
(2017) 04 AHC CK 0216
In the Allahabad High Court
Case No : 1449 of 1977

Nathoo Ram

APPELLANT

Vs

D.D.C. & Others

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 115](#) - Revision
[Uttar Pradesh Consolidation of Holdings Act, 1953](#), [Section 9](#), [Section 48](#), [Section 11\(1\)](#), [Section 9A](#), [Section 21\(2\)](#), [Section 9A\(2\)](#)

Citation : (2017) 04 AHC CK 0216

Hon'ble Judges : Sudhir Agarwal

Bench : Single Bench

Advocate : Ram Niwas Singh, Vinod Kumar, Vinod Kumar Rai

Final Decision : Allowed

Judgement

1. This writ petition under Article 226 of the Constitution of India has been filed challenging order dated 29.07.1976 passed by Consolidation Officer (hereinafter referred to as the "CO") and 30.05.1977 passed by Deputy Director of Consolidation (hereinafter referred to as the "DDC"). 2. Dispute relates to plots no. 103/2 (area 0.15), 158 (area .18), 163 (area .11), 173 (area 12) and 186 (area 12), situate in Village Piyari, Pargana Katehar, District Varanasi. 3. Petitioners filed objection under Section 9 of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the "Act, 1953") claiming cotenancy rights in disputed plots. They claim half share in aforesaid plots. It is said that Dukkhi respondent no. 4 (now deceased and substituted by legal heirs) in his statement under Section 9A(2) of Act, 1953 stated that Shiv Kumar and Ram Kumar were also ancestors of parties and on their death plots held by them were inherited both by Dhautal and Mannu. He also admitted that Mannu was eldest among the sons of Dhautal. 4. CO, however, vide order dated 29.07.1976 rejected

petitioners" objection with respect to plots in dispute. Aggrieved thereto petitioners filed appeal under Section 11(1) of Act, 1953 before Settlement Officer (Consolidation) (hereinafter referred to as the "SOC"). Appeal was allowed and petitioners were declared cotenure holders in disputed plots. Description of disputed plots were mentioned as Khata No. 141, Gata No. 152 (area 13 dismal), 155 (area 27 dismal), 171/2 (area 15 dismal), 171 (area 14 dismal), 183 (area 24 dismal), 99 (area 25 dismal) and 103/1 (area 14 dismal). 5. Respondent no. 3 and others, sons of Mannu filed Revision No. 2451 under Section 48 of Act, 1953 before DDC, who has allowed revision and set aside SOC's order dated 18.01.1977 in respect of Khata No. 141 and restored the order of CO. 6. Learned counsel for revisionist contended that DDC has appreciated entire facts as if it was considering appeal and, therefore, has erred in law inasmuch as revisional power is not extended to appreciate findings of fact recorded by SOC. He placed reliance on Apex Court's decision in Ram Dular v. Dy. Director of Consolidation, Jaunpur and others, 1994 RD 290 and Gaya Din and others v. Hanuman Prasad and others, AIR 2001 SC 386 and a Single Judge decision of this Court in Ram Nath v. D.D.C. and others, 1997(88) RD 94. He submitted that Ram Kumar and Shiv Kumar were ancestors of parties and entire land held by them was ancestral property. It was also admitted by Dukkhi in his statement under Section 9A of Act, 1953. CO and DDC committed manifest error in ignoring this aspect of the matter and, therefore, impugned judgment is perverse and liable to be set aside. 7. Learned counsel appearing for respondents, on the contrary, submitted that SOC has not appreciated matter correctly and DDC has examined entire things in detail and that is how has restored order of CO. These are findings of fact and, therefore, this Court may not interfere with the order passed by DDC. 8. The family tree shown by petitioners before CO was as under: IMAGE OMITTED 9. However, respondents no. 3 to 7 did not accept aforesaid family tree and according to them Mannu was the only son of Dhautal and respondents are sons of Mannu. Petitioners are not family members of respondents. The family tree relied by respondents before CO was as under: IMAGE OMITTED 10. With regard to question, whether Dhannu was son of Dhautal or not and, therefore, petitioners were grandsons of Dhautal, CO has recorded a finding in favour of petitioners holding that death register produced by petitioners shows that Dhannu was son of Dhautal and that is how pedigree of petitioners is proved. It is also proved from the fact that in respect of disputed plots name of Ramu son of Dhannu was shown in category 9. The findings recorded by CO is reproduced as under:

"VERNACULAR MATTER OMITTED" "But Mahavir etc. have filed certified copy of the Death Register, by which it proves that Dhannu was also son of Dhautal. In this manner, pedigree given by Mahavir etc. stands proved. Not only this, rather possession of Dhannu S/o Ramu on the Gatas of disputed land according to his respective share, also gets proved because his name is entered in Varg 9. There is no dispute regarding the issue that Ramu was father of Mahavir and Natthu. By the copy of Khatauni 1308 Fa. it is proved that Gata Numbers 152/1/13,

155/27, 171/2/13, 171/3/14, 183/24, 89/25, 103/1/14 of the disputed land were entered in the name of Dhautal the ancestor of the parties. Till date, this Arajhi continues in the family in same manner. The pedigree has proved. The possession also gets proved in favour of the parties. In this circumstance, I have arrived at this conclusion that Mahavir and Natthu son of Gangaramu are also sahkhatedar of $\frac{1}{2}$ part in above mentioned disputed Gatas along with entered khatedars. Remaining Arajhi of Khata 141 belongs solely to Chingo etc." (emphasis added) (English translation by the Court) 11. However, with regard to claim of petitioners as co-sharer in respect of Khata No. 102, CO held that it could not be proved that disputed land was ancestral property and Dukkhi also could not prove that he was sole tenure holder of said land, therefore, in Khata No. 102 CO held $\frac{1}{2}$ share of respondents no. 3 to 7 and excluded petitioners. Relation of petitioners, therefore, with respondents no. 3 to 7 was a finding recorded in favour of petitioners yet in respect to disputed plots their claim as cosharer was not accepted. The finding to this effect, recorded by CO in favour of petitioners attained finality since no appeal was filed by respondents. 12. SOC has relied the entry in Revenue record 1356 Fasli wherein disputed land was shown in category 6 and on that basis has observed that land was acquired before 1334 Fastli but when land was acquired there was already partition in family, this fact was not proved. In 1334 Fastli, Sukhdev son of Prithvi was the name registered in Revenue record and in other villages name of Sukhdev in respect of certain land was subsequently entered with name of Chingo and Natthu and Mahavir were shown as cosharer. Hence with respect to Khata No. 141 SOC accepted appeal. 13. DDC though could not find any material to show that there was partition in family before land was acquired or that disputed land was not joint family property but observed that since in basic year disputed land was shown in the name of revisionists, therefore, onus was upon petitioners to show that disputed land was acquired from the funds of Dhautal. No evidence was adduced to show that disputed land was ever connected with Dhautal. They have also not filed any receipts of payment of land revenue to support their possession over disputed land and these things show that petitioners have no connection with disputed land. Further, entry in revenue record is quite old and in such old matters alteration with a later stage without any cogent evidence is not justified. Thus the DDC has reversed findings of SOC with regard to share of petitioners in disputed property by placing onus upon them that they did not prove that property was ancestral. In view of this Court, the approach of DDC is not appreciable and it has led to reach an incorrect conclusion. Family tree shown by petitioners were found to be correct and that shown by respondents was found incorrect. It is also evident from record that entire other property was ancestral. Family was having joint property. Dispute arose in respect of a particular property, whether it was a joint ancestral property or not. Where family is joint, presumption lies in favour of joint hindu ancestral property and person claiming otherwise, burden lie upon him to prove otherwise. 14. The "joint family" is normally a transition form from "patriarchal family". At the death of common ancestors or head of house, if the family chooses to continue united,

the eldest son would be the natural head. The former one was head of family by natural authority, the later other can only be so by a delegated authority. He is primus but inter pares. An undivided Hindu family thus is ordinarily joint, not only in estate but in food and worship. The presumption, therefore, is that members of a Hindu family are living in a state of union unless contrary is established. This presumption however varies inasmuch as it is stronger in case of real brother than in case of cousin and farther one go, from the founder of family, the presumption becomes weaker and weaker. However, there is no presumption that a family, because it is joint, possesses joint property. Under Mitakshara Law, possession of property is not necessary requisite for constitution of a joint family, though where persons live together, joint in food and worship, it is difficult to conceive of their possessing no property whatever, such as, at least, ordinary household articles which they would enjoy in common. 15. In order to decide a question whether property in dispute constitute a Joint Hindu Family property, it has first to look into the concept of joint family; and, coparceners, i.e., who are the members, i.e., coparcenary property. Thirdly, whether there is any separate property self acquired; and, fourthly, the mode in which the alleged joint property is maintained and enjoyed; and, lastly, trading families. 16. The joint undivided family is the normal condition of Hindu society as observed in *Raghunadha v. Brozo Kishoro* (1876) 3 IA 154 and *Neelkisto Deb v. Beerchunder* (1989) 12 MIA 523. An HUF is ordinarily joint not only in estate but in food and worship. Unless contrary is established, the presumption is that the members of a Hindu family are living in a state of union (see: *Govind Dass v. Kuldip Singh*, AIR 1971 Delhi 151 and *Bhagwan Dayal v. Mst. Reoti Devi*, AIR 1962 SC 287). If, however, one of the coparceners is admittedly living separately from other members of the family, neither it can be said that other members do not constitute a Hindu joint family nor the member living separately, who has stripped his relation with the joint family, can be said to be still a coparcener or member of joint family. Simultaneously, merely if some members are working and living at different places, though own a joint family in common, it cannot be said that they do not form a joint Hindu family. Since it is only a presumption, the strength thereof necessarily varies in every case. The presumption of union is stronger in the case of brothers than in the case of cousins and farther one goes from the founder of the family, the presumption becomes weaker and weaker. 17. Brothers may be presumed to be joint but conclusion of jointness with collaterals must be affirmatively proved. The presumption lies strongly in favour of father and son that they are living jointly unless proved otherwise. 18. This presumption, however, does not apply in respect of property. There is no presumption that a family, because it is joint, possess joint property. As per Mitakshara law, the possession of property is not a necessary requisite for the constitution of a joint family, though where persons live together, joint in food and worship, it is difficult to conceive that they are possessing no property whatever, such as ordinary household articles which they would enjoy in common. 19. In *Sher Singh v. Gamdoor Singh*, 1997 (2) HLR 81 (SC), the Court said that once existence of a joint family is not in dispute, necessarily the

property held by family assumed the character of a coparcenary property and every member of family would be entitled, by birth, to a share in coparcenary property, unless any one of the coparcener pleads, by separate pleadings and proves, that some of the properties or all the properties are his self acquired properties and cannot be blended in coparcenary property. Merely because the family is joint, there is no presumption of joint property. A Hindu, even if he be joint, may possess separate property. Such property belongs exclusively to him. Neither member of the coparcenary, nor his male issue, acquires any interest in it by birth. On his death (intestate), it passes by succession to his heirs and not by survivorship to the surviving coparcener. The existence of joint family does not raise presumption that it owns properties jointly. But once joint family nucleus is either proved or admitted so as to draw inference that such property could have been acquired out of joint family funds, the burden shifts to the party alleging self acquisition, to establish affirmatively, that such property was acquired without aid of joint family. Initial burden always lies upon the party asserting that any item of property is joint family property. 20. There may be a situation, where a property may be joint property without having been ancestral. Where the members of a joint family acquire property, by or with the assistance of joint funds, or by their joint labour, or in their joint business, or by a gift or, a grant made to them, as a joint family, such property is the coparcenary property of persons who have acquired it, whether it is an increment to ancestral property, or whether it has arisen without any nucleus of descended property. In other words, when members of a joint family, by their joint labour or in their joint business, acquire property, that property, in absence of a clear indication of a contrary intention, would be owned by them as joint family property and their male issues would necessarily acquire a right by birth in such property. Where the business is carried on and property is acquired jointly during subsistence of joint status, the presumption is that the property, so acquired, is joint family property, even if it was acquired without the aid of ancestral nucleus. This presumption may be rebutted by leading evidence indicative of acquirers' intention to own property as co-owners between themselves. Property acquired by joint labour without the aid of joint family property is joint property of acquirers. The issues of acquirers do not take any interest by birth. So long as a family remains an undivided family, two or more members of it, whether they be members of different branches or of the one and the same branch of family, can have no legal existence as a separate independent unit, but all the members of a branch, or of a subbranch, can form a distinct and separate corporate unit within the larger corporate family and hold property as such. Such property will be joint family property of members of the branch inter se, but will be separate property of that branch in relation to the larger family. Property acquired by members of different branches cannot partake the character of joint family property as members will be in the position of co-sharers and the said property will devolve by inheritance and not by survivorship. A property, originally selfacquired, may become joint family property, if it has been voluntarily thrown by the owner into the joint stock, with the intention of abandoning all separate claims upon it. 21.

From the above discussion, it cannot be doubted that vis-a-vis jointness of the family, there is a presumption in favour of jointness and burden lies upon the defendant to prove that HUF has disrupted, particularly, when both the parties had not disputed this fact that family was a joint family, but with respect to its disruption, a time factor has been provided, meaning thereby once a joint family's existence from initial is not in dispute, the time when such jointness ceased would have to be proved, who asserts such disruption. 22. Further, the "joint family" and "joint family property" are two different things. There lies a presumption in favour of former but not so in respect to later. The Court below has not drawn any presumption in the case in hand of jointness in respect of property in question, and, in our view, it has rightly done so. While there is a presumption with respect to joint family, no such presumption is available in respect to property, particularly, when there is a dispute that disputed property whether a joint family property or not. 23. In *Appalaswami v. Suryanarayanamurti and Ors.*, AIR 1947 PC 189, it was held that Hindu law is very clear. Proof of existence of a joint family does not lead to the presumption that property held by any member of family is joint. The burden rests upon one who asserts that an item of property is joint, to establish that fact. But where it is established that the family possessed some joint property which, from its nature and relative value, may have formed the nucleus, from which property in question may have been acquired, the burden shifts to the party alleging selfacquisition, to establish affirmatively that the property was acquired without the aid of joint family property/fund. 24. Again in *Srinivas Krishnarao Kango v. Narayan Devji Kango*, AIR 1954 SC 379, it was held that proof of existence of a joint family does not lead to the presumption that property held by any member of family is joint. The burden rests upon anyone asserting that any item of property is joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value, may have formed the nucleus, from which property in question may have been acquired, the burden shifts to the party alleging selfacquisition to establish affirmatively that the property was acquired without the aid of joint family property. 25. The legal proposition which emerges therefrom is that initial burden is on the person who claims that it is joint family property but after initial burden is discharged, the burden shifts to the party claiming that the property was self acquired and without the aid of joint family property/fund. 26. In *Rukhmabai v. Lala Laxminarayan*, AIR 1960 SC 335, the Court said: "There is a presumption in Hindu Law that a family is joint. There can be a division in status among the members of a joint Hindu family by refinement of shares which is technically called "division in status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds". A member need not receive any share in the joint estate but may renounce his interest therein, his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis-a-vis the family property, A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be

expressed by any process. Though prima facie a document clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. But there is no presumption that any property, whether movable or immovable, held by a member of, a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular property is joint family property. to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the member of the family setting up the claim that it is his personal property..." (emphasis added) 27. In *Achuthan Nair v. Chinnammu Amma and Ors.*, AIR 1966 SC 411, their Lordships said: "Under Hindu law, when a property stands in the name of a member of a joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. This is a well settled proposition of law." 28. In *Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sankh*, (1969) 1 SCC 386, the Court noticed the observations of Sir John Beaumont in *Appalaswami* (supra) and reiterated that burden of proving that any particular property is joint family property, in the first instance, is, upon the person who claims it as coparcenary property. But, if possession of a nucleus of the joint family is either admitted or proved, any acquisition made by a member of joint family is presumed to be joint family property. This is however, subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self acquisition to affirmatively make out that the property was acquired without any aid from the family estate. 29. In *Baikuntha Nath Paramanik v. Sashi Bhusan Pramanik and Ors.*, (1973) 2 SCC 334, Court again held, when a joint family is found to be in possession of nucleus sufficient to make impugned acquisitions, then a presumption arises that the acquisitions standing in the names of the person who were in the management of the family properties, are family acquisitions. 30. In *Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe*, AIR 1986 SC 79, the Court observed that character of any joint family property does not change with the severance of status of joint family and a joint family property continues to retain its joint family character so long as the joint family property is in existence and is not partitioned amongst the cosharers. By a unilateral act it is not open to any member of joint family to convert any joint family property into his personal property. 31. In *Surendra Kumar v. Phoolchand*, (1996) 2 SCC 491, the Court said: "It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the

income of which the property could have been acquired. But such a presumption is a presumption of fact which can be rebutted." 32. In *D.S. Lakshmaiah and Anr. v. L. Balasubramanyam and Anr.*, (2003) 10 SCC 310, in para 18 of the judgment the Court, after a retrospect of various earlier decisions, said: "18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available." 33. In *Appasaheb Peerappa Chandgade v. Devendra Peerappa Chandgade*, (2007) 1 SCC 521, the Court said: "...there is no presumption of a joint Hindu family but on the evidence if it is established that the property was joint Hindu family property and the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint Hindu family, then the burden shifts to the party alleging selfacquisition to establish affirmatively that the property was acquired without the aid of the joint family property by cogent and necessary evidence." 34. In the Division Bench decision of this Court in *Mangal Singh v. Harkesh* (supra), this Court in para 10 has referred to the decision in *Srinivas Krishnarao v. Narayan Devji*, AIR 1954 SC 379 wherein the Court has quoted with approval some observations of Privy Council in *Appalaswami v. Suryanarayanamurti*, AIR 1947 PC 189 stating the law as under: "The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging selfacquisition to establish affirmatively that the property was acquired without the aid of the joint family property." 35. This Court in para 11 then said: "...mere existence of a nucleus is not enough to raise a presumption that all the properties possessed by its various members are joint. The presumption arises only if the nucleus is substantial and is such that its yield could provide in whole or at any rate in considerable part the money necessary for acquiring the property in question." 36. The Court has also quoted certain extracts from various authorities of Hindu Law on the subject, i.e., Manu, Mayne, Mulla, S.V. Gupta etc. 37. Manu lays down: What one member acquires by his exertions without using paternal wealth, with acquisition, of his own effort, he shall not share unless by his own will. (Manu, Ch. IX, Versa 208). 38. Jimuta Vahana in his *Daya Bhag* lays down: "Manu and Vishnu declare indivisible what is gained without expenditure. What a brother has acquired by his labour, without using patrimony, he need not give up without his assent; for it was gained by his own exertion. Since the patrimony is not used, there is no exertion on the side of

others through the means of the common property; and, since it was obtained by the man's own labour, there is no corporal effort on the part of the rest. It is, therefore, the separate property of the acquirer alone for the phrase "it was gained by his own exertion's" is stated as a reason." (Ch. VI, Section I, Verses 3 and 4, Ghosh's Translation)." 39. Mulla in "Principles of Hindu Law", 10th Edition at page 241, says: "Property jointly acquired by the members of a joint family with the aid of ancestral property is joint family property." 40. Mayne in "Hindu Law and Usage, 10th Edition on page 352 after referring to the texts some of which have been referred to above, stated: "The test of self-acquisition is that it should be without detriment to the father's estate. Accordingly all acquisitions made by coparcener or coparceners with the aid of the joint estate becomes joint family property." 41. S.V. Gupte in his "Hindu Law in British India", at page 70 and 72, observed: "Property which is acquired (1) with the aid or assistance of joint family property, or (2) without the aid or assistance of joint family property provided it is acquired jointly by two or more coparceners is joint family property." "Property acquired with the aid of joint family property is necessarily joint family property whether (1) it is a mere increment or accretion to it by way of income or profits; or (2) it is acquired through the exertions of a single member or by joint labour of the whole family or of some of its members for the test of self-acquisition (separate property) is that it should be without detriment to the father's estate, that is, family property..... Property acquired with the aid of joint family property is necessarily joint family property in all cases." 42. Ghose, in his Book on Hindu Law, 3rd Edition, Vol. I, at page 404 says: "Property purchased with the income of the proceeds of the sale of ancestral property or with the ancestral moveables or with money borrowed on the security of ancestral property as well as any accretion to or improvement to an ancestral property by the efforts of one member have all the incidents of ancestral property attached to it." 43. Therefore, before an acquisition can be claimed to be separate property it must be shown that it was made without any aid or assistance from the ancestral or family property. If the aid of the family property was employed for acquiring the property it must be shared by all the members of the family. The extent of the contribution by different members is wholly irrelevant, but if the funds have been made available from joint family nucleus, it will be a joint family property. However, if no contribution has been made by members of Joint Family or Joint Family nucleus, and an individual member has acquired the property from its own self acquired funds, the position would be different. 44. In the present case jointness of family and in respect of other property, factum that it was joint ancestral property is not in dispute. If that be so, initial presumption, in my view, would apply to property in question also that it was joint ancestral property unless otherwise shown by persons claiming that it was not joint ancestral property. 45. Respondents no. 3 to 7 adduced no evidence as to how they claimed that disputed property was not a joint ancestral property so as to exclude petitioners from their share. 46. So far as jurisdiction of DDC is concerned, as argued by learned counsel for petitioners, it cannot be doubted that he does not exercise appellate jurisdiction but if a finding is

perverse or otherwise, he can validly exercise power under Section 48 of Act, 1953. It would be appropriate first to examine the scope of revisional power to be exercised by DDC, under Section 48 of Act, 1953. The Scheme of statute contemplates a tentative plan, inviting objection from stakeholder, i.e. tenure holder, and, after considering the same, finalization of plan, i.e., allotment of Chaks. There against appellate power has been conferred upon SOC under Section 21(2) of Act 1953. The power which is exercised by DDC, is termed "Revision and Reference" under Section 48 of Act, 1953. 48. The original Section 48, as enacted, initially read as under: "48. Revision.- Director of Consolidation may call for the record of any case if the Officer (other than the Arbitrator) by whom the case was decided appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit." 49. It was amended by substitution by U.P. Act No. 24 of 1956 as under: "48. Powers of Director of Consolidation to call for records and to revise orders.- The Director of Consolidation may call for the record of any case or proceeding if the Officer (other than the Arbitrator) by whom the case was decided or proceeding taken appears to have exercised jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit." (amendment in bold) 50. Within a short period, it was again amended by U.P. Amendment Act No.38 of 1958 as under: "48. Revision.- The Director of Consolidation may call for the record of any case decided or proceedings taken, where he is of opinion that a Deputy Director, Consolidation has - (i) exercised jurisdiction not vested in him in law, or (ii) failed to exercise jurisdiction vested in him, or (iii) acted in the exercise of his jurisdiction illegally or with substantial irregularity, and as a result of which, substantial injustice appears to have been caused to a tenure-holder and he may, after affording reasonable opportunity of hearing to the parties concerned, pass such order in the case or proceeding as he thinks fit." (amendment in bold) 51. Section 48 as noted above came on statute book by way of Section 39 of U.P. (Amendment) Act No. VIII of 1963. Major amendment came to be made by U.P. Act No. 20 of 1982 inasmuch as, in sub section (1) the words "other than an interlocutory order" were inserted w.e.f. 10.11.1980. An Explanation was added by Act No. 4 of 1969 with retrospective effect. It was renumbered as Explanation (1) by Act No. 20 of 1982 w.e.f. 10.11.1980 and then Explanation (2) was added w.e.f. 10.11.1980. 52. Presently, Section 48 reads as under: "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 any order [other than interlocutory order] passed by such authority in the 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. (2) Powers under Subsection (1) may be exercised

by the Director of Consolidation also on a reference under Subsection (3). (3) Any authority subordinate to the Director of Consolidation may, after allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under subsection (1). Explanation (1) - For the purposes of this section, Settlement Officer, Consolidation, Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation. Explanation (2) - For the purpose of this section the expression "interlocutory order" in relation to a case or proceedings, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect of finally disposing of such case or proceeding. Explanation (3) - The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re appreciate any oral or documentary evidence." (emphasis added)

53. Section 48 as it was initially enacted came to be considered in *Sher Singh (dead) v. Joint Director of Consolidation and others* (1978) 3 SCC 172 and the Court observed that a bare reading thereof makes it clear that it is *pari materia* with Section 115 CPC which confines revisional jurisdiction of High Court to cases of illegal or irregular exercise or non exercise or illegal assumption of jurisdiction by subordinate Courts. If a subordinate court is found to possess jurisdiction to decide a matter, it cannot be said to exercise it illegally or with "material irregularity even it decides the matter wrongly. Relying on the cases interpreting Section 115 CPC, the Court held that whatever revisional jurisdiction was available to High Court under Section 115, the same was the scope of revisional jurisdiction of DDC under Section 48. It has no jurisdiction to go into errors of facts. The Court said that an erroneous decision on a question of fact or law reached, by subordinate court which has no relation to question of jurisdiction of that court, cannot be corrected by High Court under Section 115 CPC and same would apply to DDC under Section 48 as it stood originally under Act 1953. The Court observed that consolidation authorities subordinate to Joint Director possess plenary jurisdiction and competent to go into the question of correctness or otherwise of entries in revenue records. If there are concurrent findings of fact of two Courts, which do not leave any ground, as observed above, with reference to revisional jurisdiction, interference by Joint Director of Consolidation would not be competent. In para 16 of the judgement the Court said as under: " Thus the subordinate Consolidation authorities not having acted illegally in exercising their jurisdiction, the Joint Director of Consolidation was not competent to interfere with their decisions." 54. Section 48 as amended in 1963 then came to be considered in *Ramakant Singh v. Deputy Director of Consolidation, U.P. and others* AIR 1975 Allahabad 126 but therein the Court confined its consideration to Section 48(1) only to the question, whether DDC once has called for record, is it incumbent on him to decide the matter on merit or it can decline and dismiss the revision on any technical ground like lack of impleadment of proper party etc.

55. Amended section 48 in 1963, then came to be considered by Supreme Court

in *Shanti Prakash Gupta v. DDC* 1981 SCC (Suppl) 73 and therein the Court observed that Section 48 as then stood, vide amendment of 1963, was wider than Section 115 CPC. However, it proceeded to hold that Director should not lightly interfere with discretion of CO unless the order sought to be reversed is palpably erroneous or likely to cause miscarriage of justice. To the same effect and imposing similar restriction, observations were made in *Ram Dular v. Dy. Director of Consolidation* (1994) Supp (2) SCC 198, which are under: "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 root of the matter, had been committed in recording the order or finding." 56. A slight different form of observation came to be made in *Preetam Singh v. Assistant Director of Consolidation and others* (1996) 2 SCC 270 where the Court said: "When the matter was in revision before the Assistant director (Consolidation), he had the entire matter before him and his jurisdiction was unfettered. While in seisin of the matter in his revisional jurisdiction, he was in complete control and in position to test the correctness of the order made by the Settlement Officer (Consolidation) effecting remand. In other words, in exercise of revisional jurisdiction the Assistant Director (Consolidation) could examine the finding recorded by the Settlement Officer as to the abandonment of the land in dispute by those tenants who had been recorded at the crucial time in the Khasra of 1359 Fasli. That power as a superior court the Assistant Director (Consolidation) had, even if the remand order of the Settlement Officer had not been specifically put to challenge in separate and independent proceedings. It is noteworthy that the Court of the Assistant Director (Consolidation) is a court of revisional jurisdiction otherwise having suo moto power to correct any order of the subordinate officer. In this situation the Assistant Director (Consolidation) should not have felt fettered in doing complete justice between the parties when the entire matter was before him. The war of legalistics fought in the High Court was of no material benefit to the appellants. A decision on merit covering the entire controversy was due from the Assistant Director (Consolidation). (para 6) (emphasis added) 57. Yet in *Ram Avtar v. Ram Dhani*, AIR 1997 SC 107, the Court, in para 8, observed: "This Court has repeatedly pointed out that howsoever wide the power under statutory revision may be in contrast to Section 115 of the Code of Civil Procedure, still while exercising that power the authority concerned cannot act as a Court of appeal so as to appreciate the evidence on record for recording findings on question of fact." 58. These observations again

put the things in the shape, bringing scope of jurisdiction under Section 48, nearer to jurisdiction as contained in Section 115 CPC. 59. Section 48(1) as it stood before its amendment in 1963 and subsequent thereto, both came to be noticed in *Sheshmani and another v. The Deputy Director of Consolidation, District Basti, U.P. and others* 2000 (2) SCC 523. Referring to earlier decision in *Sher Singh v. Joint Director of Consolidation* (supra) and *Ram Dular v. DDC* (supra), and, the intervening amendment, Court followed the observations made in *Ram Dular*, as noticed above, and then upheld order passed by DDC holding that orders of CO and Additional Settlement Consolidation Officer were against settled principles of law, therefore, DDC was justified in exercise of revisional power, for coming to a different conclusion. 60. It is in these circumstances, Legislature intervened by inserting Explanation 3 vide U.P. Act No. 3 of 2002, giving effect from 10.11.1980. In *Karan Singh v. DDC* 2003 (94) RD 382, this Court, however, said that even after addition of Explanation 3, D.D.C. cannot substitute its own finding in place of subordinate authorities. 61. In a recent decision in *Jagdamba Prasad v. Kripa Shankar* (2014) 5 SCC 707, the Court has considered Section 48 as amended in 1963, but thereafter in para 15, following earlier decision in *Sher Singh v. Joint Director of Consolidation* (supra), has said as under: "15. According to the legal principle laid down by this Court in the case mentioned above, the power of the Revisional Authority under Section 48 of the Act only extends to ascertaining whether the subordinate courts have exceeded their jurisdiction in coming to the conclusion. Therefore, if the Original and Appellate Authorities are within their jurisdiction, the Revisional Authority cannot exceed its jurisdiction to come to a contrary conclusion by admitting new facts either in the form of documents or otherwise, to come to the conclusion. Therefore, we answer point no. 1 in favour of the appellants by holding that the Revisional Authority exceeded its jurisdiction under Section 48 of the Act by admitting documents at revision stage and altering the decision of the subordinate courts." 62. It is thus difficult to observe that Explanation III to Section 48 has brought scope of revision at par with appellate jurisdiction so as to assess evidence on pure issue of fact and recording findings de novo. Revisional power is not a power of first or second appellate Court which are final Courts of fact. The findings recorded therein would be possible to be interfered under Section 48 only on the grounds, discussed in *Ram Dular* (Supra), *Sheshmani* (Supra) and *Jagdamba Prasad* (supra). 63. Recently, this Court has examined power of revisional authority in detail in *Ram Udit v. D.D.C. & others* (Writ S/S no. 885 of 2001) (Lucknow Bench), decided on 24.09.2014. This Court in para 26 of the judgment, has observed: "..... From a bare and plain reading of Section 48(1) it is evident that Director of Consolidation has been given power to call for and examine any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself (i) to the regularity of the proceedings and (ii) to the correctness, legality or propriety of any order." 64. Having said so, in the present case I find that approach of DDC with regard to concept of joint ancestral property by placing burden on petitioners is not correct and in absence of any otherwise evidence or material on record, in my

view, the order passed by SOC was not liable to be interfered. DDC, however, has not looked into matter in correct perspective, therefore, in my view, let matter be reexamined by it in the light of observations made above and in accordance with law. 65. In that view of the matter, I find that order of DDC impugned in this petition is not sustainable. 66. In the result, writ petition is allowed. Impugned order dated 30.05.1977 passed by DDC is hereby set aside. Matter is remanded to DDC to decide revision treating the same to be pending in the light of observations made above and in accordance with law. 67. No costs. Petition Allowed.