
(1982) 02 AHC CK 0048
In the Allahabad High Court
Case No : Second Appeal No. 2121 of 1977

Bal Dutta and another	Vs	APPELLANT
Raj Narain and others		RESPONDENT

Date of Decision : 23-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 49

Citation : (1982) 02 AHC CK 0048

Hon'ble Judges : V.K.Mehrotra, J

Final Decision : Allowed

Judgement

V. K. Mehrotra, J.

The second appeal is by two defendants in a suit which was dismissed by the Trial Court but decreed by the lower appellate Court.

The case of the plaintiffrespondent was that in proceeding under the U P Consolidation of Holdings Act, an order was passed against them without affording them an opportunity of hearing on impleading two of them namely Raj Narain and Hirdai Narain as parties to those proceedings. Consequently, the order passed in those proceedings was void and not binding upon them.

During proceedings under the U. P. Consolidation of Holdings Act at the stage of formation of chaks certain plots were consolidated as chak No. 17. This chak was allotted to the three brothers who are respondents in this Court It appears that the present appellants were not satisfied by the chaks formed and filed a revision under Section 48 of the Act in regard thereto before the Deputy Director of Consolidation. In this revision only Udai Narain was impleaded as a party. The case of plaintiffs is that even Udai Narain was not aware of the proceedings when the revision was heard on the spot by the Deputy Director of Consolidation, Their chak was slightly altered and some part thereof was included in a chak which had been allotted to the present appellants namely, the defendants. On coming to

know of this alteration application was made before the Deputy Director of Consolidation by all the three respondents making a grievance of the fact that alteration in their chak was made to their prejudice without affording them an opportunity of having their say. This application was disposed of by Deputy Director of Consolidation after hearing the parties by an order dated January 13, 1971. He rejected the prayer and affirmed the order passed earlier by him on November, 12, 1970.

The respondents in this appeal, namely, the two plaintiffs and his brother Udai Narain, then approached this Court in a petition under Article 226 of the Constitution assailing the first order of the Deputy Director of Consolidation dated November 12, 1970 inter alia on the ground that the order passed by the Deputy Director of Consolidation was invalid for it had been passed in a revision to which Raj Narain and Hirdaya Narain were not parties and were not heard. The petition after exchange of affidavits between the parties, which included the present appellants and hearing their counsel was dismissed by this Court by an order dated November 20, 1975. A copy of the judgment of this Court is Ext. 5 on the record of the suit. This Court h"ld that the interest of Raj Narain and Hirdaya Narain was duly represented by (Jdai Narain before the Deputy Director of Consolidation and that in any case, it was not a fit case for interference by this Court for the petitioners had not approached the High Court with clean hands. After dismissal of the writ petition Raj Narain and Hirdaya Narain instituted the suit out of which arises the present second appeal. In this suit they impleaded their brother Udai Narain, the third respondent as defendant No. 3. The suit was amongst others, based on the ground that the order passed by the Deputy Director of Consolidation on November 12, 1970 was void for it had been passed without imp leading the plaintiffs. On the basis of this order it was alleged that the plaintiffs could not be dispossessed from the plots which came to be subsequently included in the chak allotted to the defendantsappellants. The case of the defendants however, was that they had actually been put into possession of the plots which were included in the chaks allotted to them in consequence of the order of the Deputy Director of Consolidation dated November 12, 1970. The plaintiff claimed that by means of an injunction the defendants be restrained from interfering with their possession and alternatively if they are found to be out of possession they should be granted a decree restoring possession to them.

The defendants contested the suit on various grounds and peladed inter alia, that it was barred by Section 49 of the U.P. Consolidation of Holdings Act and on principles of Section 11 of the Code of Civil Procedure. They also claimed that they had been put in possession of the disputed plots and that the suit, thereafter, for injunction was not sustainable.

On the pleas aforesaid which were the principle ones the" Trial Court framed necessary issues and came to the conclusion that the plaintiffs were not entitled to any relief. It was of the view that the suit was barred on the principle of resjudicata on account of the judgment rendered by this Court in the writ petition.

The plaintiffs assailed the Trial Court in an appeal. The 1st Additional District and Sessions Judge Azamgarh who heard the appeal allowed it and in error decreed the suit. The learned Judge was of opinion that the Trial Court was in error in taking the view that the suit was barred under Section 11 C.P.C. or that the controversy which was before this Court in the writ petition was similar to the one invoked in the suit. He also was of opinion that Section 49 of the U. P. Consolidation of Holdings Act did not bar the suit for the grievance of the plaintiffs being that a decision had been taken against them behind their back from the Deputy Director Consolidation could not be agitated by them in any proceedings under the Act. The suit was decreed for cancellation of the order of the Deputy Director of Consolidation dated November 12, 1970 as well as for delivery of possession to the plaintiffs for, in the opinion of the learned Judge they had been dispossessed forcibly during the pendency of the suit.

For the appellants Sri P. N. Singh their learned counsel has urged, in the first instance, that the suit was not maintainable for it was barred both under Section 40 of the U. P. Consolidation of Holdings Act as well as on the principle of resjudicata under Section 11 C. P. C. His submission in the main has been that the grievance raised by the plaintiffs in the present suit was essentially same as was agitated by them before this Court in the writ petition and the decision of this Court in that petition was binding between the parties. It has also been urged that in any case, the Deputy Director of Consolidation hid the jurisdiction to decide whether the alteration in the chak had been brought about without hearing a necessary party or not and in as much as such an objection could be taken before the Deputy Director of Consolidation and was in fact, raised before him and decided by the Deputy Director of Consolidation by his order dated January 13, 1971 the matter could not be agitated in a suit on account of the clear provision in that regard contained in Section 49 of that Act.

In Rama Kant Singh v. Deputy Director of Consolidation and others 1974 R.D. (Supp.) 262= 1974 A.L.J. 834 a Full Bench of the Court ruled that where the record has been called for by the Deputy Director of Consolidation under Section 48 of the U. P. Consolidation of Holdings Act he should examine the record to decide whether it was fit case for exercise of revisional jurisdiction suo motu. Such opinion is to be formed even where the application in revision moved by the parties was defective having been made beyond the prescribed period of limitation or wherein all the necessary parties had not been impleaded. Further that in case the Deputy Director of Consolidation finds that the case requires further hearing he shall give notice to all the necessary parties irrespective of the fact whether they were or were not impleaded in the application and after giving them reasonable opportunity of hearing pass such orders as he thinks fit.

On the basis of this decision it was urged for the respondents by Sri Sripat Narain Singh their counsel that it was necessary for the present appellants to have impleaded the two plaintiffs in the revision filed by them in the matter of allotment of chaks and that where the order was secured by them from the

Deputy Director of Consolidation without impleading them as parties it was a void order. This submission is based upon the dictum of the Supreme Court that even where the power of revision is exercised by the Deputy Director of Consolidation suo motu he is under an obligation to give notice to the necessary parties. Counsel for the respondents also urged on the basis of the decision of a Division Bench of the Court in *Satrujeet and others v. Deputy Director and others* 1979 A.W.C. 282 wherein reliance was placed upon the aforesaid Full Bench decision that the Deputy Director had no jurisdiction to make an order in exercise of his revisional jurisdiction under Section 48 without affording the parties concerned an opportunity of being heard. In that case, the Bench found that the petitioner before it was a necessary party and had not been impleaded in the revision by the party at whose instance the Deputy Director had interfered with a decision in his favour."

The case of the plaintiffs was that the order of the Deputy Director of Consolidation dated November 12, 1970 by which he made alteration in chak Mo, 17, was void for it had been passed without the defendantappellants impleading them in the revision application in which it was passed. The question whether an order of the nature passed in the instant case was void or not depends upon the conclusion about the fact whether it has not been passed after hearing the necessary parties or not. In *Satrujeet* case (Supra) the Division Bench observed (in paragraph 8 of the report thus;

"In *R. K. Sinph v. Director of Consolidation* a Full Bench of this Court held that the Dy. Director of Consolidation wishes to act suo motu he shall give notice to all the necessary parties irrespective of whether they were or were not Impleaded and after giving them a reasonable opportunity of hearing pass such orders as he may think fit. We respectfully accept this proposition. The crucial thing is that the parties concerned should be afforded an opportunity of being heard. Even if a concerned party is not impleaded but it afforded an opportunity of being heard, the order will be within jurisdiction. In the present case *Rajaram* who was a party concerned was neither impleaded nor afforded an opportunity of being heard. The revisional order was without jurisdiction and void".

In paragraphs 6 and 7 of the plaint in the present case the averments made were these:

6. That the plaintiffs moved a restoration application on 25.11.1970 before the D.D.C. which was summarily rejected.

That the plaintiffs along with defendant 2nd set filed a writ petition No. 1540 of 1971 which was not taken cognizance of by the Hon"ble High Court is involved question offset also. The Hon"ble Court did not deem it proper to exercise discretion in the matter and left the party to pursue any other remedy to which they may be entitled to pursue. This order was made on 20. 2.75. The Hon"ble High Court did not touch the point of void ability of the revision application filed by the defendants

1st set due to nonimpleadment of plaintiffs in that revision".

In the written statement too the facts aforesaid were mentioned in paragraphs 6 and 7. On these pleadings it is clear that it was the common case of the parties that the plaintiffs filed an application described by them as restoration Application assailing the order of the Deputy Director of Consolidation dated November 12, 1970 and that the matter was disposed of by the Deputy Director of Consolidation by rejecting their application Further that the order dated November 12, 1970 was also challenged by the respondents in the Court in the aforesaid writ petition which was dismissed by this Court.

A copy of the judgment of this Court is Ext 5 of the record of the case. It has also been filed as Ext A1 by the defendants. Some portion of the judgment has been extracted by the Addl. Distt. Judge in the judgment under appeal. A perusal of that judgment shows that in the opinion of this Court, the third respondent namely, Udai Narain also represented the interest of the two plaintiffs in proceedings before the Deputy Director of Consolidation and it was not permissible for Udai Narain to say that they had not actually been heard. The relevant observations are these:

""From the perusal of the affidavits filed in this writ petition it appears that Udai Narain petitioner No. 2 appeared before the Deputy Director of Consolidation on 12.11.1970 but when the revision WPS decided against them, the present writ petition was filed by Udai Narain along with his brothers asserting that the petitioners were not heard. Udai Narain filed rejoinder affidavit in the High Court on behalf of the petitioners.

This also goes to corroborate the case of the respondents nos. 2 and 3 that Udai Narain did not only represent his interest but also was representing the interest of Raj Narain and Hirdai Narain. Udai Narain cannot be permitted to assert that Raj Narain and Hirdai were not actually heard. The interest of Udai Narain was common with that of Raj Narain and Hirdai Narain".

The petition, as is clear from the recital contained in the judgment of this Court was based upon the allegation that the two plaintiffs were also joint tenure holder of chak No. 17 alongwith Udai Narain had not been impleaded as parties and that none of the petitioner were actually heard by the Deputy Director of Consolidation and that the order of the Deputy Director of Consolidation allowing the revision filed by the present appellants, was invalid and liable to be set aside. That is the precise grievance which has been made by the plaintiffs in the present suit. They have assailed the validity of the order of the Deputy Director of Consolidation dated November 12, 1970 on the ground of it being void for having been passed without the plaintiff being impleaded as parties in the revision which that order was made and without opportunity of hearing having been afforded to him. The decision of this Court in the writ petition was thus on a matter which is directly and substantially in issue between the parties in the present suit. The decision that the two plaintiffs had been heard and their

interest was represented by their brother Udai Narain being inter parties precludes them from agitating the question again in the suit. It is settled that a decision in a petition under Article 226 of the Constitution on a matter directly and substantially in issue between the parties would operate as *resjudicata* for a "subsequent suit between them about it. See *Union of India v. Nanak Singh*(A.I.R. 1968 S.C. 1370) and *State of Uttar Pradesh v. Nawab Hussain*. (A.I.R. 1977 S.C. 1680)

It was urged with some emphasis by Sri Sripat Narain Singh that the mere fact of nonimpleadment of the plaintiffrespondent in the revision rendered the decision of the Deputy Director of Consolidation dated November 12, 1970 void and that this ground was not in issue before the High Court which declined relief to the respondents in the writ petition primarily on the ground that the respondents, as petitioners had not approached the Court with clean hands. This submission loses sight of the fact that in the writ petition too a grievance was made by the petitioners, respondents in this appeal that the order of the Deputy Director of Consolidation had been passed without impleading two of them who are plaintiffs in the suit as parties to the proceedings. It also loses sight of the law laid down by the Division Bench in the case of *Satrujeet* case (*Supra*) that even if the concerned party is not impleaded but is afforded an opportunity of being heard the order will not be without jurisdiction.

On the conclusion of this Court in the writ petition that the interest of the plaintiffs was duly represented in the proceedings before the Deputy Director of Consolidation by the third respondent their brother and that it was not open therefore, to the petitioners in the writ petition to say that they had not been heard by the Deputy Director of Consolidation, it is clear that the order passed by the Deputy Director of Consolidation on November 12, 1970 cannot be characterised as being without jurisdiction. If it was an order within jurisdiction and has been upheld by this Court in the writ petition, any suit on the basis of the alleged invalidity of that order was not maintainable nor could the question be reagitated in a suit. The view of the Trial Court in that regard was perfectly sound.

In the view that I have taken, it is not necessary for me to notice the other submissions made by learned counsel or to deal with some other decisions cited by them. The learned Additional District Judge was in error in decreeing the suit.

The appeal succeeds and is allowed. The decree of the lower appellate Court is set aside and that of the Trial Court dismissing the suit, is upheld. In the circumstances of the case, however I direct the parties to bear their own costs throughout.