

(1989) 07 AHC CK 0020

In the Allahabad High Court

Case No : Writ Petition No's. 2977 of 1979 and 6826 of 1987

Jaan Ali and Another

APPELLANT

Vs

Joint Director of Consolidation and Others

RESPONDENT

Date of Decision : 31-07-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Oudh Rent Act, 1886 — Section 48
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 9
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (1990) 1 AWC 98

Hon'ble Judges : D.S. Bajpai, J

Bench : Single Bench

Advocate : H.S. Sahai, for the Appellant;

Judgement

D.S. Bajpai, J.—Writ Petition No. 2977 of 1979 filed by Jaan Ali (since deceased and substituted by, his legal heirs and representatives) and another pray for quashing the impugned orders dated 20-10-1971, 13-1-1972 and 30-6-1979 contained in annexures 6, 7 and 8 respectively to the writ petition passed by the Consolidation Officer, Ram Nagar, Faizabad, Assistant Settlement Officer Consolidation Faizabad and the Joint Director of Consolidation, Faizabad respectively.

2. Writ Petition No. 6826 of 1987 has been preferred by Auladan and another against the very said orders filed as annexures 1, 2 and 3 respectively to this writ petition. Thus in both the writ petitions, a prayer for quashing the said orders has been made by the contending parties.

3. The dispute related to Khata No. 118 in village Kasdaha, Pargana Birhar, Tehsil Tanda, district Faizabad which was recorded in the name of Auladan and Ibne Hasan as Bhumidhars in the basic year and on publication of records u/s 9 of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act). Jaan Ali and Smt. Wahidunnisan filed objection claiming co-tenancy rights over the said

Khata on the ground that the land was ancestral and was coming down since the time of Gulab Khan. The claim of Jaan Ali and Smt. Wahidunnisan was refuted by Auladan and Ibne Hasan and it was asserted that they had never been in possession at any point of time and the land in dispute was not ancestral. It was thus pointed out that Jaan Ali and Smt. Wahidunnisan had no title or share in the land in dispute. It is not disputed between the parties that before the start of consolidation operations a suit u/s 229B of the U.P. Zamindari Abolition and Land Reforms Act was filed by Jaan Ali and Smt. Wahidunnisan against Auladan and Ibne Hasan where a compromise was entered into between the parties. Subsequently Jaan Ali and Smt. Wahidunnisan objected to the said compromise and before the matter could be finally concluded and it could be ascertained as to what was the position of the compromise the suit abated because of the notification u/s 4 of the Act. The Consolidation Officer by his order dated 20-10-1971 granted co-tenancy rights over some plots of the Khata to Jaan Ali and Smt. Wahidunnisan and maintained the name of Auladan and Ibne Hasan over the other plots. Against this order both the parties i.e. Jaan Ali and Smt. Wahidunnisan, as also Auladan and Ibne Hasan filed appeals before the Settlement Officer Consolidation. The appeals were dismissed by the order of the Assistant Settlement Officer Consolidation dated 13-1-1972. Against the said orders the parties again preferred two revisions before the Deputy Director of Consolidation. On the revisions being heard the Joint Director of Consolidation by his order dated 30-6-1979 dismissed both the revisions. It is against these orders that the contending parties have preferred two writ petitions as stated hereinabove. Petitioners in Writ Petition No. 2977 of 1979 are aggrieved against the orders of the Joint Director of Consolidation and the other authorities refusing to grant co-tenancy rights to them in certain plots of the Khata in dispute while Petitioners in Writ Petition No. 6826 of 1987 are aggrieved against the orders of the consolidation authorities granting co-tenancy rights to the contesting opposite parties in some plots of the disputed Khata.

4. I have heard learned Counsel for the parties appearing in both the writ petitions on behalf of contesting parties. Affidavits exchanged between the parties have also been examined. The contention of the learned Counsel appearing for Jaan Ali and Smt. Wahidunnisan is to the effect that since a compromise between Jaan Ali and Shakoore Khan deceased, husband of Smt. Wahidunnisan, Auladan and Ibne Hasan being to the effect that in Khata No. 118 co-tenancy rights of Jaan Ali and Smt. Wahidunnisan were accepted and as such in view of this admission of Auladan and Ibne Hasan the consolidation authorities erred in depriving Jaan Ali and Smt. Wahidunnisan of their co-tenancy rights in the whole Khata No. 118. Learned Counsel for Auladan and Ibne Hasan, on the other hand, contended that since no finality had attached to the alleged compromise in view of the fact that the suit u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act stood abated and also in view of the fact that there being no evidence to the effect that the land came down from the common ancestors; that possession over the land in dispute was ever held by Jaan Ali and

Smt. Wahidunnisan and that they had been paying rent of the said land they could not be held to be the co-tenure holders. The contention of the learned Counsel for the Petitioners in Writ Petition No. 6826 of 1987, Auladan and Ibne Hasan, does not appear to be without substance inasmuch as before co-tenancy rights can be claimed by a contending party it is incumbent on him to establish that the land came down from the common ancestors with unbroken identity; the identity must be on the entire holding; that the person or persons claiming co-tenancy rights were in possession of the holding and that they had been paying rent of the said holding. In support of this contention the learned Counsel relied on a decision of this Court in the case of Jagdamba Singh v. Dy. Director of Consolidation, 1984 (2) LCD 398 wherein the Court has held:

It is fairly well settled that in order to entitle a party to claim co-tenancy rights in the holding on the ground of its being ancestral, the unbroken identity of the holding has got to be established throughout the period. If the identity has changed of the holding, the claim cannot succeed

To establish co-tenancy rights it is further incumbent that possession of the contending party claiming co-tenancy rights must also be proved as also the fact that he was continuously paying rent. In the case in hand identity is not proved and there is no evidence to indicate that after the death of common ancestor possession was taken over by Jaan Ali and Smt. Wahidunnisan claiming co-tenancy rights or that any re-settlement was made in their favour since no extracts of Khasra were produced by them indicating that they were in possession thereof. Similarly no rent receipts granted in their favour were placed on record. The contention of the learned Counsel for Auladan and Ibne Hasan to the effect that Jaan Ali and Smt. Wahidunnisan had failed to adduce any evidence in support of their claim of co-tenancy has to be upheld.

5. The learned Counsel further contended that even otherwise since the basic year entry stood in the name of Auladan and Ibne Hasan there was no question of succession at all. This could be proved by Jaan Ali and Smt. Wahidunnisan only by establishing their possession and succession. There being no evidence to that effect the judgment and order of the Consolidation Officer dated 20-10-1971 holding Jaan Ali and Smt. Wahidunnisan co-tenants of certain plots of land in the disputed Khata cannot be sustained. The learned Counsel for Auladan and Ibne Hasan has further relied on the decision in the case of Pulavarthi Venkata Subba Rao and Others Vs. Valluri Jagannadha Rao and Others, wherein it has been laid down by their Lordships that-

A compromise decree is not a decision by the Court. It is the acceptance by the Court of something to which the parties had agreed. A compromise decree merely sets the seal of the Court on the agreement of the parties. The Court does not decide anything. Nor can it be said that a decision of the Court was implicit in it. Only a decision by the Court can be *res judicata*, whether statutory u/s 11 of the Code of Civil Procedure, or constructive as a matter of public policy on which the entire doctrine rests. Such a decree cannot strictly be regarded as

decision on a matter which was heard and finally decided and cannot operate as res judicata. Such a decree might create an estoppel by conduct between the parties, but such an estoppel must be specifically pleaded.

The contention of the learned Counsel for Auladan and Ibne Hasan is to the effect that it not having been specifically pleaded by Jaan Ali and Smt. Wahidunnisan that Auladan and Ibne Hasan were estopped by their compromise from claiming co-tenancy rights in the disputed khata the consolidation Courts could not enter into this aspect of the matter. It has not been submitted by the learned Counsel for Jaan Ali and Smt. Wahidunnisan that it was ever pleaded specifically. Even otherwise the fact that compromise itself was challenged and before any finality could come to be attached to it the matter abated and the plea of estoppel could hardly be attracted. The contention of the learned Counsel for Auladan and Ibne Hasan is, not without substance and it is held that on the basis of this compromise no rights accrued in favour of Jaan Ali and Smt. Wahidunnisan.

6. The learned Counsel for Auladan and Ibne Hasan further contended that in any case there being no concept of joint Hindu family amongst the Parties who are Muslims the premise on which the consolidation authorities proceeded to adjudicate the matter was fallacious. The consolidation authorities, therefore, clearly erred in proceeding to declare Jaan Ali and Smt. Wahidunnisan as co-tenure holders on the basis of certain entries in the revenue records without taking into consideration as to how it came down u/s 48 of the Oudh Rent Act and ignoring the fact that possession, payment of rent and the holding coming down in identical form had not been established.

7. In the result Writ Petition No. 2977 of 1979 (Jaan Ali and Anr. v. Joint Director of Consolidation and 5 Ors.) is dismissed with costs and Writ Petition No. 6826 of 1987 (Auladan and Anr. v. Joint Director of Consolidation and 4 Ors.) is hereby allowed with costs. The impugned judgment and order dated 20-10-1971 passed by the Consolidation Officer filed as annexure-6 to Writ Petition No. 2977 of 1979 and annexure-1 to Writ Petition No. 6826 of 1987 is quashed to the extent it grants co-tenancy rights to Jaan Ali and Smt. Wahidunnisan, Petitioners of Writ Petition No. 2977 of 1979 in plots detailed therein. Orders dated 13-1-1972 and 30-6-1979 passed by the Assistant Settlement Officer Consolidation and the Joint Director of Consolidation, annexures 7 and 8 to Writ Petition No. 2977 of 1979 and annexures 2 and 3 to Writ Petition No. 6826 of 1987 respectively affirming the order of the Consolidation Officer dated 20-10-1971 (annexure-6 to Writ Petition No. 2977 of 1979 and annexure-1 to Writ Petition No. 6826 of 1987) are also likewise quashed. Let a writ of certiorari issue accordingly. The objection filed by Jaan Ali and Smt. Wahidunnisan, Petitioners in Writ Petition No. 2977 of 1979 claiming co-tenancy rights in the disputed khata stand dismissed and the basic year entry in respect of the disputed Khata No. 118 in favour of Auladan and Ibne Hasan, Petitioners in Writ Petition No. 6826 of 1987, is hereby directed to be restored.