

Dildar Husaln Vs. Ali Husaln and ors.

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Court : Allahabad

Decided On : Apr-30-1976

Reported in : AIR1976All502

Judge : D.N. Jha, J.

Acts : [Constitution of India](#) - Article 226; [Limitation Act, 1963](#) - Schedule - Articles 64 and 65; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 1

Appeal No. : Writ Petn. No. 1218 of 1970

Appellant : Dildar Husain

Respondent : Ali Husaln and ors.

Advocate for Def. : B. Calla, Adv.

Advocate for Pet/Ap. : Har Gurcharan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

D.N. Jha, J.

1. The petitioners have filed this petition under Article 226 of the Constitution praying for quashing of the order dated 14-7-1970 passed by the Settlement

Officer (Consolidation) and the Deputy Director of Consolidation respectively.

2. The brief facts of the case are that the dispute between the petitioners and opposite parties Nos. 1 to 3 was with respect to Khata No. 48. In the basic year opposite parties All Husain, Nizam-uddin and Mohd. Nazir were recorded as tenants of the disputed Khata which had 18 plots with an area of 17 Bigha, 5 Biswa and 12 Biswani. The petitioner claimed co-tenancy over the land in dispute with 1/3rd share each. The pedigree set out is as under:--

MOHAMMAD RAZA

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|||

Gazaffar Khan Mohaammad Husain Ahmad Husain

|||

Dildar Husain ----- Kamrul Nisa

(Petitioner No.1) ||| (Daughter)=

Ali Husain Nizamuddin Mohd. Nazir Married to

(O.P.No.1) (O.P.No.2) (O.P.No.3) Abdul Aziz

|

Mohd. Anis

(Petitioner No.2)

The dispute was referred to the Consolidation Officer who vide his order dated 30-12-1968 dismissed the objections preferred by the petitioners. They filed an

appeal before the Settlement Officer (Consolidation) who vide his order dated 14-7-1969 partly allowed the appeal inasmuch as he declared the petitioners to be the Sirdars over the plots Nos. 652 and 759 on the basis of adverse possession. This is Annexure-2. The petitioners as well as the opposite parties filed revisions against the order passed by the Settlement Officer (Consolidation) before the Deputy Director of Consolidation. The Deputy Director of Consolidation vide his order dated 14-6-1970 allowed the revision filed by the opposite parties and dismissed the revision filed by the petitioners. It is in these circumstances that the petitioners have come up before this Court by means of this petition.

3. The petition has been contested on behalf of the opposite parties and a counter-affidavit has been filed on behalf of the opposite parties 1 to 3. It is asserted in the counter-affidavit that Mohd. Hussain, father of the opposite parties alone in 1332 F. was admitted over the disputed Khata and that Mohd. Eaza had been ejected by the then Zamindar. It is further asserted that there was fresh contract for plots Nos. 208 and 272 in the year 1333 F. which is evident from the Khetaunis of 1332 F. and 1344 F. In 1344 F. all the plots excepting plots Nos. 208 and 272 are recorded in the name of Mohd. Husain alone with a duration of 15 years and with respect to plots Nos. 208 and 272 Mohd. Husain's name is recorded with a duration of 12 years. It is asserted that in Muslim law there is no provision of representative capacity and joint family. The land cannot be taken by a Mohammadan in a representative capacity. In short, an effort has been made to support the order passed by the Deputy Director of Consolidation being legal, just and proper.

4. I have heard the learned counsel for the parties.

5. Learned counsel for the petitioners argued that in 1344 F. Mohd. Husain is entered as 'Waris over plots Nos. 208 and 272. On this basis he maintained that the name of Mohd. Husain was recorded over these plots as an heir of Mohd. Raza and as such the petitioners were entitled to the share and the Deputy Director of Consolidation committed an error in rejecting the claim of the petitioners. In my opinion, there is no substance in the contention of the learned counsel for the petitioners. There is no right of inheritance under the Oudh Rent Act. Moreover, there is also clear indication that Mohd. Raza had been ejected. If

this was so then the disputed khata was obviously resettled by the then Zamindar. In this view of the matter, in my opinion, no capital can be made out from this entry of 'Waris'. That being so, unless it was clearly established by the evidence on record that Mohd. Husain had inherited the property from his ancestors, it cannot be concluded that the petitioners had any share in the property on the ground of relationship. The Deputy Director of Consolidation has recorded a clear cut finding that the disputed Khata was settled afresh, in the name of Mohd. Husain sometime in 1333 F. He has further observed that there is nothing on the record to show that the land was taken in the representative capacity, viz., in the name of Gazaffar Khan, father of Dildar Husain and Ahmad Husain. There can be no bar to the acquisition of land by an individual even though he might be joint in estate with his other brothers but by virtue of this fact they cannot automatically become co-tenants with that individual who has obtained acquisition in individual name. In my opinion, the matter is concluded by rank (sic) finding of fact recorded by the Deputy Director of Consolidation in this connection.

6. It was next argued by the learned counsel for the petitioners that the Deputy Director of Consolidation committed an error in ignoring the decision reported in *Khazan Singh v. Abhey Ram*, (1966 All WR (HC) 254 (1)). He argued that the Deputy Director of Consolidation erred in not considering the rights of the petitioners on the basis of adverse possession which was implied from a column of title. He argued that the decision reported in 1966 All WR (HC) 254 (1) was on all fours with the facts of the case and the Dy. Director of Consolidation misconstrued the legal position and thus committed a manifest error. In my opinion, the argument is wholly misconceived. In this case the claim had been set up by the petitioners for sirdari rights not on the basis of adverse possession but they had only claimed co-tenancy rights. The petitioners had claimed co-tenancy with 1/3rd share and hence the acquisition of Sirdari rights by adverse possession could not rightly be interwoven. The Deputy Director of Consolidation had observed that the petitioners had claimed acquisition of sirdari rights on specific plots and he also after considering the evidence, recorded a finding of fact that Gazaffar Husain and Mohd. Anis could not be deemed to be in adverse possession of particular plots for a continuous period of more than six years and hence he observed that they could not be held to be Sirdars of any plots. Learned counsel has not brought on

the record of this case any evidence so as to enable this Court to accept their claim of adverse possession. The mere observations in orders by various authorities cannot enable a Court in exercise of supervisory jurisdiction to record a finding with respect to petitioners having perfected their rights by adverse possession. Moreover, this Court does not sit as court of appeal to reassess the evidence led by the parties before the subordinate tribunal. The ambit of Article 226 is very limited and ,a Court has to examine the orders in the light of jurisdictional errors or an error apparent on the face of the record. I am constrained to observe in the instant case that there is nothing from which it can be legitimately concluded that the order passed by the Deputy Director of Consolidation suffers from any manifest error. That being so, I do not think that it is a fit case warranting interference under Article 226 of the Constitution.

7. The result is that the writ petition fails and is accordingly dismissed. I, however, make no order as to costs.

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