

(1972) 05 AHC CK 0020
In the Allahabad High Court
Case No : Special Appeal No. 578 of 1964

Dilawar Singh

APPELLANT

Vs

The Gram Samaj and Others

RESPONDENT

Date of Decision : 29-05-1972

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 48, 52, 52(1)

Citation : AIR 1973 All 411 : (1972) 42 AWR 557

Hon'ble Judges : Satish Chandra, J;K.N. Seth, J

Bench : Division Bench

Advocate : U.N. Khar, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.N. Seth, J.—In consolidation proceedings Smt Tulsa was allotted a chak in lieu of certain plots of which she was the recorded tenure-holder. While the consolidation operations were still in progress she died in 1962. On her death, the appellant made an application u/s 12 of the Consolidation of Holdings Act (hereinafter referred to as the Act) for mutation of his name in place of her name claiming to be her heir, being the daughter's son. Another application was filed by one Nathu Singh. The Gaon Samai also entered the arena claiming that Smt Tulsa had died without leaving any heir and her property had vested in the Gaon Samaj. The Consolidation Officer, by his order dated 13-5-1963, upheld the claim of the present appellant and rejected the claim put forward by the Gaon Samaj and Nathu Singh. The Gaon Samai preferred an appeal which was allowed by the Settlement Officer (Consolidation) by an order dated 28th November, 1963 holding that the property of Smt. Tulsa had vested in the Gaon Samai. Against the order of the Settlement Officer (Consolidation), the appellant filed a revision on 12th December, 1963. Before the revision was filed, a notification u/s 52 of the Act was issued on 7th December, 1963. The revision was dismissed on the ground that after the notification u/s 52 of the Act, the revision could not be entertained. The order of the Deputy Director (Consolidation) was challenged in

this Court by a petition under Article 226 of the Constitution. A learned single Judge dismissed the petition and hence this appeal.

2. It is admitted that when the notification u/s 52 of the Act was issued, no revision had been filed challenging the order of the Settlement Officer (Consolidation). The question for consideration is whether the revision filed on December 12, 1963 was maintainable.

3. Sub-section (2) of Section 52 of the Act was added by Section 43 of the U.P. Amendment Act No. VIII of 1963 and reads:--

"Notwithstanding anything contained in Sub-section (1), any order passed by a Court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases or proceedings pending under this Act on the date of issue of the notification under Sub-section (1) shall be given effect to by such authorities as may be prescribed and the consolidation operations shall, for that purpose, be deemed to have not been closed."

Under the aforesaid provision the consolidation authorities were bound to give effect to orders passed by Court of competent jurisdiction in cases or proceedings pending under the Act on the date of the issue of the notification under Sub-section (1). It was contended that the proceedings initiated by the applications made by the rival claimants had not finally concluded by the order passed by the Settlement Officer (Consolidation) and were still pending when the notification under Sub-section (1) of Section 52 of the Act was issued. The learned single Judge took the view that in order to attract the provisions of subsection (2), a proceeding must be actually pending on the date of the notification and it should not be in mere contemplation. In the present case the revisional proceeding was only in contemplation till it was filed on December 12, 1963, and it could not be accepted that on December 7, 1963 when the notification was issued, the revisional proceeding was pending.

4. A proceeding whether initiated through a suit or an application embraces within its ambit all the rights available to a party by way of appeals, second appeals or revisions. In *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, S. R. Das, C.J., delivering the majority judgment laid down that the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic entity and are to be regarded as one legal proceeding and that the right of appeal was not a mere matter of procedure but was a substantive right. The Court further observed that the institution of the suit carried with it the implication that all rights of appeal then in force were preserved to the parties thereto till the suit was finally decided and that right of appeal was a vested right which accrued to the litigant from the date the lis commenced and this vested right could be taken away by a subsequent enactment if it so provided expressly or by necessary intendment. It is thus clear that the right of a litigant to take the proceeding to a superior Court, if an adverse order is passed against him, comes into existence the moment a

proceeding is initiated and it continues till the lis continues. The right is to be governed by the law prevailing at the date of the Institution of the suit or appeal and not by the law that prevails at the date of the decision or at the date of the filing of the appeal. Applying this principle it has to be held that on the filing of a claim or objection before the Consolidation Officer, certain rights vested in a party to take the proceeding to the superior authorities. That right could not be taken away by a subsequent enactment unless it was expressly or by necessary implication so provided. There is nothing in Section 52 of the Act which either expressly or by necessary implication takes away that right.

5. In *Gopi Singh v. Deputy Director of Consolidation* 1967 All LJ 439 the objections filed by some of the parties were allowed by the Consolidation Officer by an order dated 25-8-1965. An appeal was preferred before the Settlement Officer (Consolidation). While the objections were still pending before the Consolidation Officer, a notification u/s 52 of the Act was published on 22-5-1965. An objection was raised in appeal that it was not competent as the appeal had not even been instituted when the notification u/s 52 was published. This objection prevailed and the same was upheld by the Deputy Director (Consolidation) in revision. The matter came up to this Court in a petition under Article 226 of the Constitution and one of us (Satish Chandra, J.) relying on the principle laid down in *Garikapati's case* (supra) held:

"The term "proceedings" in Section 52 (2) has, in my opinion, been used in that comprehensive sense to include the entire series of proceedings commencing from the one which is initiated before the Consolidation Officer and including that taken in the appeal Court. When an appeal is instituted the proceeding which commenced in the trial Court continues. The appeal does not initiate a fresh proceeding. On the institution of the appeal the proceedings which have become dormant on the decision by the trial Court, revive and remain pending. The only difference being that it is now pending in a different Court, namely, the Court of appeal."

It was further observed:

"The word "cases" in the phrase "cases of writs filed under the Constitution", in Sub-section (2) will include orders passed by higher Courts of appeal including the Supreme Court. Thus, Sub-section (2) is designed to preserve and make effective orders passed by any one or more of the hierarchy of Courts established under the Act, irrespective of whether the proceeding was pending in any particular Court or in any Court subordinate thereto, on the date of issue of the notification in Sub-section (1)."

We are in agreement with the view taken in the aforesaid case.

6. The principle of a vested right of a litigant to take a proceeding to the superior Court by an appeal would be equally applicable in case of a revision. It is true that a revision is a power conferred on a Court or authority to be exercised at its discretion but it does not mean that the litigant does not possess the right to

approach the superior Court through a petition for revision. The only basic difference between an appeal and a revision is that in case of an appeal the appellant is entitled to a relief if he succeeds in establishing that the order of the subordinate Court or authority was unsound or contrary to law. In case of a revision the Court has discretion to refuse the relief if, for example, in its opinion substantial justice had been done between the parties although the order sought to be revised suffered from infirmities which could justify an interference by the revising Court.

7. There is no definition of the word "appeal" in any statute. In Wharton's Law Lexicon "appeal" is defined as "the judicial examination of the decision by a higher Court of the decision of an inferior Court". In *Nagendra Nath Dey v. Suresh Chandra Dey*, 1932 Oudh Cas 168 their Lordships observed that any application by a party to an appellate Court asking it to set aside or revise, a decision of the subordinate Court is an appeal within the ordinary acceptation of the term. This indicates that there is no basic difference between the appellate and the revisional powers. If under a statute a party has a right to approach the superior Court with a prayer to revise the order of the subordinate Court, the proceeding can be said to be pending till the right to exercise the right of approaching the superior Court subsists in the applicant and so long that right subsists, it cannot be said that the proceedings had finally come to an end. The right to approach the superior Court through an appeal or a revision can be exercised only after an adverse judgment or order is passed against the party. Till then the right only remains dormant and when that right is exercised, the original proceedings become pending.

8. In the instant case the order of the Settlement Officer (Consolidation) was passed on November 28, 1963. Against that order the petitioner had a right to approach the Deputy Director (Consolidation) u/s 48 of the Act. Before his right to approach the superior Court came to an end, the notification u/s 52 was issued. That notification did not have the effect of destroying the right which the petitioner had. The proceedings initiated by the appellant u/s 12 of the Act had not come to an end. It was still pending when the notification u/s 52 of the Act was issued although in a dormant shape and had become active again when the revision was filed. In this view of the matter the Deputy Director (Consolidation) was in error in holding that the application u/s 43 of the Act could not be entertained. The learned single Judge also fell in the same error and his order cannot be sustained.

9. Before the learned single Judge a question was raised that the claim of the Gaon Samaj was barred by time. The learned Judge noticed that the argument had not been advanced before the Settlement Officer (Consolidation) and no such ground had been raised in the writ petition and as the point was not taken earlier, he would not permit it to be raised at the time of argument. The learned Judge, however, decided the question on merit. In our opinion it was not necessary for the learned single Judge to decide this question on merits after he

had come to the conclusion that the revision before the Deputy Director (Consolidation) was incompetent and the petitioner was not entitled to any relief.

10. In the result we allow the appeal, set aside the order of the learned single Judge dated 16-7-1964 and quash the order of the Deputy Director (Consolidation) dated 4-6-1964. The Deputy Director (Consolidation) is directed to decide the revision filed by the present appellant on merits. The parties shall bear their own costs.