
(1994) 10 AHC CK 0075

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 574 of 1978

Bipat

APPELLANT

Vs

Dy. Director of Consolidation, Gorakhpur and Others

RESPONDENT

Date of Decision : 28-10-1994

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1994) 10 AHC CK 0075

Hon'ble Judges : Binod Kumar Roy, J and B. Dikshit, J

Final Decision : Dismissed

Judgement

1. The petitioner prays to quash the appellate order dated 25th March, 1974 passed by the Assistant Settlement Officer Consolidation, Gorakhpur (respondent No. 2) in Appeal No. 1533 (copy appended as Annexure IX) and the revisional order dated 1.11.1977 passed by the Deputy Director of Consolidation, Gorakhpur (respondent No. 1) in Revision No. 1351/366 (copy appended as Annexure X).

2. The relevant facts appearing from the Writ petition, Counter affidavit and the various Annexures thereto and the Rejoinder of the petitioner are as under : The petitioner claims to have purchased by registered sale deed dated 3.6.1967 the interest of respondent No. 3 Smt. Karmi, who is an illiterate widow, in the lands of Khata No. 42 of village Dhaska Pachisi, Pargana Bhauapar, Tehsil Bansgaon," district Gorakhpur The basic year entry also admittedly stands recorded in name of respondent No. 3 Navnath and Ram. Chander. On the basis of his sale deed the petitioner filed an objection under Section 9A (2) of the U. P. Consolidation of Holdings Act (hereinafter referred to as the Act) and thus his name be entered in her place. Objection was registered as Case Nps. 105 and 106. Respondent No. 3 resisted the claim of petitioner on the grounds inter alia that she had not executed any document in his favour, and that when she came to know of the fraud played upon her she instituted a title suit No. 150 of 1977 in the Court of Munsif Bansgaon, district Gorakhpur, which, however, abayed in view of

commencement of the consolidation proceedings, on orders of this Court. The Consolidation Officer framed three issues : (1) Whether the sale deed in regard to land of Khata No. 42 have been executed by Smt. Karmi widow of Devi Charan, in favour of Bipat and if not then what is its effect? (2) Whether Bipat is cotenant and bhumidhar of the land of Khata No. 42, and if yes then what is the share of parties? and (3) What would be the share of the parties? The petitioner produced the original sale deed, a certified copy of which has been appended as Annexure I to this writ petition. Perusal of the deed shows that 3.76 Acres of lands were allegedly transferred for Rs. 6,000/-. The petitioner examined himself, besides Basudeo, who has put his signature (thumb impression) on the sale deed as its witness. Respondent No. 3 also examined herself. The petitioner also got the alleged thumb impression of respondent No. 3 examined by a handwriting expert who, however, opined that the thumb impressions are blurred and hence he cannot give any definite opinion. The Consolidation Officer, vide his order dated 25th July, 1992 (copy appended as Annexure VI) accepted the claim of the petitioner after holding that the burden of proof was on Smt. Karmi to prove that she had not executed the sale deed. Respondent No. 3 went up in appeal No. 749/404 which was dismissed by order dated 31.11.1972) copy appended as Annexure VII). Thereafter respondent No. 3 went up in revision, which was allowed and the appeal was remitted back to hear the parties on the issue of possession, which was held to be of importance. Thereafter the appellate authority allowed the appeal of respondent No. 3 vide the impugned order holding that Karmi had not executed the deed and Bipat got executed the deed by producing a Farzi women who is also not in possession. While reversing the findings the appellate authority observed as follows(i) The Government expert opines that the sale deed does not contain signatures of Smt. Karmi. (ii). Bipat could not prove his allegation that Smt. Karmi had brought the Government expert in collusion, (iii) D. Alexander, the private expert had opined that the thumb impressions are not clear, and hence, he cannot say whether on the sale deed there is signature of Smt. Karmi or not. (iv) The marginal witness Basudeo had stated in his evidence that he does not know where Smt. Karmi resides whose thumb impression was not taken in his presence on the sale deed, (v) Similarly Bipat stated that Karma was identified by Ram Chandra before the Registrar but Ram Chandra was not produced as his witness, (vi) .The sale deed was the basis of claim of Bipat which he could not prove correctly, (vii) The Consolidation Officer has mentioned in his order that as Smt. Karmi had sold away her house and, therefore, she would have sold away the land whereas the deed shows that she need money for pilgrimage and repair of her house, (viii) From Khasras of 1372 Fasli and 1373 Fasli it is clear that Bipat is not in possession of the land in question. Had he been in possession after the purchase his name should had been mentioned in the Khasras by mentioning his 1/3 share. The petitioner went up in revision No. 1353 of 1976 which was dismissed by the impugned order observing/holding as follows : (i) The onus to prove that the petitioner acquired title on the basis of alleged sale deed was on him, on the basis of which he got possession but he examined only one of the marginal

witnesses namely, Basudeo, who had not clearly stated that Smt. Karmi had put her signature in his presence and in the presence of Ram Chandra. This witness had further stated that he had not identified Smt. Karmi before the Registrar and it is not known as to whether another witness Chandrika Rai identified her before the Registrar or not and from his statement it further appears that he was not well known to Bipat from before and was made a witness by Bipat at the time of registration. From further perusal of his deposition it becomes clear that he has not stated correctly the facts, (ii) The other witness Ram Chandra, who was claimed to be Chandrika Rai by Basudeo, was not examined, (iii) Even though the petitioner claims to be in possession after the execution of the document, nothing was stated about his possession in the partial (i.e. Inquiry made during consolidation), (iv) From the evidence on record it is not proved that the land has been partitioned amongst the co-sharers.

The submission :

3. Mr. Sankatha Rai, the learned counsel appearing on behalf of petitioner, submitted as follows :

(i) The revisional authority has committed an apparent error of law in not considering the legal position that the finding of the Consolidation Officer that the sale deed was executed by Smt. Karmi was not set aside earlier by the appellate authority rather the appeal was remitted back for determining the question of possession only and accordingly the earlier finding was binding on the appellate authority as well as the revisional authority. He placed reliance on a recent judgment of the Hon'ble Supreme Court in *Ram Dular v. D. D. C., Jaunpur*, 1994 RD 290.

(ii) At the time when the sale deed was admitted in evidence no objection was raised by respondent No. 3 about its formal prove and it was not open for her to make any grievance in that regard either before the appellate authority or the revisional authority but this legal aspect was illegally not considered by the revisional authority. In this context he further submitted that the appellate and revisional authority have not taken into account the fact that the opposite party No. 3 had executed the document before the Registrar, and the presumption of law emerging out of Sections 34, 35, 58 and 60 of the Indian Registration Act.

(iii) The revisional authority has also not considered the oral evidence which was adduced by the petitioner before the Consolidation Authorities.

He also placed reliance on some more decisions viz. *Gopal Das and another v. Sri Thakurji and others*, A.I.R. 1943 PC 83, *Gajraj and others v. Board of Revenue, U. P. Allahabad and others* 1966 A.L.J. 149 and *State of Maharashtra v. Sukhdeo Singh*, A.I.R. 1992 SC 2100.

4. Mr. R.C. Singh, the learned counsel appearing on behalf of respondent No. 3, on the other hand, contended that there is no merit in the submissions of Mr. Rai and the writ petition is fit to be dismissed with costs. The onus to prove was

incorrectly placed by the Consolidation Officer on respondent No.3, and accordingly his order was erroneous and, therefore, correctly set aside on appeal and the appellate order was also correctly affirmed by dismissing the revision of the petitioner. The reasons assigned by the authorities for disbelieving the evidence and case of the petitioner are correct and could not be shown to be vitiated on account of "any error of fact, muchless of law requiring interference by this Court in exercise of its discretionary jurisdiction. After the case was remanded by the revisional authority the finding of fact recorded in favour of petitioner automatically disappeared, besides while remitting the appeal no finding of fact was recorded by the appellate authority that the sale deed was executed by respondent No. 3 in favour of the petitioner. The decisions relied upon by Mr. Rai do not apply to the facts of the instant case.

5. Before we proceed we take note that this writ petition was referred to for its adjudication by a Division Bench to examine the following questions :

(i) Whether in the facts and circumstances the revisional authority was correct in dismissing the revision application of the petitioner or should have remitted back as the case for read judication by the appellate authority?

(ii) Whether in the facts and circumstances of this case, despite abatement of her title suit filed for setting aside the registered sale deed said to have been executed in her favour, it was open for her to take a defence simplicitor before the Consolidation Officer that she had not executed that deed?

Our findings : ?

6. The second question referred to above was not pressed before us. Thus, we proceed to decide the first question only.

7. Section 48 (1) of the Act reads as follows :

48. Revision and Reference. (1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of and order other than interlocutory order passed by such authority in case of proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case of proceedings as he thinks fit.?

8. The scope of Section 48 of the Act has been laid down by the Hon''ble Supreme Court in Ram Dular's case (supra) strongly relied upon by Mr. Rai as follows :

?It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness, of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the . correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to

itself the jurisdiction of the original authority as a fact finding authority by appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no, evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the rest of "the matter, had been committed in recording the order of finding.?

9. Undisputedly respondent No. 3 is an illiterate widow. In *Parasnath Rai v. Tilesm Khwar*, 1965? A.L.J. 1080, this Court held as follows:"

?Rules regarding transaction by Pardahnashin lady are equally applicable to an illiterate and ignorant woman though she may not be a pardahnashin. It is not by reason of the Pardah itself that the law throws its protection round a Pardahnashin lady but by reason of those disabilities which a life of seclusion lived by a pardahnashin lady gives rise to, and which are consequently presumed to exist in the case of such a lady. But the disabilities which make the protection necessary may arise from, other causes as well as old age, infirmity, ignorance, illiteracy ailing mental deficiency, in experience and dependance upon others may by themselves create disabilities that may render the protection equally necessary. It is, therefore, proved that a woman, who is not a pardahnashin lady, suffers from disabilities to which a Pardahnashin lady is presumed to be subject, the validity and the binding nature of a deed executed by her have to be judged in the light of those very principles which are applied to a deed by a Pardahnashin lady.?

10. The question as to what would be the effect of a transaction where an endorsement is made by the Registrar was also examined in *Jagannath v. Mt. Dhiraja*, A.I.R. 1918 Oudh 120, and it was held that the Court was not bound to treat the registration endorsement as conclusive proof of execution. A learned Single Judge of this Court also considered the same argument in *Mallo v. Bakhtawari*, A.I.R. 1985 All. 160, and following the ratio in A.I.R. 1918 Oudh 120 (supra), observed that endorsement cannot be resorted to if circumstances of execution are suspicious. We respectfully ^endorse the same view.

11. In *Ramesh Chandra v. H. D. Jain College, Arrah and others*, A.I.R. 1957 Patna 145, it was held that wrong placing of the onus is a material irregularity.

12. Thus, the original authority had committed an apparent error of law in holding that onus was on the respondent No. 3 to prove her case. The appellate court, after remand, correctly held that the onus to prove was on the petitioner, who was respondent.

13. We have been taken through the evidence of the petitioner and his witnesses. We do not find that any error of law was committed by the, appellate authority in regard to consideration of his evidence. Even the revisional Court had also proceeded to consider his evidence and it cannot be said that he had committed any error on record. No reason whatsoever has been assigned by

the petitioner as, to why the describe of the deed was not examined by the petitioner.

14. It is also a settled law that an order of "remand is not binding on the higher courts (see Kshitish Chandra Bose v. Commissioner of Ranchi,, A. I.R. 1981 SC 707). Besides, we also do not find merit in the contention of Mr. Rai that the finding recorded by the appellate authority earlier at the time of the remand"of appeal, in regard to validity of the sale deed was binding either on the appellate authority or on the revisional authority after remand. No finding was recorded by the appellate authority that the sale deed was executed by respondent No. 3. As the order of the Consolidation Officer was set aside his finding automatically became nonexistent/non est and a non est finding cannot be said to be binding after remand.

15. Accordingly we overrule the submissions Nos. (i) and (iii) made by Mr. Rai.

16. We do not find that submission No. 2 was raised by the petitioner before the appellate or the revisional authority. Necessary facts in that regard has also not been pleaded in the writ petition. The order sheet of the Consolidation Officer has also not been appended. The decisions relied upon by Mr. Rai in the peculiar facts and circumstances of instant case are of no help to him.

17. For the reason stated as above, we do not find any merit in this writ petition.

18. This writ . petition is accordingly dismissed.

19. In the peculiar facts and circumstances of the case, however, we make no order as to costs.