

Dashrath and Others Vs. Deputy Director of Consolidation, Varanasi and Others

Dashrath and Others Vs. Deputy Director of Consolidation, Varanasi and Others

SooperKanoon Citation : sooperkanoon.com/477448

Court : Allahabad

Decided On : Jul-14-1998

Reported in : 1998(2)AWC1587

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Consolidation of Holdings Act, 1953 - Sections 9 and 48

Appeal No. : C.M.W.P. No. 9691 of 1975

Appellant : Dashrath and Others

Respondent : Deputy Director of Consolidation, Varanasi and Others

Advocate for Def. : S.C. and ;Triveni Shankar, Adv.

Advocate for Pet/Ap. : K.P. Singh and ;R.N. Singh, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order dated 31.5.1975 passed by the Deputy Director of Consolidation, Varanasi.
2. The parties are related to each other as mentioned in the following pedigree :

Ramsukh|_____||
|Kishuni Shiv Dihal Ram Dihal| || _____ || || |Parmu Ambar
Swayambar Lautan| || |_____|| || || || || || |Jai Mangal Shiv
Mangal | Raghunandan _____| | | |_____| | || | | | Jagnandan
RamaSwaminath _____ Budhi Ram | || | | | | KhedarooDashrath
Hargen Ram Ratan | | || || || || _____| | || Ram Banarsi|
Briksh||Shivnandan|Devnandan

3. The parties filed objection in respect of various khatas in dispute.

4. Sri S.N. Singh, learned counsel for the petitioners has challenged the decision of the Deputy Director of Consolidation, respondent No. 1, in respect of plot Nos. 563 and 583 of Khata No. 90. The claim of the petitioners was that these plots exclusively belonged to them and from the branch of Ram Dihal. none of the persons was entitled to any share in respect of the land of this khata. The Consolidation Officer recorded a finding that this khata was joint holding of the parties coming down from common ancestor Ram Sukh. He accordingly directed for partition of the land according to the share specified in his order dated 19.9.1973. The petitioners preferred an appeal against the decision of the Consolidation Officer. The Settlement Officer Consolidation allowed the appeal on 12.2.1975 and it was held that the petitioners have exclusive right over plot Nos. 563 and 583 and directed to maintain the basic year entry in the revenue record. Ram Briksh, respondent No. 4, filed Revision No. 3170 against the said decision. The revision was allowed by the Deputy Director of Consolidation by his order dated 31.5.1975 holding that all the parties were co-tenants of Khata No. 90. This order has been challenged in this writ petition.

5. I have heard Sri S. N. Singh, learned counsel for the petitioners, and Sri Trivent Shankar learned counsel for the respondent.

6. Learned counsel for the petitioners submitted that the entry of the settlement year 1349 Fasli did not show that the name of Ram Dihal or any of the person from his branch was recorded in the revenue record and only the entry of settlement year should be taken into account for the purpose of determining the rights of the parties. A perusal of the impugned order indicates that in the khataunl

of 1287 F. these disputed plots were recorded in the name of Shtv Mangal, Jal Mangal, Lautan and Swayambar. This entry clearly indicates that in the khatauni of 1287 Fasli all these persons were taken as joint tenureholders of the plots consisting in Khata No. 90. Subsequently in the settlement year 1349 Fasli, the name of Lautan or any person from his branch was not recorded. The Deputy Director of Consolidation taking into consideration the fact that in earlier khatauni. the name of all the members of the common ancestor were recorded and the mere fact that in the settlement entry, the names of some of the members are excluded, itself is not conclusive to establish that the land was resettled with the members of the branches of two sons of Ram Sukh, namely, Kishuni and Shiv Dihal alone.

7. It was not the case of the petitioners either that earlier they were joint but subsequently in the settlement year, the land was settled exclusively on the members of the branches of Kishuni and Shiv Mangal. In the revenue record, there is a presumption of correctness of the entries but if in a subsequent year, the name of some of the members of the same family is not included, there is no presumption that the property which was earlier recorded as joint property should be treated as exclusive property of such persons who are recorded subsequently in the revenue record. The settlement entry is also an entry in the revenue record and has to be considered as a piece of evidence while considering the other revenue entries.

8. Learned counsel for the petitioners has placed reliance upon the decision of Shri Raja Durga Singh of Solon v. Tholu and others, AIR 1963 SC 361, wherein it was held where the entries in the record of rights are relied on and there is a conflict between them, it is the later entry which must prevail. In this case, the appellant was claiming that he was khudkasht holder and the respondent contended that he was a occupancy tenant. It was not a case where the property was claimed as joint property and conflicting entries were made. It is not a case of conflicting entries but here the names have not been recorded of some of the members who were earlier recorded. The Deputy Director of Consolidation has rightly held on the basis of the evidence that the parties were co-tenants of the land in dispute.

9. The second submission of the learned counsel for the petitioners is that the Deputy Director of Consolidation has specified the shares of the parties without assigning any reason as to in what manner he has specified the shares. The Deputy Director of Consolidation should have given reasons as to in what manner he has fixed the shares of the parties.

10. The writ petition is partly allowed to the extent that the Deputy Director of Consolidation, respondent No. 1, shall determine the shares of the parties after giving opportunity to all the parties concerned. The parties shall, however, bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com