
(1977) 11 AHC CK 0046
In the Allahabad High Court
Case No : Civil Revision No. 176 of 1974

Baij Nath and Others

APPELLANT

Vs

Binda and Another

RESPONDENT

Date of Decision : 30-11-1977

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49, 9

Citation : (1978) AWC 52 : (1978) RD 77

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : Radhey Shyam, for the Appellant;

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—Having unsuccessfully challenged the conciliation order passed by the Assistant Consolidation Officer u/s 9 of the U.P. Consolidation of Holdings Act on the ground of fraud upto the stage of Deputy Director Consolidation the applicant filed the suit, which, on an objection raised by the opposite party of being barred u/s 49 of the Act, was decided in the negative by the trial court but in affirmative by the appellate court.

2. The learned Counsel for the applicant relying on a number of decisions reported in Noor Khan v. Board of Revenue 1977 AWC 394, Ram Nath v. Smt. Munna 1976 AWC 412 and 1966 RD 147 , has urged that the suit for cancellation of an order passed u/s 9 was not a proceeding regarding which any relief could have been obtained from the consolidation courts as such the suit was maintainable. On the other hand the learned Counsel for the Respondent relying on Chandra Shekhar and Others Vs. Director of Consolidation, U.P., Lucknow (Camp Sultanpur) and Others, Unreported Revenue Cases 41 and two other cases in the same volume at pages 121 and 250, Chet Ram v. Director of Consolidation 1970 AWR 775 has strenuously defended the order passed by the appellate court. He has also relied on Ramzan Ali Vs. Mt. Satul Bibi and Others, and Kalka Prasad Ram Charan Vs. Harish Chandra, in support of his argument

that this Court should not exercise its discretion in favour of the applicant as he having agitated the matter once upto the Deputy Director of Consolidation there was no equity; in his favour and justice having been done between the parties the revision should be dismissed.

3. Section 49 of the Consolidation of Holdings Act excludes jurisdiction of Civil Court in regard to:

(a) declaration and adjudication of rights of tenure holders.

(b) adjudication of any right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken.

A suit challenging conciliation proceedings on ground of fraud and seeking declaration that the order is null and void is not a suit or proceeding for declaration and adjudication of the rights of a tenure holder. It may however be said that such proceeding may be covered by the second category contemplated in Section 49 of the Act. The controversy whether a consolidation court can consider the validity or otherwise of a document which is obtained by fraud, inducement or misrepresentation has now been set at rest in *Gorakh Nath Dube Vs. Hari Narain Singh and Others*, . It was observed:

We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such an appropriate alienation would be necessarily implied in the decision of dispute involving conflicting claims to rights or interest in land which are subject matters of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interest in land, to declare such documents effective or ineffective, but, where there is a document the legal effect of which, can Only be taken away by setting it aside or its cancellation it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it.

The effect of interpretation of law is that a void document can be considered and adjudicated by the consolidation courts but a document which is only voidable and needs a declaration or adjudication by a competent court then the matter can be agitated only in the civil court and the jurisdiction of the consolidation courts shall be barred.

4. In *Ningawwa v. Byreppa* AIR 1968 SC 957 it was held by the Supreme Court:

It is well established that a contract or other transaction induced or tainted by fraud is not void but only voidable at the option of the party defrauded.... The

legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof.

With reference to the former it has been held that the transaction is void, while in the case of latter, it is merely voidable. On the facts of the case it was found by the Supreme Court that the doner while executing gift deed fraudulently included plot Nos. 91 and 92 in the gift deed. This was held a misrepresentation of the contents of document and not a fraudulent misrepresentation regarding the character of a document.

5. In the plaint the applicant claimed to be sole sirdar as the conciliation was obtained by inducement and practising fraud on him. The opposite party was alleged to have obtained thumb impression of the applicant on plain paper and he subsequently after opposite party's assertion of possession, on enquiry, came to know that those thumb impressions have been utilised as compromise before the Assistant Consolidation Officer. The applicant therefore unmistakably challenged the character of the document. The effect of inducement if found true was to render the document void. Such a claim could be and was in fact agitated before the consolidation courts. As the nature of the document itself was challenged the case was squarely covered by the principle laid down in Ningawwa's case (supra).

6. In view of what has been stated it is not necessary to consider the respective contentions advanced on behalf of the learned Counsel for the applicant and Respondent.

7. The result is that this revision fails and is dismissed. But the parties shall bear their own costs.