
(2015) 08 AHC CK 0225
In the Allahabad High Court
Case No : Writ B. No. 37969 of 2015

Indra Pal Dev Pandey

APPELLANT

Vs

Dy. Director of Consolidation, Mirzapur and Others

RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 34
Registration Act, 1908 — Section 49
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 32
Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 —
Section 13
Transfer of Property Act, 1882 — Section 58, 59
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9, 9-A

Citation : (2015) 129 RD 6

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : M.N. Singh, for the Appellant; Jitendra Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri M.N. Singh, for the petitioner and Sri Jitendra Prasad, for respondents. The writ petition has been filed for quashing the order of Deputy Director of Consolidation dated 2.6.2015 passed in title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "Act").

2. The dispute relates to khata-77 (consisting plots 1828 (area 10 biswa), 1833 (area 13 biswa) and 1834 (area 16 biswa) of village Bhatpura, tappa Chaurasi, pargana Kantit, district Mirzapur. In basic consolidation year names of Shanta Prasad (now represented by the petitioner) and Jwala Prasad (respondent-2) were recorded. At the time of portal, shares of Shanta Prasad and Jwala Prasad were noted as 1/2 each. The village was notified under section 9 of the Act on 4.2.1989. Assistant Consolidation Officer by order dated 15.3.1989 recorded shares of Shanta Prasad and Jwala Prasad as 1/2 each.

3. Shanta Prasad filed a time barred objection (registered as Case No. 3008) under section 9-A of the Act, on 14.1.1998, for deleting the name of Jwala Prasad from the land in dispute, along with delay condonation application. It is alleged that matter was compromised before Consolidation Officer and a written compromise was filed by the parties on 11.9.1998. On the basis of which Consolidation Officer allowed the objection by order dated 26.10.1998. Jwala Prasad filed an application for recall of the aforesaid order, on 25.2.2000, along with delay condonation application, which was allowed by order dated 25.3.2003 and order dated 26.10.1998 was set aside and the objection was restored.

4. Thereafter, the case was tried by Consolidation Officer. The petitioner filed a photostat copy of document dated 5.1.1994, allegedly executed by Jwala Prasad, in which it has been mentioned that after taking Rs. 40,000/- from Shanta Prasad, Jwala Prasad had relinquished his share in the land in dispute in his favour. He examined two witnesses, namely Jagdish and Saltu as witnesses of the deed dated 5.1.1994. Jwala Prasad examined himself and stated the land in dispute was his ancestral property in which he had 1/2 share. He neither executed deed dated 5.1.1994 nor signed the compromise dated 11.9.1998. The Consolidation Officer, after hearing the parties, by order dated 20.6.2009 again allowed the objection and directed to delete the name of Jwala Prasad. Jwala Prasad filed an appeal (registered as Appeal No. 518/734 A/1075) from the aforesaid order, which was dismissed by Settlement Officer Consolidation, by order dated 4.12.2010.

5. Jwala Prasad filed a revision (registered as Revision No. 181) from the aforesaid order. Deputy Director of Consolidation, after hearing the parties, by order dated 2.6.2015 held that share of parties had already been decided by order of Assistant Consolidation Officer dated 15.3.1989. In spite of the order of Assistant Consolidation Officer, a time barred objection was filed before Consolidation Officer. In the alleged compromise dated 11.9.1998, no reference of the alleged deed dated 5.1.1994 was made. In case, there had been any such deed dated 5.1.1994, then it would have been mentioned in the compromise dated 11.9.1998. Deed dated 5.1.1994 is an unregistered document although it is alleged that a consideration of Rs. 40,000/- was paid and its registration was compulsory. On these findings, he allowed the revision and set aside the orders of Consolidation Officer dated 20.6.2009 and Settlement Officer Consolidation dated 4.12.2010. Hence this writ petition has been filed.

6. The Counsel for the petitioner submitted that after taking Rs. 40,000/- from Shanta Prasad, his brother Jwala Prasad relinquished his 1/2 share in the land in dispute in his favour and executed agreement dated 5.1.1994. Due execution of the agreement was proved by marginal witnesses Jagdish Singh and Saltu. Jwala Prasad also acknowledged right of the petitioner through compromise dated 11.9.1998. Consolidation Officer and Settlement Officer Consolidation relied upon the agreement dated 5.1.1994 as well as compromise dated 11.9.1998. Deputy Director of Consolidation has illegally ignored the agreement dated 5.1.1994 and

compromise dated 11.9.1998. Agreement dated 5.1.1994 amounts to a mortgage deed and in view of section 164 of U.P. Act No. 1 of 1951, it has effect of sale-deed and name of Jwala Prasad was rightly deleted from the land in dispute on its basis. This Court in Ramanand v. DDC and others 1993 RD 90, held that U.P. Act No. 1 of 1951 is a special enactment and provisions of general enactments of Transfer of Property Act, 1882 and Registration Act, 1908 are not applicable. If possession over bhumidhari property has been transferred in lieu of money advanced, then provisions of section 164 of U.P. Act No. 1 of 1951 will come into play, under which it amounts to sale. The order of Deputy Director of Consolidation is illegal and liable to be set aside.

7. I have considered the arguments of the Counsel for the parties and examined the records. So far as the arguments that U.P. Act No. 1 of 1951 is a special enactment and provisions of general enactments of Transfer of Property Act, 1882 and Registration Act, 1908 are not applicable, is concerned, U.P. Act No. 1 of 1951 does not provides mode of execution of an agreement to sell, sale-deed and mortgage deed. Section 158 U.P. Act No. 1 of 1951 provides for registration of lease deed, exceeding one year. Transfer of Property Act, 1882 provides mode of execution of an agreement to sell, sale-deed and mortgage deed. As such there is no conflict between two Acts for execution of an agreement to sell, sale-deed and mortgage deed. Transfer of Property Act, 1882 is law of land and has to be followed. In view of law laid down by Supreme Court in the cases noted below, ratio of Ramanand v. DDC and others 1993 RD 90, is not a good law.

8. Supreme Court in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , considered the question as to which of the two laws i.e. the Industrial Disputes Act, 1947 (the ID Act) and the Life Insurance Corporation Act, 1956 (the LIC Act), was a special law. Having regard to the doctrine of generalia specialibus non-derogant (general provisions will not abrogate special provisions), it was submitted that an employee of LIC cannot invoke the provisions of the ID Act in his complaint, and the matter would have to be decided in accordance with the LIC Act. The Court observed that the LIC Act was "special" as regards nationalisation of the life insurance business. But however, the disputes between employer and employee had to be dealt with under the ID Act which was a special law for resolving such disputes and if a dispute arose between employer and employee in the Life Insurance Corporation, the LIC Act must be treated as "general law" and the ID Act should be treated as "special law."

"52. In determining whether a statute is a special or a general one, the focus must be on the principal subject-matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relatively no absolutes--so too in life."

In Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd. and Another, , the conflict arose between two special statutes

i.e. the State Financial Corporations Act, 1951 and the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). This Court came to the conclusion that the 1951 Act deals with the pre-sickness situation, whereas the 1985 Act deals with the post-sickness situation, and therefore, it was not possible to agree that the 1951 Act is a special statute vis-a-vis the 1985 Act which is a general statute. Both are special statutes dealing with different situations notwithstanding a slight overlap here and there, for example, both of them provide for grant of financial assistance though in different situations. We must, therefore, hold that in cases of sick industrial undertakings the provisions contained in the 1985 Act would ordinarily prevail and govern.

In *Allahabad Bank v. Canara Bank*, 2001 (42) ALR 761 (SC), held that with reference to the Companies Act, the RDDB Act should be considered as a "special law" though both laws could be treated as "special laws" in respect of recovery of dues by banks and financial institutions.

In a later *Solidaire India Ltd. Vs. Fairgrowth Financial Services Ltd. and Others*, the question arose in the context of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and SICA. It was contended that in view of the special provisions contained in SICA no proceedings could have been initiated under the Special Court Act. The Court observed that though section 32 of SICA contained a non-obstante clause, there was a similar non-obstante clause in section 13 of the Special Court Act. That in such an event it is the later Act which must prevail. In *KSL & Industries Ltd. Vs. Arihant Threads Ltd.*, held that it is a settled rule of interpretation that if one construction leads to a conflict, whereas on another construction two Acts can be harmoniously construed, then the latter must be adopted. In view of the observations of this Court in the decisions referred to and relied on by the learned Counsel for the parties we find that, the purpose of the two enactments is entirely different. As observed earlier, the purpose of one is to provide ameliorative measures for reconstruction of sick companies, and the purpose of the other is to provide for speedy recovery of debts of banks and financial institutions. Both the Acts are "special" in this sense. However, with reference to the specific purpose of reconstruction of sick companies, SICA must be held to be a special law, though it may be considered to be a general law in relation to the recovery of debts. Whereas, the RDDB Act may be considered to be a special law in relation to the recovery of debts and SICA may be considered to be a general law in this regard. For this purpose we rely on the decision in *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*. Normally the latter of the two would prevail on the principle that the legislature was aware that it had enacted the earlier Act and yet chose to enact the subsequent Act with a non-obstante clause. In this case, however, the express intendment of Parliament in the non-obstante clause of the RDDB Act does not permit us to take that view. Though the RDDB Act is the later enactment, sub-section (2) of section 34 thereof specifically provides that the provisions of the Act or the Rules made thereunder shall be in addition to, and not in derogation of, the other laws

mentioned therein including SICA.

9. U.P. Act No. 1 of 1951 nowhere defines mortgage nor provides mode of execution of mortgage. Mortgage has been defined under section 58 of Transfer of Property Act, 1882 and section 59 makes its registration compulsory, if mortgage money is Rs. 100 or more. If a document is required to be registered compulsory then in view of section 49 of the Registration Act, 1908, an unregistered deed is not admissible in evidence and also held by Supreme Court in *K.B. Saha and Sons Pvt. Ltd. Vs. Development Consultant Ltd.*, , and *S. Kaladevi Vs. V.R. Somasundaram and Others*, . In this case, there is no registered mortgage deed as such provisions of section 164 will not apply.

10. So far as transfer of possession is concerned, *Shanta Prasad and Jwala Prasad* were real brothers and co-sharers in the land in dispute. In case of co-sharers, possession is immaterial as possession of one is possession of all. A Division Bench of this Court in *Mohammad Fasih v. Munir Khan* 1987 ALJ 617, held that for application of section 164 of U.P. Act No. 1 of 1951, transfer of possession alone is not sufficient. If possession of the holding has been transferred in pursuance of an agreement, it cannot be amount to sale. Similar view has been taken in *Kawal Patti and Another Vs. Ram Jokhan Upadhya*, , *Data Ram Vs. Addl. Civil Judge and Another*, , and *Umesh Chand and Others Vs. Board of Revenue, Allahabad and Others*, .

11. Conduct of the petitioner has been also noticed by Deputy Director of Consolidation that in the alleged compromise dated 11.9.1998, nowhere mentioned about agreement dated 5.1.1994. Thus inference has been drawn that agreement dated 5.1.1994 is a fabricated document. The compromise has been denied by *Jwala Prasad* and order passed on its basis has already been set aside on 25.3.2003. Thereafter, no reliance could be placed on the compromise. In view of the aforesaid discussions, the writ petition has no merit and is dismissed.