petition (Civil Misc.Writ Petition No.4413/78) and the other against the order in the Review Petition (Civil Misc.Review Petition No.6816 of 1998) filed by the appellants arise from the proceedings under the U.P.Consolidation of Holdings Act. The subject-matter of the dispute are three plots bearing Nos.641, 642 and 803 situate at village Barhat, Pargana Shakiabad, District Ghazipur. The contest over the disputed land had begun between Kedar and Badri sons of Sarju Ram and Ghurahu respectively on the one side and Baij Nath son of Daroga Singh and others on the other. In course of the proceedings the original contestants died and the litigation was carried on by their respective heirs and legal representatives. The appellants before this Court are the sons of Daroga Singh and Baij Nath and the respondents are the sons of Kedar, Badri and Rupu.

2. In the basic year the disputed land was undeniably recorded in the names of Sarju and Ghurahu i.e. predecessors-in-interest of the respondents. The village where the land is situated was brought under consolidation operations by notification, dated October 2, 1956. In the consolidation proceedings the Assistant Consolidation Officer by his order dated June 7, 1959, found Baij Nath and others in possession of the disputed land. He held them as Sirdars and directed for entering their names in respect of the disputed plots. No appeal was filed against the order passed by the Assistant Consolidation Officer and the matter was allowed to rest at that stage. Later on, Kedar and Badri filed an objection under Section 12 of the Act claiming that they were the bhumidars, in possession of the disputed plots and the names of Daroga Singh and others were wrongly recorded in respect of those plots in the revenue records. The Consolidation Officer found that the dispute involved the question of title and by his order, dated October 3, 1961 referred the matter to the Civil Judge. The Civil Judge by his order, dated October 5, 1962 referred the matter for arbitration. The Arbitrator by his Award, dated August 12, 1964 held that Badri Ghurahu and others were the bhumidars of the disputed land and further found that Baij Nath and others were not the Sirdars of the plots in dispute. The Civil Judge confirmed the Award by order, dated January 8, 1965. Against the order of the Civil Judge, Baij Nath and others filed a revision before the High Court and the High Court remanded the matter to the Consolidation Officer for deciding the question of Sirdari rights claimed by them.

3. The Consolidation Officer framed issues in light of the remand order and on a consideration of the materials produced by the two

sides passed the order, dated April 13, 1973 holding that Baij Nath was Sirdar of the plots in dispute and the entry of his name should be maintained. He gave directions accordingly. Against the order passed by the Consolidation Officer the side of Kedar and Badri took the matter in appeal before the Settlement Officer, Consolidation, Ghazipur. The Settlement Officer by order, dated December 1, 1973 allowed the appeal and reversed the finding of the Consolidation Officer. The order of the Settlement Officer was based mainly on the revenue records. Against the Appellate order the side of Baij Nath filed a revision before the Deputy Consolidation Officer, Ghazipur. In the revision one of the grounds raised by them was that earlier the other side had filed Suit No.658 of 1955 seeking a decree of permanent injunction against the defendants (the side of Baij Nath) in regard to the disputed plots. The suit was dismissed by the Civil Court and hence, it was no longer open to the other side to question or challenge their possession of the disputed land.

4. The revisional authority did not consider the aforesaid point raised by the appellants or for that matter any other points raised on their behalf and disposed of the revision in a somewhat curious manner. It noted the facts of the case and the points urged on behalf of the two sides and then abruptly gave the operative direction under the heading 'order'. There is no indication in the order why the revisional authority deemed fit to uphold the appellate order or why he accepted the case of Kedar and Badri in preference to the pleas raised by the side of Baij Nath. On a plain reading the revisional order appears to us to be quite unsustainable. The appellants then took the matter to the High Court. But before the High Court too the writ petition was dismissed without any proper consideration of the pleas raised on their behalf. The High Court simply referred to some of the observations made by the Settlement Officer and dismissed the writ petition. In review, the point with regard to the earlier suit, being title Suit No.658 of 1955 was specifically pressed but the High Court brushed it aside by observing that since the suit was dismissed for default there was no decision on merits deciding the rights of the parties.

5. We are afraid, that can hardly be accepted as a proper consideration of the consequences of the dismissal of the suit between the same parties in regard to the disputed land.

6. On hearing counsel for the appellant and on going through the materials on record, including the orders coming under challenge we are satisfied that the revisional order and the two orders passed by the High Court are unsustainable in law. We, accordingly, set aside the order dated February 10, 1978 passed by the ADM/Deputy Consolidation Officer, Ghazipur in Revision No.16 as well as the orders of the High Court, dated November 25, 1997 in Civil Misc.Writ Petition No.4413 of 1978 and the other, dated August 6, 1998 in Civil Misc.Review Petition No.6816 of 1998 and remlit the matter to the revisional authority.

7. As the matter has become very old it is expected that the revisional authority will finally dispose of the matter after hearing both the sides in accordance with law within four months from the date of the receipt of the order.

8. In the result the appeals are allowed but with no order as to costs.