

(2002) 11 AHC CK 0014
In the Allahabad High Court
Case No : Writ Petition No. 14024 of 1985

Karan Singh (D) through L.Rs.

APPELLANT

Vs

Dy. Director of Consolidation and Another

RESPONDENT

Date of Decision : 23-11-2002

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A

Citation : (2003) 1 AWC 620

Hon'ble Judges : R.H. Zaidi, J

Bench : Single Bench

Advocate : Shesh Kumar, for the Appellant; Prakash Chandra and K.B. Sinha and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned counsel for the parties and perused the record.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 3.9.1985 passed by the Deputy Director of Consolidation in exercise of his powers u/s 48 of the U. P. Consolidation of Holdings Act, for short "the Act".

3. The relevant facts giving rise to the present petition, in brief, are that in the basic year, the name of the petitioner's father, Mohan Singh, was recorded in the revenue papers. Respondent No. 2, Hublal, filed an objection that he had purchased the land in dispute from Karan Singh and Ram Swarup, sons of Mohan Singh through the sale deed dated 3.12.1974, therefore, his name was liable to be entered in the revenue papers after expunging the names of Karan Singh and Ram Swarup whose names were mutated after the death of Mohan Singh. The objection filed by respondent No. 2 was objected to and opposed by the petitioner who had pleaded that the sale deed was never executed by him in favour of Hublal nor any sale consideration was paid to him. The parties in

support of their cases produced evidence, oral and documentary. The Consolidation Officer, after considering the evidence on record, held that the execution of the sale deed was not proved and dismissed the objection filed by Hublal by his judgment and order dated 20.10.1983. Aggrieved by the order passed by the Consolidation Officer, respondent No. 2 filed an appeal before the Settlement Officer, Consolidation, which also met the same fate and was dismissed by his judgment and order dated 26.12.1983. Thereafter, respondent No. 2 preferred a revision u/s 48 of the Act before the Deputy Director of Consolidation. The Deputy Director of Consolidation reversed the findings recorded by the authorities below and allowed the revision by his judgment and order dated 3.9.1985, hence the present petition.

4. Learned counsel for the petitioner vehemently urged that the Deputy Director of Consolidation had no jurisdiction to reverse the findings recorded by the authorities below and to substitute his own findings for the findings recorded by them. He could at the best remand the case if he was of the opinion that the findings recorded by the authorities below were erroneous or perverse and that the judgments and orders passed by them were not in accordance with law. It was also urged that the findings recorded by the Consolidation Officer and the Settlement Officer, Consolidation, were all findings of fact which were based on relevant evidence on record. They did not suffer from any error of law. The Deputy Director of Consolidation has noticed wrong facts in his order and came to the wrong conclusion, therefore, the order passed by the Deputy Director of Consolidation was liable to be quashed.

5. On the other hand, learned counsel appearing for the contesting respondent supported the validity of the order passed by the Deputy Director of Consolidation. It was urged that the order passed by the Deputy Director of Consolidation is concluded by findings of fact which are based on relevant evidence on record. The same, therefore, cannot be interfered with under Article 226 of the Constitution of India. It was also urged that after the amendment of Section 48 of the Act, vide U. P. Ordinance No. 12 of 2002, the Deputy Director of Consolidation had jurisdiction to reverse the findings recorded by the authorities below and to record his own findings after the reappraisal of the evidence on record, therefore, the writ petition had no force and was liable to be dismissed.

6. I have considered the submissions made by the learned counsel for the parties.

7. Admittedly, the land in dispute was recorded in the basic year in the name of Mohan Singh. After his death, the names of his sons, Karan Singh and Ram Swarup, were recorded in the revenue papers. Respondent No. 2 filed objection, as stated above, that he had purchased the said land from Karan Singh and Ram Swarup, Karan Singh and Ram Swarup denied the execution of the sale deed. Karan Singh also appeared as a witness and denied the execution of the sale deed on oath. He also denied the receipt of sale consideration specifically. From the other side, no evidence was produced regarding execution of sale deed and

payment of sale consideration. After denial of execution and payment of sale consideration by Karan Singh and his brother, the presumption u/s 60 of the Registration Act lost its force. The burden was squarely upon the respondent to prove the execution as well as payment of sale consideration. Without payment of sale consideration, no sale deed can be executed and even if it is executed, it would not pass title to the purchaser. The alleged execution of the sale deed shall be of no consequence as it will not transfer the rights in the subject matter of sale deed to the purchaser, as stated above. The amendment of Section 48 of the Act has widened the scope of the powers of the Deputy Director of Consolidation. It has given power to him to reappraise the evidence but it nowhere provided that the Deputy Director of Consolidation will have jurisdiction to reverse the findings recorded by the authorities below and can substitute his own findings. The Apex Court in *Gaya Din (D.) through L.Rs. and Ors. v. Hanuman Prasad (D.) through LR's and Ors.* 2001 (1) AWC 344 (SC) : JT 2000 3 SC 199. specifically laid down that the Deputy Director of Consolidation has got no jurisdiction to act as the Consolidation Officer or the Settlement Officer, Consolidation, otherwise there will remain no difference in the powers of the Consolidation Officer, the Settlement Officer, Consolidation and the Deputy Director of Consolidation while dealing with the cases originally, in appeal and in revision. In case the Deputy Director of Consolidation was of the opinion that the findings recorded were bad in law, he could set aside the same after reappraisal of the evidence and could remand the case for decision afresh. In the present case, the Deputy Director of Consolidation has recorded the findings that the Settlement Officer, Consolidation was not right in holding that the sale deed was not executed after noticing the wrong facts. Karan Singh specifically denied the execution of the sale deed as well as receipt of sale consideration. The Deputy Director of Consolidation was not right in holding that he has not denied the payment of sale consideration and execution of sale deed. In either case, the sale deed was bad in law and on the basis of the same, title could not pass to the purchaser, i.e., respondent No. 2. Therefore, judgment and order passed by the Deputy Director of Consolidation is bad in law. The findings recorded by him are manifestly erroneous and perverse. They are based on misreading of evidence on record, therefore, I do not propose to remand the case. The writ petition deserves to be allowed.

8. The writ petition succeeds and is hereby allowed. Order dated 3.9.1985, passed by the Deputy Director of Consolidation is hereby quashed. No order as to costs.