A.F.R.
Court No.5

Civil Misc. Writ Petition No.72987 of 2011
Pramod Kumar Singh Vs. Deputy Director of Consolidation, Allahabad, and others

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Hon'ble A.P. Sahi, J

Heard Sri Ashok Kumar Singh, learned counsel for the petitioner and Sri Ghanshyam Pandey, holding brief of Sri S.S. Shukla, for respondent Nos. 3 to 7.

This writ petition arises out of proceedings in relation to an objection filed by the petitioner under Section 9-A (2) of The Uttar Pradesh Consolidation of Holdings Act, 1953, claiming title over the land in dispute on the basis of a registered Will dated 4.6.1986 said to have been executed by the tenure holder Smt. Parwati. It is undisputed that the Notification under Section 4 of the 1953 Act was published on 1.10.1983. Smt. Parwati had executed the Will and she died on 8.6.1986. The petitioner filed an application on the basis of the Will, which was allowed on 2.1.1987 by the Assistant Consolidation Officer.

The predecessor in interest of the contesting respondent Late Jagat Bahadur Singh filed an appeal against the said order on 2.11.1987 which has been ultimately allowed on 30.8.2010 setting aside the order of the Assistant Consolidation Officer with a direction that the objection should proceed after hearing the contesting respondents, who are claiming title over the land on the basis of a sale-deed dated 27.8.1970 executed by Smt. Parwati. The matter was, accordingly, remitted to the Consolidation Officer to be contested on the claim set up by the petitioner on the basis of a Will and the sale-deed relied on by the respondents predecessor Jagat Bahadur Singh.

Sri Ashok Kumar Singh has further pointed out that the Notification under Section 52 de-notifying the village has been

issued on 31.3.2003. In the meantime, the contesting respondents have also filed a time-barred objection under Section 9 on 16.9.2010.

The submission of Sri Singh is that firstly no dispute was raised or endorsed in CH Form 5 relating to the sale-deed set up by the respondents consequent to the Notification under Section 4 that was issued on 1.10.1983. No objection was filed by Jagat Bahadur Singh which lacuna is now sought to be filled by filing of the objection on 16.9.2010 indicated herein above. Secondly, no application for mutation was either filed under Section 34 of the U.P. Land Revenue Act, 1901, before the consolidation operation had set in nor any steps were taken for mutation by the respondents under Section 12 after the notification of the village under Section 4 of the U.P.C.H. Act, 1953. He, therefore, submits that the appellate order erroneously observed that the Assistant Consolidation Officer should have taken care of the situation or the petitioner should have impleaded the contesting respondent. He submits that the order of the Settlement Officer Consolidation amounts to condoning the latches on the part of the contesting respondent inasmuch as if Jagat Bahadur Singh had failed to file any objection under Section 9-A (2) of the 1953 Act on the basis of the sale-deed inasmuch as during the continuance of consolidation operations, the bar of Section 11-A would operate and after the closure of consolidation operations under Section 52, the bar of Section 49 would operate. These statutory bars, therefore, cannot be condoned by the Settlement Officer Consolidation to re-open a dispute about which the respondents had never set up a claim before the appropriate forum. He submits that this stands substantiated by the fact that the respondents have now on 16.9.2010 filed a heavily time barred objection under Section 9 of the 1953 Act.

The contention, therefore, is that in the absence of any appropriate objection having been filed by the respondents, they are not entitled to contest the objection of the petitioner.

On the basis of the said submissions, Sri Singh urges that the appeal filed before the Settlement Officer Consolidation was also not maintainable. The contention, therefore, is that not only the appellate order but also the revisional order dismissing the revision of the petitioner are erroneous and they deserve to be set aside.

Replying to the same, Sri Pandey for the contesting respondent, submits that the intervening events would clearly demonstrate that the objection filed by the petitioner ought to have been dismissed for non-joinder of necessary party inasmuch as the predecessor in interest of the petitioner Late Smt. Parwati herself had filed original suit No.139/80 for cancellation of the sale-deed executed in favour of Late Jagat Bahadur Singh on 27.8.1970. This Suit, being Original Suit No.139/80, was filed in the year 1980 and was dismissed. An appeal filed against the same was also dismissed. A second appeal was preferred in the year 1986, which was ultimately dismissed in default on 27.11.2003. A restoration application in the said second appeal was filed by the petitioner which has also been dismissed on 27.4.2011. This is evident from the documents filed by the petitioner himself and brought on record as Annexure-13 to the writ petition. He, therefore, contends that this litigation was being contested not only by Smt. Parwati but also by the petitioner having full knowledge about the sale-deed dated 27.8.1970. In such a situation, it was the duty of the petitioner-objector to have brought this fact to the notice of the Consolidation Officer and should have impleaded the answering-respondents/their predecessor in interest Late Jagat Bahadur Singh in the objection filed under Section 9-A (2). Accordingly, the appellate authority rightly reversed the order for a proper contest between the parties for which the matter stands remitted to the Consolidation Officer.

Sri Pandey further submits that even assuming for the sake

of argument that the dispute on the basis of possession had not been indicated in CH Form 5 yet admission by the petitioner of the pendency of the civil litigation where an injunction order was operating obliged him to implead Jagat bahadur Singh and his successors while proceeding to seek mutation as against the name of Smt. Parwati.

Sri Pandey has further contended that these facts do not appear to have been brought to the notice of the Assistant Consolidation Officer when he passed the order dated 2.1.1987. This lapse on the part of the petitioner is deliberate when the second appeal itself had been filed in the year 1986 and the application, claiming succession on the basis of a Will, had been filed by the petitioner in the year 1987.

In reply, Sri A.K. Singh submits that the entire consolidation operations culminated in favour of the petitioner. Right from CH Form-5 to CH Form-45, all the entries are made in faovur of the petitioner and in such a situation, the respondents or their predecessor in interest ought to have instituted their own objection under Section 9-A (2) if they were aggrieved and having not done so, the Settlement Officer Consolidation should not have passed an order in order to condone the aforesaid statutory lapse of the contesting respondent.

Having heard learned counsel for the parties what is evident and admitted on facts, is that there was a sale-deed executed by Smt. Parwati on 27.8.1970. It is this sale-deed the cancellation whereof was sought by Parwati herself, who was the recorded tenure holder. The petitioner, who was claiming succession on the basis of a Will from Smt. Parwati, ought to have brought this fact on record in his objection and should have impleaded the vendee Jagat Bahadur Singh as opposite party in the objection. Even assuming for the sake of argument that the Assistant Consolidation Officer had no knowledge or had no duty to have brought this on record, in my opinion, the objection of the

petitioner did suffer from non-joinder of a necessary party namely that of Jagat Bahadur Singh whose sale-deed was being contested by no-one-else than by the petitioner himself in the Suit giving rise to the second appeal. In such a situation, the conclusion ultimately drawn by the Settlement Officer Consolidation does not suffer from any infirmity.

The objection of the petitioner having been filed during consolidation operations without impleading the proper and necessary party, therefore, could not proceed and rights could be settled after proper contest. In this view of the matter, it cannot be said that the Settlement Officer Consolidation has condoned the bar which, according to the petitioner's counsel, would operate under Section 49 in relation tot he objection filed by the petitioner himself. On the contrary, Jagat Bahadur Singh was an aggrieved person who had a right, as such the appeal was maintainable on his behalf. The sale-deed in his favour was intact and the Suit for its cancellation filed by Parwati had failed. So long as the sale-deed is not held to be void, the objection of the petitioner ought to have disclosed this position which was clearly avoided by him. This is impermissible in law.

However, so far as the objection filed by the respondents dated 16.9.2010 is concerned, it has been filed after the de-notification of the village. It will be open to the petitioner to raise any objection of such a bar under Section 49 of the 1953 Act and which shall be decided in accordance with law. The parties are not prejudiced at this stage as even other wise they will have a right to contest their respective claims before the Consolidation Officer.

Accordingly, I do not find any error in the impugned orders so as to exercise jurisdiction under Article 226 of the Constitution of India. The writ petition, therefore, lacks merits and is, accordingly, dismissed.

Dt. 16.12.2011
Irshad