
(1984) 07 AHC CK 0019
In the Allahabad High Court
Case No : Writ Petition No. 1672 of 1971

Bhusaili

APPELLANT

Vs

Deputy Director of Consolidation & Others

RESPONDENT

Date of Decision : 25-07-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1984) 07 AHC CK 0019

Hon'ble Judges : U.C.Srivastava, J

Final Decision : Allowed

Judgement

U.C Srivastava, J.—After losing the case before all the three consolidation authorities the petitioner has filed this writ petition. The basic year entry in respect of the disputed land was in the names of the petitioner and opposite parties 4 to 14. The said opposite parties filed objection for expunction of the names of the petitioner on the ground that his father Nanda was adopted as son by Prayag and as such, lost rights in the family property left by Basant. The Consolidation Officer allowed the objection against which the petitioner filed an appeal which was dismissed. Thereafter he filed a revision application which was also dismissed. The simple question for determination was whether Nanda in fact was adopted by Prayag and continued to be his family member. There was no direct evidence on the point of adoption. The petitioner gave some evidence to prove that in fact Nanda was not adopted by Prayag. The petitioner earlier, along with Mangrey and Nankau, filed a suit for partition on the basis of decree. The suit was decreed and the issue as to whether Nanda was adopted by Prayag was decided in favour of the petitioner. The matter went in appeal and the District Judge held that Nanda was adopted by Prayag and as such, he lost all rights and title. A second appeal was filed but during the pendency of the appeal some of the respondents died and no application for substitution was moved and, accordingly, an order abating the appeal was passed. In the meantime the village had already been brought under consolidation operations. The Deputy Director of

Consolidation took the view that appeal abated because of start of consolidation operations. The original file of the second appeal was perused from which it was obvious that an order was passed abating the appeal by rejecting the application for condonation of delay in filing the substitution application and not on the ground of start of consolidation proceedings in the village, though when the death took place or order of abatement was passed the village had already been brought under consolidation operations. The question for consideration before the Deputy Director of Consolidation was whether the finding of reversal regarding adoption of Nanda by the I Additional District Judge was final and binding. The consolidation proceedings are not Civil suit as contemplated by CPC and objection before consolidation authorities is not in the nature of a suit on a particular cause of action. It is true that principles of res judicata apply in proceedings under U.P. Consolidation of Holdings Act and if determination of a particular right has become final between the parties in competent court of law that cannot be ignored. The Deputy Director of Consolidation without addressing himself on all these questions and considering the evidence or record disposed of the revision application on the ground of res judicata and that too on a wrong assumption of fact. In this view of the matter the writ petition is to be allowed.

2. The writ petition is allowed and the order dated 13th July, 1971 (Annexure3) passed by the Deputy Director of Consolidation is quashed and he is directed to restore the revision application to its original number and hear and decide the same in accordance with law. As the matter is old, it is expected that the Deputy Director of Consolidation will decide the revision application within six months. There will be no order as to costs.

(Petition allowed)