

Khali Beg and Others Vs. D.D.C. and Others

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Court : Allahabad

Decided On : Mar-29-2011

Judge : A.P. Sahi, J.

Acts : [Constitution of India](#) - Article 226; U.P.Z.A. & L.R. Act. - Section 171

Appeal No. : Civil Misc. Writ Petition No. 65563 of 2005.

Appellant : Khali Beg and Others

Respondent : D.D.C. and Others

Judgement :

1. The petitioners and the contesting respondents are related to each other according to the pedigree given herein under Ahmad Beg

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Vasheer Nazeer Lateef Khaleel Jaheer Rafeek Saleem Waseem Shafeek

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Shabbeer Siddik Haneef Hasif Sazid Rashid

Beg Beg Beg Beg Beg Beg

2. This pedigree was however disputed at the stage of the consolidation officer but the aforesaid issue appears to have been reconciled and the pedigree is almost admitted to the parties.

3. According to the aforesaid pedigree Ahmad Beg had nine sons. His two sons namely Bashir Beg and Nazir Beg are represented by respondent no.2 and 3 being the grandsons of Ahmad Beg. They are the sons of Bashir Beg and Nazir Beg, who died issueless. Bashir Beg and Nazir Beg were two sons from the first wife of Ahmad Beg.

4. It has also come on record that the aforesaid two sons had predeceased their father and Ahmad Beg at the time when he died was living with respondent nos. 2 and 3.

5. Ahmad Beg married a second time and a third son was born to him, namely, Latif Beg whose four sons are petitioner nos. 7 to 10 herein. They are also his grand sons. From his third wife he had six sons, who are the petitioner nos. 1 to 6 before this Court. Ahmad Beg had approximately 80 bighas of land and it has been contended by the respondent nos. 2 and 3, who are the grand sons of Ahmad Beg from the first wife, that they had been given 40 bighas of land half share of the holding during his life time by Ahmad Beg and the balance of 40 bighas was being cultivated as per the wish of Ahmad Beg by the other seven sons born out of the second and third wedlock.

6. When the consolidation operations commenced claims were filed before the Assistant Consolidation Officer by petitioner no.4, Salim Beg, one of the sons from the third wife, contending that his name has been omitted in the Basic Year records and, therefore, the same should be recorded as a co-tenure holder and he be also declared to be the owner of his respective share. He also set up a claim that he had 1/8 th share, as out of nine sons of Ahmad Beg, Nazir Beg had died

issueless and, therefore all the eight sons had equal share and the respondent Shabbir Beg and Siddique Beg grandsons had 1/16 share each. It is to be noted that the names of respondent nos. 2 and 3, Shabbir Beg and Siddique Beg were already recorded in the basic year. Finding the matter to be a dispute of succession, the Assistant Consolidation Officer referred the matter to the Consolidation Officer, who registered it as an objection and passed an order on 12th May, 1998. This order appears to have been passed ex-parte and the petitioner no.1 Khalil Beg and his other brothers appear to have moved a restoration application which was allowed on 10.11.2000 and the order dated 12.5.1998 was set aside. Khalil and others also filed an objection contending that the name of respondent nos. 2 and 3 has been wrongly recorded and deserves to be expunged as the entries are forged. The petitioner nos. 1 to 6 however, admitted the claim of petitioner nos. 7 to 10.

7. The respondent nos. 2 and 3 also filed objections on 10th April, 2001 explaining the aforesaid pedigree and contending that their grand father during his life time had given half share of the holding and they also admitted that the name of petitioner no.4 had been wrongly omitted which can be recorded along with the other brothers. On the admitted position that the name of Salim Beg had been left out, the Consolidation Officer passed an order for recording his name as a co-tenure holder.

8. The petitioners Khalil and his other brothers with regard to the claim of respondent nos. 2 and 3, filed objections before the Consolidation Officer that they are not the grand sons of Ahmad Beg . The Consolidation Officer after discussing the evidence disbelieved this claim and also held that the names of the said contesting respondents were rightly recorded and were not forged entries. The Consolidation Officer thereafter proceeded to discuss the oral evidence led by the contesting parties. The petitioner no.6 Shafiq Beg led the evidence by getting his statement recorded but his statement was disbelieved as there were a lot of inconsistencies recorded by the Consolidation Officer.

9 Another contention that was raised on behalf of the petitioners was that since there was no Nikahnama filed to establish the first marriage of Ahmad beg,

therefore, the respondent nos.2 and 3 cannot claim any right of inheritance. This was also disbelieved by recording a finding that such a Nikahnama that took place almost a century ago was not likely to be retrieved. The petitioners also produced one Maqbool Khan as a witness whose statement was also doubted by the Consolidation Officer after discussing the same.

10. The respondent no.2, Shabbir produced himself as a witness explaining the pedigree and Babu Khan was the other witness produced who stated that they were cultivating the half share of 40 bighas of land on the basis of a family arrangement that had been made by late Ahmad Beg during his life time. It was also stated by the contesting respondents that Ahmad Beg died while living with them and the Consolidation Officer came to the conclusion that the names of respondent nos. 2 and 3 were rightly recorded to the extent of their half share as claimed by them. Accordingly the objections filed by the contesting respondents were allowed and that of the petitioners were rejected except recording the name of Salim Beg, who was admitted by the parties to be a co-tenure holder.

11. This order of the Consolidation Officer dated 26th July, 2002 was appealed against by the petitioners in relation to the half share as declared in favour of the contesting respondent nos. 2 and 3 and allowing them 1/4 share each. The Settlement Officer Consolidation before whom the appeal was preferred came to the conclusion that the Consolidation Officer was right in accepting the respondent nos. 2 and 3 as the grand sons of late Ahmad Beg. He however, recorded a finding that since there was no evidence relating to the family arrangement of giving half share to the contesting respondent nos. 2 and 3 and it was not proved before the Consolidation Officer, therefore, the declaration of rights to the extent of half of the property in favour of the respondent nos. 2 and 3 was annulled, and the order of the Consolidation Officer was modified to the said extent.

12. Accordingly all the eight sons and their survivors were given their respective shares.

13. Aggrieved the respondent nos. 2 and 3 filed a revision and the Deputy Director of Consolidation has allowed the same simply recording that the petitioner had failed to lead any evidence that the respondents did not have half share. He

further held that the case of the petitioners that no oral family arrangement was permissible has to be rejected. The Deputy Director of Consolidation simply concluded that the oral arrangement had been established relying on the statement of Babu Khan who was the sole testimony apart from the respondent Bashir Beg on behalf of the respondents. A restoration application was filed by Zaheer Beg and others contending that they had no notice of the pendency of the revision which was rejected on 14 th September, 2005 holding that the order of Deputy Director of Consolidation had been passed after giving full opportunity to the parties. Aggrieved the petitioners have approached this Court.

14. Learned counsel for the petitioners contends that the order of the Deputy Director of Consolidation is cryptic and in the absence of any cogent evidence to prove a family partition or arrangement, the order of the Deputy Director of Consolidation deserves to be set aside. It is further contended that all the petitioners along with the contesting respondents are entitled for their respective shares and that the respondent nos. 2 and 3 together cannot claim half share of the property without there being any legal support available in respect of such a claim.

15. Learned counsel for the respondents submits that the declaration of the share is in accordance with the oral family settlement made by the grand father of the answering respondents during his life time which was corroborated by the statement of Babu Khan and hence such a finding of fact having established by the Consolidation Officer and affirmed by the Deputy Director of Consolidation need not be interfered with in the exercise of jurisdiction under Article 226 of the [Constitution of India](#). In rejoinder, learned counsel for the petitioners submits that the claim of possession by the contesting respondents is absolutely untenable inasmuch, had they been in possession they would not have moved any application on 25.6.2005 claiming demarcation of their allotted share of 40 bighas as is evident from a perusal of the document which is filed as annexure-9 to the writ petition. Having heard learned counsel for the parties and perused the records, it is more than evident that the dispute now crystallizes only to the extent of the share as claimed by the respondent nos. 2 and 3 to the exclusion of the petitioners. The respondents relied on a family arrangement which was contained

in the statement made by the respondent Shabbir Beg and corroborated by another witness namely Babu Khan, who was aged about 65 years. The issue relating to oral family settlements as time and again created problems as to the weak nature of evidence available in such matters. The Consolidation Officer and the Deputy Director of Consolidation have nowhere indicated any part of the statement of the respondents as to when and how this oral settlement had been arrived at. Apart from the oral statements of the contesting respondent Shabbir and his witness Babu Khan, which have been reproduced in the order of the Consolidation Officer, nothing was available to establish the said oral family settlement. The contesting respondents have filed a stay vacation application but no statements of the respondents have been filed to reflect anything further. There was nothing further to demonstrate that the said oral family settlement had been acted upon except for the statement that 40 bighas of land was cultivated by them.

16. The surrounding circumstances in each particular case have, therefore, to be closely examined with a burden on the parties claiming such oral settlements to prove that such a settlement had taken place. A shadowy evidence may not be sufficient for establishing an oral arrangement. It has to be further indicated as to how the shares in the holding had been demarcated and which share was being held by which party. In the instant case neither the order of the Consolidation Officer indicates the existence of 40 bighas to be in the exclusive possession of the respondents and on the other hand the respondents themselves have moved an application for demarcating their shares after the order of the Deputy Director of Consolidation. This fact therefore, raises a clear doubt about the respondents holding exclusive possession over 40 bighas of land. A mere statement that they are in possession of their respective shares according to the oral family settlement since the time of their grand father may not be sufficient.

17. So far as an oral family arrangement is concerned, the same no doubt is admissible and permissible in law as held by the Deputy Director of Consolidation. The said view is supported by the decision of the Apex Court in the case of Kale and others v. Deputy Director of Consolidation and others, reported in 1976 (3) SCC 119 wherein it has been held that the Courts are in favour of giving effect to family arrangements entered orally as it brings about an end to all disputes.

Nonetheless such an arrangement has to be culled out from a long course of dealing and also which indicates a fair and equitable division amongst the share holders.

18. If the contention of the respondents is accepted then this fair and equitable distribution amongst the sons of late Ahmad Beg is not established. Nonetheless the contesting respondents could have led their evidence to establish that the oral family arrangement had been given effect to. In the opinion of the Court, the Settlement Officer of Consolidation rightly came to the conclusion that mere statement of respondent Shabbir and his witness Babu Khan did not prove the oral family arrangement made as contended by the respondents. It is also not clear from the records that as to what cross examination was conducted before the Consolidation Officer to give any further clue with regard to the claim that the family arrangement had been made. Nonetheless the respondents in their counter affidavit have not demonstrated as to how they were in possession of half share of the land in dispute. The Deputy Director of Consolidation has, therefore, in a cryptic way to proceed to conclude that the order of the Consolidation Officer deserves to be upheld.

19. There is yet another aspect of the matter, namely, intestate succession upon the death of a male Bhoomidhar. Succession can be claimed only through the provisions of Section 171 of the U.P.Z.A. & L.R. Act. Any transfer made during the life time of the tenure holder has to be through a valid procedure of transfer. It is not the case of the respondent nos. 2 and 3 that they had received any oral or documentary gift from their father. It is also not their case that the property to the extent of the share claimed by them had been willed by their father. In such a situation, any arrangement as alleged would have to be adjudicated in the light of the process of succession as provided for in the U.P.Z.A. & L.R. Act. Any bequeath can be made only by the modes prescribed or through a transfer of an immovable property. This issue has also not been dealt with and should have been probed by the authorities before proceeding to decide the claim.

20. Accordingly, this Court is of the opinion that neither the order of the Deputy Director of Consolidation nor the order of the Settlement Officer, Consolidation

delves into the matter as required under the law. The Settlement Officer, Consolidation had in a cryptic way through a one line order discarded the oral family arrangement which, therefore, renders the said order unsustainable. In such a situation, the order of the Deputy Director of Consolidation as well as of the Settlement Officer, Consolidation both deserve to be set aside with a direction to the Settlement Officer, Consolidation to proceed to decide the appeal afresh.

21. The order dated 14.9.2005, the order dated 19.1.2004 passed by the Deputy Director of Consolidation and the order of the Settlement Officer, Consolidation dated 7.2.2003 are quashed. The matter shall stand remitted to the stage of the Settlement Officer, Consolidation, who shall record his findings in the light of the observations made hereinabove including the possession of the parties over the land in question.

22. Needless to mention that the issue relating to respondent nos. 2 and 3 being the grandson of Ahmad Beg stands foreclosed and shall not be opened to any reassessment. They shall be treated to be the heirs of late Ahmad Beg and shall be entitled to their respective shares in accordance with the decision to be taken as directed hereinabove.

23. The Settlement Officer, Consolidation shall proceed to decide the matter as expeditiously as possible preferably within a period of three months from the date of presentation of a certified copy of this order before him.

24. With the above observations, the writ petition is allowed.

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