

(1975) 04 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7266 of 1971

Ajodhya

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 03-04-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Rules, 1954 — Rule 111

Citation : (1975) AWC 398 : (1977) RD 151

Hon'ble Judges : N.D. Ojha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.D. Ojha, J.—This writ petition arises out of proceedings under the U.P. Consolidation of Holdings Act. In respect of land of Khata No. 126, two sets of objections were filed, one by the Petitioner and the other by some of the Respondents. Both these objections were treated as one single case, being case No. 3066 of 1970-71 by the Consolidation Officer and were dismissed subsequently by him. Aggrieved the Petitioner filed an appeal before the Settlement Officer (Consolidation); whereas two appeals were filed by the Respondents. The appeals filed by the Respondents were allowed but the appeal filed by the Petitioner was dismissed by Settlement Officer (Consolidation). The Petitioner challenged the order of the Settlement Officer (Consolidation) by filing a revision before the Dy. Director of Consolidation. This revision was filed within limitation and was in order. Subsequently, it appears that on legal advice, the Petitioner filed two more revisions. This advice seems to have been given in view of the fact that the Settlement Officer (Consolidation) had by his order disposed of three appeals in respect of the land of Khata No. 126. The two revisions filed subsequently were beyond limitation and were also not accompanied with a copy of the order of the Consolidation Officer. The Deputy Director of Consolidation did not summarily dismiss the two revisions on the ground that they were either

belated or were defective on account of a copy of the order of the Consolidation Officer not being filed. On the other hand he issued notice on all the three revisions. On the date of hearing of the revisions, a preliminary objection was raised that the two revisions which were barred by time and were also not accompanied with a copy of the order of the Consolidation Officer ought to be dismissed. The preliminary objection prevailed with the Dy. Director of Consolidation. He dismissed those two revisions on the ground of being barred by time as also of non compliance of Rule 111 of the U.P. Consolidation of Holdings Rules. He dismissed the first revision which was in order on the ground that it was barred by res judicata. Aggrieved the Petitioner has come to this Court under Article 226 of the Constitution.

2. It was urged by the learned Counsel for the Petitioner that the principle of res judicata was not attracted and even if the other two revisions which were filed subsequently, were ignored it was incumbent upon the Dy. Director of Consolidation to have decided the revision which was in order on merits. He committed a manifest error of law in dismissing that revision on the ground that it was barred by res judicata.

3. Having heard learned Counsel for the parties, I am of the opinion that the submission made on behalf of the Petitioner is well-founded. As already seen above, the two sets of objections filed by the parties were in respect of the same land and they gave rise to one single case. In *Narhari and Others Vs. Shankar and Others*, , two appeals had been filed against the decree passed by the trial court in a suit. Both these appeals were allowed by the appellate court and two decrees were prepared. These decrees were against the Plaintiff who preferred two appeals. One of the appeals was time barred and applying the principle of res judicata in respect of the other, the High Court dismissed both the appeals. It was held that it was not necessary to file two separate appeals. The question of res judicata arose only when there were two suits. As there was one suit and both the decrees were in the same case and based on same judgment and the matter decided concerned the entire suit the principle of res judicata did not apply. Further, the High Court ought to have given the Appellant the benefit of Section 5 of the Limitation Act, as there was conflict of decisions regarding the question involved in the case. The facts of the instant case are identical and the Dy. Director of Consolidation has committed a manifest error of law in dismissing the revision filed by the Petitioner which was in order on the ground that it was barred by res-judicata. The Dy. Director of Consolidation also committed a manifest error of law in not condoning the delay in filing the other two revisions. So far as the other two revisions being not accompanied with a copy of the order of the Consolidation Officer is concerned as seen above, they were not dismissed on this ground initially. The Deputy Director of Consolidation having summoned the record of the case was not competent to dismiss the revision on the ground that they were defective in view of the fact that a copy of the order of the Consolidation Officer had not been filed along with them See *Kanahi v. Roop Ram* 1972 ALJ 1047 (D.B.). Learned Counsel for the Respondents placed reliance on

the decision of Sheodan Singh v. Daryao Kunwar 1966 AWR 449. In that case it was held that where the trial court has decided two suits having common issues on the merits and there are two appeals therefrom and one of them is dismissed on some preliminary ground, like limitation or default in printing, with the result that the trial court's decision stands confirmed, the decision of the appeal court will be res-judicata and the appeal court must be deemed to have heard and finally decided the matter. In such a case the result of the decision of the appeal court is to confirm the decision of the trial court given on merits, and if that is so, the decision of the appeal court will be res-judicata.

4. In my opinion, Sheodan Singh's case is distinguishable on facts. In that case two suits had been filed raising common issues, whereas the instant case was not that of two separate suits. As already seen, both the sets of objections filed in regard to the land in dispute were treated as one single case. The law laid down in Narhari's case by the Supreme Court and not in Sheodan Singh's case is, therefore, applicable in the present case.

5. In the result, the writ petition succeeds and is allowed. The order of the Deputy Director of Consolidation dated 6th May, 1971, is quashed and he is directed to decide all the three revisions filed by the Petitioner on merits in accordance with law, In the circumstances of the case, there will be no order as to costs.