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**(1996) 04 AHC CK 0054**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 1822 of 1983**

Om Prakash and Ors.

APPELLANT

Vs

D.D.C., Faizabad & Ors.

RESPONDENT

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**Date of Decision :** 19-04-1996

**Acts Referred:**

Evidence Act, 1872 — Section 76, 77

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11, 9

**Citation :** (1996) 04 AHC CK 0054

**Hon'ble Judges :** A.P. Singh, J

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## Judgement

A.P. Singh, J.—This petition by sons of Ram Phal being petitioners 1 to 3 and Ram Nath petitioner No. 4 has been filed in pursuit of their challenge to the corrections of the basic year entries which were found recorded at the inception of consolidation proceedings under the provisions of U.P. Consolidation of Holdings Act, 1953, (hereafter the Act) in villages Hazipur, Mohammadpur Hamza in Tehsil Akbarpur district Faizabad Property in contention between petitioners on the one side and respondents 4 and 5 on the other is agricultural land of Khata No. 82 of village Mohammadpur Hamza and Khata No. 119 of village Hazipur, hereafter for the sake of convenience called land in dispute.

2. In the basic year records names of petitioner No. 4 and father of petitioners 1 to 3 alongwith the name of respondents 3 and 4 appeared as cotenantholders. Objections under Section 9 of the Act in respect of both these Khatas was filed by petitioner No. 4 and father of petitioners 1 to 3. Contention raised by them was that name of respondents 4 and 5 was wrongly entered surreptitiously for the first time in 1356 Fasli without any order from any competent court etc. which was therefore liable to be expunged. According to petitioners land in dispute was the (sic) acquisition of their predecessorininterest, namely Gudar and Pheru after the eviction of Basanta therefrom and that respondents 4 and 5 had no concern with it. It was further said that prior to the acquisition of the land by Gudar and Pheru, Kashi, Mangru, Gudar, Pheru had separated from each other and Kashi and Mangru had no concern with the land in dispute nor they were in

the possession. According to petitioners Gudar died issueless on 161139 whereas Basanta died on 1051912, Mathura on 2161913 and Kashi on 181238 whereas Pheru (Ram Pher) died on 14938. Petitioners and respondents both are from common ancestor. Sridhar who had three sons Basanta, Mathura and Parag. Gudar was Basanta's son but this branch extinguished with the death of Gudar who had no issue. Similarly branch of Parag also extinguished with the death of Parag as he too had no sons. Both petitioners and respondents are from Mathura's branch. Mathura had three sons Kashi, Ram Pher (Pheru) and Mangru. Mangru had no sons whereas Ram Prajwalk, father of respondents 4 and 5 was the son of Kashi, Gokul and Bisai are the sons of Ram Pher (Pheru), Ram Nath petitioner No. 4 is the son of Gokul and Ram Phal, father of petitioners 1 to 3 is the son of Bisai. According to petitioners though Basanta had initially acquired the land in dispute from the erstwhile Zamindar but in spite of the fact that Matriura was his own brother who survived him the land was not recorded in the name of Mathura after the death of Basanta because the then Zamindar had evicted Basantd from the land during his life time and hajd settled it with Gudar, the son of Basanta and Ram Pher (Pheru) son of Mathura. According to petitioners respondents 4 and 5 who are Kashi's grand sons have no concern with the land which exclusively belongs/ to them. Whereas case of opposite parties 4 and 5 is that the land was acquired by Basanta whereafter it was recorded in the name of Gudar and Pheru in representative capacity. They denied that Basanta was ever evicted from the land in dispute and that it was acquired by Gudar and Pheru independently from the then Zamindar after the eviction of Basanta from the said land. They claimed that as members of joint family they had share in the said land alongwith petitioners and the petitioners" claim that it was their exclusive tenancy was not at all correct. Both the parties in support of their respective contentions led evidence. It was found that from 1302 Fasli to 1314 Fasli name of Basanta was recorded whereafter with the duration of 1320 F. Ram Pher and Gudar were recorded over the land. Consolidation Officer held that petitioner as well as respondents were entitled to half share in the land in dispute and he therefore directed for maintaining of the basic year entry. On appeal filed before the Settlement Officer, Consolidation order of the Consolidation Officer was set aside in respect of Khata No. 199 and it was held that Opposite Parties 3 and 4 had no share whatsoever in the Khata, therefore, their name was directed to be expunged from that Khata. In regard to Khata No. 82 Settlement Officer, Consolidation awarded 1/4 the share to Opposite Parties 4 and 5 whereas petitioner were found entitled to 3/4th share. Revision was filed before the Deputy Director of Consolidation by respondents 3 and 4 who admitted additional evidence at the behest of Opposite Parties which included rent receipts, revenue records and irrigation receipts being 57 in number. The Deputy Director of Consolidation without considering the matter on merits remanded the case back to the Settlement Officer of Consolidation for decision of the appeal in the light of fresh evidence tendered by opposite parties 4 and 5 before him. After remand Settlement Officer, Consolidation reconsidered the matter in the light of additional evidence filed by respondents 3 and 4 before the Deputy Director of

Consolidation and by order dated 14.12.91 dismissed petitioners' appeal and held that both petitioners and opposite parties 4 and 5 were equally entitled to share the land in dispute as cotenant with equal share. It was further held that the land was ancestral property which was never acquired by Gudar and Pheru and it continued in the same form from the time of Basanta. Revision was filed by petitioners before the Deputy Director of Consolidation. The Deputy Director of Consolidation however by his order dated 9383 dismissed petitioners' revision and upheld the order of the Settlement Officer, Consolidation.

3. Against the decision of the Consolidation Courts this writ petition was filed by petitioners. It was heard and finally allowed by this Court vide judgment dated 231090. However, an appeal was filed in the Supreme Court by opposite parties 3 and 4 being Civil Appeal No. 8207 of 1995 arising out of S.L.P. (Civil) No. 6609 of 1990. It was inter alia contended before the Apex Court by the said respondents that they were not given opportunity of hearing by the High Court and the judgment was rendered by this Court against them without affording opportunity of hearing. Consequently the Apex Court set aside the judgment of the Court and remanded the case back to this Court for rehearing of the writ petition on merits with the request that the case may be disposed of within a period of three months. The case was thereafter listed on several occasions but for the reason or the other its hearing continued to be postponed. Reference in this respect may be made to the orders dated 18196, 30196, 15296, 26296 and on the last date i.e., 26296 following order was passed while postponing hearing of the case;

"Pursuant to the order dated 15296 this case has been listed peremptorily. Learned counsel for the petitioner is present but learned counsel for the respondents on whose appeal, the case has been remitted back by the Supreme Court is not present. The list has been revised. To afford last opportunity to the learned counsel for the respondents. I direct that the case shall be taken up tomorrow at 10.15 a.m. immediately after fresh and in case learned counsel for the respondent does not appear again it will be presumed that he does not want any further hearing."

A.P. Singh J"

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On the next date when the case was taken up learned counsel for petitioner appeared but counsel for opposite failed to appear. Sri R. K. Sharma sent illness slip which however could not be entertained on account of the fact that case was peremptorily listed and was not to be adjourned on any ground. Sri H.S. Sahay, learned counsel for petitioner completed his arguments. At the end Sri Manish Singh appeared and tried to seek permission to file power on behalf of respondents alongwith Sri V.R. Singh and Sri Shailendra Singh Chauhan. After filing power they sought adjournment to prepare and argue the case which was however turned down whereupon Sri Manish Singh requested that he may be

allowed to file written argument on behalf of the respondents 4 and 5 within a period of two weeks. This accommodation was granted and written argument was allowed to be filed by counsel for both the parties. The detailed order in this respect was passed on 27/2/96 which is made part of this judgment. However, no written argument was filed by Sri Manish Singh or other counsel who had filed their power on 27/2/96 on behalf of respondents 4 and 5. Judgment in the case was reserved on that very day. Written argument was however filed by counsel for petitioner. Sri Mohammad Arif Khan filed written argument on behalf of respondents 4 and 5 on 9th March, 1996. He also filed his power on behalf of the said respondent on which Sri Tanvir Ahmad Advocate and Sri Amir Hasan Advocate also put their signatures. Vakalatnama was also filed alongwith written argument. Written argument and Vakalatnama were signed by the counsel on 7th March, 1996

4. The permission to file appearance on behalf of respondents 4 and 5 and to file written argument was granted by the Court on 27th February, 1996 Sri Manish Singh who had (sic) appearance for respondent alongwith Sri V.R. Singh and Shailendra Singh Chauhan. However, written argument Mohammed Arif alongwith power was filed by Sri Mohammed Arif Khan on 8/3/96. Legally written argument of Sri Mohammad Arif Khan would not be entertainable as counsel cannot be allowed to file his appearance after the conclusion of hearing of the case. Still as a special gesture in keeping with the anxiety of the Apex Court to afford opportunity of hearing to respondents 3 and 4 who had on earlier occasion lodged a complaint before it that they had been denied opportunity of hearing by this court the written argument filed by Sri Mohammad Arif Khan was accordingly entertained.

5. The question which arises for decision by this Court in the writ petition is very limited question being as to whether land in dispute was acquired again by Gudar and Pheru after eviction of Basanta by the erstwhile Zamindar. If finding on this question is in the affirmative, then respondents 4 and 5 will have no share whatsoever in the land in dispute, however if finding on the point is in the negative, respondents 4 and 5 will have their share in the land in dispute as cotenants with petitioners according to their pedigree which is not in dispute.

6. Bone of contention between petitioners on the one hand and respondents on the other is in respect of Khatauni entry of the year 1356 F. wherein name of opposite parties 4 and 5 was recorded. According to petitioners this entry was made surreptitiously without any order from any competent Court or competent authority, therefore, the entry is liable to be discarded. For proving their case that names of respondents 4 and 5 was surreptitiously recorded in Khatauni of 1356 F. without any order from any competent court or competent authority petitioners placed reliance on the entries made in the Khatauni extract of 1355 F. wherein names of petitioners alone is recorded as tenants of the land in dispute whereas names of opposite parties 4 and 5 are not recorded. On the other hand, Opposite parties 4 and 5 disputed correctness and genuineness of the entry

made in the Khatauni of the year 1355 F. with the allegation that the same was issued in suspicious circumstances on a date which was a close day, therefore no reliance can be placed on that extract. It was maintained by respondents that the entry in 1356 F. Khatauni was correctly made which could not be discarded for the reason given by petitioners. Before the remand of the case by the Deputy Director of Consolidation the Settlement Officer (Consolidation) by his judgment and order dated 20677 had held that the entry of respondents' name in 1356 F. over Khata No. 119 of village Hazipur was made by way of interpolation as their name was surreptitiously added without their being any order of any competent court or competent authority. He further held that in view of the fact that different holdings were separately recorded in the names of different persons including Kashi, grand father of Opposite Parties 4 and 5 and petitioners' partition having been admittedly affected in the year 1328 F. no presumption of jointness could arise; he had accordingly turned down the case of respondents. However, after remand of the case to him the Settlement Officer (Consolidation) gave contradictory findings holding that entry Khatauni of 1356 F. was genuine. How this finding was given is not understandable as respondents after the remand of the case had not produced order of any competent court or competent authority for recording their names over the land in dispute alongwith petitioners. Settlement Officer, Consolidation also discarded the certified copy of Khatauni extract of 1355 F. which was filed by petitioners on which petitioners had placed reliance for showing that respondents were never recorded as cotenants with them over the disputed land prior to 1356 F. and that addition of their names in the Khatauni of 1356 F. was surreptitiously made by the village lekhpal of his own which was against the provisions of the Land Records Manual. The Settlement Officer, Consolidation this time rejected the certified copy of Khatauni extract of 1355 F. on the ground that it was prepared and issued on a day when offices of the Collectorate were closed on account of Holi. The Deputy Director of Consolidation also took the same view and rejected petitioners' revision on the basis that Khatauni extract of 1355 F. on which reliance was placed by them was not liable to be accepted in evidence as it was issued on a close day. The Deputy Director of Consolidation also did not accept genuineness of various rent receipts and irrigation slips Khatauni and Khasra extracts which had been tendered in evidence at revisional stage prior to remand of the case by Opposite parties 4 and 5 for proving their possession and title over the land in dispute for the reason that those documents were not authentic and were not admissible in evidence having been issued by the village Lekhpal.

7. It is important to note that neither Settlement Officer, (Consolidation) nor the Deputy Director of Consolidation cared to address the question raised by petitioners that had the land in dispute continued in the same form from the time of Basanta, it was but natural that names of Mathura who died after the death of Basanta would have been recorded thereon after Basanta's death which was however not done. Similarly name of Kashi, elder son of Mathura was also never recorded over the land though after the death of Basanta and Mathura his name

would normally have been recorded if the case of respondents that the land in dispute came by way of succession from the time of Basanta was true. Neither Settlement Officer of Consolidation nor Deputy Director of Consolidation considered this important question as to why names of only Guder s/o Basanta and Pheru s/o Mathura were recorded and names of Mathura, Parag and Mangroo were not recorded over the land in disputes. The question raised by petitioner on this aspect was of great importance which deserved full attention by the Consolidation Courts especially by the Settlement Officer (Consolidation) and Deputy Director of Consolidation before reaching the conclusion that the land came down to Guder and Pheru and then to Abhai Raj, Chandrika and Petitioner by way of succession from Basanta. In my opinion Settlement Officer (Consolidation) and Deputy Director of Consolidation both erred in holding that the land in dispute had continued in the same form from the time of Basanta. There was no sanction for this finding as on their own observations in their impugned orders variation in area and land revenue payable for it has been found at different stages. In view of the variations in the area as also in the land revenue payable for the land in dispute it was not possible to hold that the land in dispute came to the parties by way of succession specially when there was categorical evidence of partition in the family in the year 1928 which case had been believed by all the Courts below. Circumstance that after the death of Basanta land was not recorded in the name of Mathura, Kashi, Pheru and Mangroo and Ram Prajwalit etc. and further that it did not continue in the same form as it was at the stage when it was recorded in the name of Basanta clearly indicated that there had been fresh settlement of the land in dispute by the Zamindar in the name of Ram Pher alias Pheru and Gudar. This case was however not accepted by Settlement Officer, (Consolidation) and Deputy Director of Consolidation only for the reason that petitioners were not able to produce the Patta which had been executed by the then Zamindar in favour of Gudar and Pheru and further that no direct evidence of eviction of Basanta from the land in dispute was filed by petitioners.

8. In absence of direct evidence fact can be proved by circumstantial evidence. The circumstances present in the case which have already been noted hereinabove clearly established that the land in dispute was not recorded in the name of Gudar and Pheru by way of succession but as a result of fresh settlement by the then Zamindar in their favour after eviction of Basanta therefrom who was its previous tenant. Presumption in this respect is also strengthened from the fact firstly, that the area and land revenue of the land after its settlement in the name of Gudar and Pheru changed and secondly, that the land had not been recorded in the name of Mathura, Parag, Kashi, Ram Pherato Pheru and Mangroo, Prajwalit, Gudar etc, after the death of Basanta. The theory succession set up by respondents was mainly based on the revenue entry of 1348 F. and 1356 F. though genuineness of these entries was questioned by petitioners saying that extract of 1348 F. having been issued by village Lekhpal was not admissible in evidence and that the entry of 1356 F. was surreptitiously

having been made by the Lekhpal without any order of a competent court or of a competent authority as per the provisions of Land Records Manual for making the entries, therefore, it was unreliable so as to confer right of cotenancy on the respondents.

9. Khatauni being a record of title, names of only such persons can be entered in it who have title over the land. Entry in the Khatauni cannot be made by the lekhpal for the first time at his own instance. Such an entry can be made for the first time by the Lekhpal only on the authority of an order to that effect of competent court or of a revenue authority under the U.P. Land Revenue Act. In the entry made for entering the names of respondents 4 and 5 no reference of any court order or of any order of any revenue authority has been given. Therefore, it was necessary for the respondents to have proved that their names had been entered in the Khatauni of 1356 F. either on account of its previous continuance in the Khatauni of the earlier years or that it was entered for the first time in 1356 F. on the basis of an order of a competent court or authority in accordance with the provisions of Land Record Manual. Unfortunately respondents have not been able to produce any order of any competent court or of any competent authority to support the entry made in their favour in the Khatani of 1356 F.

10. On the contrary to bring the point home that names of the respondents were entered surreptitiously. Petitioners filed Khatauni extract of 1355 F. wherein names of respondents was not recorded. The Settlement Officer (Consolidation) and Deputy Director of Consolidation however discarded this important piece of evidence on the ground that the same was not issued to the petitioner on a working day and therefore its admissibility in evidence was not possible. The fact that certified extract of Khatauni of 1356 F. had been issued on a nonworking day has been denied by petitioners in the writ petition wherein it has been stated by them in para 24 that delivery of Khatauni extract was made to them on 12th March, 1957 which was not a holiday in the Collectorate. This fact has not been denied in the counteraffidavit by respondents 4 and 5. It will be necessary to reproduce relevant portions of para 24 of the Writ Petition for the sake of convenience:

"Certified copy of the Khatauni of 1355 Fasli issued by the revenue record room indicates that the application for copy was moved on 531957. Preparation and publication on the notice board is shown U357 and the date of delivery of the copy indicated to be 1231957. The petitioners filed affidavit to the effect that 1231957 was not the holiday in the Collectorate and no evidence could be given to indicate that 1231957 was a holiday in the Collectorate. The date of 15th March, 1957 was not the date on which copy was issued nor is the date on which the copy was prepared."

11. This statement of fact of petitioners has been replied in para 21 of the counteraffidavit of respondents 4 and 5 which inter alias reads as under:

"It is denied that the copy of Khatauni 1355 Fasli was issued by record room. The said copy was forged and the petitioners have produced for the purpose of litigation. The petitioners have not filed the said Khatauni in the writ petition. The opposite parties Nos. 1 and 2 have rightly held that no reliance can be placed on Khatauni of 1355 Fasli and have given cogent reasons for the same and in this respect a perusal of the order of opposite parties 1 and 2 may be made."

12. It will be necessary in this connection to notice the observations made by the Deputy Director of Consolidation while discarding certified Khatauni extract of 1355 F. which had been filed by petitioners to demonstrate that the entry of respondents' names for the first time in 1356 F. was done surreptitiously by the village Lekhpal and the same was not made on the basis of any order of any competent court or authority or in continuity of entry of earlier years.

"NIGRANI PAKSHA NE 1355 F. KEE KHATAUNI KA UDDHARAN DAKHIL KIA HAI JISMEN KEVAL RAM NATH, RAM PHAL ANKIT HAI YAH TJDDHRAN MUJHE FARJI LAGTA HAI. 1355 F. KEE KHATAUNI TALAF HO GAI HAI JARI HONE KI TITHI 12357 DEE GAI HAI. SWAIN NIGRANI KARTA NE JO KI DIARY DAKHIL KIYA HAI USMEN 15 MARCH KO HOLI ANKIT HAI. PRATYARTHI KEE ORE SE SHAPATH PATRA DAKHIL KIYA KI 12357 KO HOLI THEE.

VAHARHAL UDDHRAN MEN DINAK 12 AUR 15 DONO TITHIYAN HAI. IS KHATAUNI PAR VISH WAS NAHIN KIYA JA SAKTA"

13. In this connection observation of the Settlement Officer (Consolidation) is also necessary to be noticed;

"UTTAR VADIGAN KE VIDWAN ADHIVAKTA NE YAH DHI TARAK KIYA KI APPEALKARTA GAN DWARA NAKAL KHTAUNI 1355 FASLI DAKHIL HAIJOTAHSIL SE JARI KARNA BATAYA JATA HAI ISMEN RAM NATH VA BITAI KA NAM ANKIT HAL YAH NAKAL JALI HAI AUR YAH NAKAL 12357 KO JARI KIYA GAYA HAI JAB KI 12357 AVAKASH KA DIN THA."

14. On the comparison of the observations made by the Deputy Director of Consolidation and Settlement Officer of Consolidation on the question it will be evident that the Deputy Director of Consolidation wrongly mentioned the date of issue of extract of Khatauni of 1355F. on 15th March, 1957. The correct date of issue of Khatauni has rightly been given in para 24 of the writ petition as 12357 which is not denied by respondents in their counteraffidavit. The certified extract of 1355 F. was however discarded by both Settlement Officer (Consolidation) and Deputy Director of Consolidation on the ground that 12th March, 1957 was a holiday. According to them its issue on a date which was holiday cannot be said to be authentic and therefore same was not admissible in evidence. While coming to the conclusion that 12th March, 1957 was holiday Deputy Director of Consolidation placed reliance on a calendar in which 12th March, 1957 was shown holiday on account of Holi. This approach by the Deputy Director of Consolidation was palpably wrong. Petitioner and filed an affidavit before the Deputy Director of Consolidation showing that 12th March, 1957 was not a closed



day in the Collectorate on account of Holi. It was necessary in the circumstances for the Deputy Director of Consolidation to have made enquiry from the Collectorate or from some other authentic sources as to whether 12th March, 1957, the date when the extract of 1355 F. was issued to the petitioner from the Record Room of the Tehsil was really a holiday. No such endeavour was made by either the Settlement Officer (Consolidation) or by the Deputy Director of Consolidation. Respondents 4 and 5 too have totally omitted to meet petitioners' assertion made in para 24 of the writ petition that 12th March on which date certified copy of 1355 Khatauni extract was delivered to them there was no closure of office on account of Holi, this statement in para 21 of the counteraffidavit is evasive wherein respondents have simply reiterated the findings of the Consolidation Courts on this aspect without stating categorically that 12th March, 1957 was holiday in the Collectorate on account of Holi Festival. There is sufficient material on the record to show that the reason given by the Settlement Officer (Consolidation) and Deputy Director of Consolidation for discarding authentic Khatauni extract of 1355 F. relied by petitioners was factually not correct and important piece of evidence tendered by petitioner was illegally discarded by them for which there was no just and proper reason before either the Settlement Officer (Consolidation) or the Deputy Director of Consolidation.

15. From 1355 F. Khatauni extract which is very important piece of evidence it is clear that names of petitioners alone were recorded as tenants of the land in dispute whereas names of respondents 4 and 5 were not found recorded therein. Their names for the first time was entered in 1356 F. The question in the circumstances which has to be answered by respondents 4 and 5 is as to how and on whose orders their names got entered in 1356 F. It was thus for the respondents to have given satisfactory explanation as to in what circumstances they came to be recorded as cotenants with petitioner over the land in dispute for the first time in the Khatauni of 1356 F.

16. In the written submissions filed on behalf of respondents No. 3 and 4, it has inter alia been argued that:

(a) Since names of opposite parties are continuing to be recorded over the land in dispute since 1348F. and also in 1356F and 1359F in cultivatory possession they would become Adhivasi by virtue of Sec. 3 of U.P. Land Reforms (Supplementary) Act, 1952 and then Sirdar and Bhumidhar in view of law laid down by the Supreme Court in *Sonawati & others v. Sri Ram and others*, 1968 RD 151.

17. This is perhaps new point which has been pleaded for the first time before me by the respondents. The plea is against the case of cotenancy which was set up by respondents from the very beginning before the consolidation courts. Respondents had earlier not set up the plea of acquisition of adhivasi rights by them by virtue of being recorded as occupants of the land in dispute in Khasra of 1356 F and 1359 F years. Their case throughout was that they were

cotenureholders of the land alongwith the petitioners by virtue of the land having been acquired by Basanta who was common ancestor of theirs as well as of petitioner; they throughout contradicted the claim of petitioners that Basanta was evicted from the land by the Zamindar and fresh settlement of the land was made by the Zamindar in the names of Gudar and Ram Pher @ Pheru. Therefore, respondents' plea of acquiring Adhivasi right in the land by virtue of being recorded as occupant of the land in 1356 F and 1359 F years is selfdestructive of their own plea of cotenancy. Such a plea cannot be raised in this Court for the first time as it will involve investigation of facts. Otherwise also, this plea is hardly of any help to the respondents. Entry as occupant in 1356 F and 1359 F years would confer adhivasi rights on the person who is found recorded as occupant in the remarks column of the khasra to the exclusion of the tenants of the land provided the entry has been made in red ink as provided under the provisions of the Land Record Manual. None of these features are present in the present case, therefore, respondents cannot derive any advantage from the view taken by the Supreme Court in Sonawati. On the contrary, Sonawati will help petitioners. It was observed by the Supreme Court in Sonawati that if entry of occupant in 1356 F khasra is made in revenue records surreptitiously by the village Lekhpal and the entry is not made in accordance with the provisions of the Land Records Manual, it will confer no right on the recorded person and investigation into its genuineness can be made by the courts where such entry has been set up.

18. The Settlement Officer (Consolidation) and Deputy Director of Consolidation themselves in their respective judgment observed that Khatauni and Khasra extracts of 1348 F, 1349 F, 1356 F and 1359 F which had been filed by respondents bear no authenticity as the same had not been issued from the recordroom but by the village Lekhpal and, therefore, not being authentic no reliance can be placed on it. As a matter of fact no tangible evidence was filed by the respondents for proving that their names or the names of their predecessors in interest was ever recorded over the land in dispute after the death of Gudar and Pheru. On the other hand, petitioners have filed Khatauni extracts of 1301 F, 1314 F, 1328 F, 1346 F and 1355 F to show that names of their branch alone continued to be consistently recorded over the land. They also proved partition in the family in the year 1928 from the statement of Abhai Raj, opposite party No. 4 which was also supported by revenue records showing entries of separate khata and plots of land separately in the names of different branches of the family from the very beginning (From the time of Kashi and Mathura). Despite there being sufficient material on the record to establish that names of respondents in 1356 F Khatauni had wrongly been recorded and the petitioners were the exclusive bhumidhars of the land still the courts below illegally brushing aside tangible evidence of petitioners placed reliance on inadmissible evidence tendered by respondents for upholding the claim of cotenancy of the respondents.

19. It was contended on behalf of respondents that presumption of the correctness of the entries is raised until it is proved to be wrongly made. In

support of this contention reliance has been placed on a judgment of learned Single Judge of this Court in Ahmad Ban v. Ramjit Singh, 1995 (13) LCD 438; relevant observations are to be found in para 101. The view taken in Ahmad Bari is on the lines of Sonawati and Shekhar Chand Jain, AIR 1974 SC 478 and Hira Lal and another v. Gajjan and others, 1990 (3) SC 285.

20. These authorities, as already discussed above, will be of no help to petitioners for the reason firstly, that the entries presumption of correctness whereof is being canvassed, have themselves not been proved. As was observed by the Settlement Officer (Consolidation) and also by the Deputy Director of Consolidation in their respective judgments that those entries occur in Khatauni and Khasra extracts of 1348 F, 1349 F, 1356 F and 1359 F which had been issued by the village Lekhpal and not from the recordroom, therefore, no authenticity could be attached to these extracts showing entry of the names of respondents alongwith petitioners as cotenants. It has already been noticed above that names of respondents in the Khatauni of 1356 F is not recorded over the land in dispute. There was, thus, sufficient reason to believe that entry of the names of respondents in the Khatauni and Khasra extracts of 1356 F and 1359 F etc. was made surreptitiously as for recording their names in 1356 F for the first time could be only under an order passed by some competent court or competent authority. No such order having been passed, the entries were of no value and could not be relied upon for proving cotenancy of respondents. For this reason no help can be taken on respondents' behalf on the basis of the view of this Court in Ahmad Bari.

21. Third point taken in the written argument on behalf of respondents is also a new point which is to the effect that respondents have acquired cotenancy rights in the land in dispute by acquiescence and estoppel. According to respondents, it was admitted by Ram Phal, father of petitioner No. 1 to 3 himself that no ejectment from the land in dispute had taken place after the death of Gudar and the land in dispute continued in the identical form since then (from the time of Basanta) which is established from the entries of 1301F, 1314F, 1328F and 1346F etc. In support of this plea, reliance was placed by respondents on various judgments of this Court and also on Sec. 48 of the Oudh Rent Act, 1886 wherein it is provided that if after the death of the tenure holder, with whom the land was settled his heirs retain possession for a period of five years heirs of the tenant become statutory tenants. Plea raised by the respondents that they became statutory tenants of the land in dispute under Section 48 of the Oudh Rent Act would involve investigation into facts. This plea was not set up by respondents in the consolidation courts. Deputy Director of Consolidation too had no occasion to examine this aspect of the matter. For acquiring cotenancy under Section 48 of the Act it has to be established that after the death of Basanta, Gudar, Mathura and Parag etc. jointly retained possession over the land of the khata in dispute which also had continued in the possession of Kashi, Ram Pher and Mangru. Evidence in this respect is not available on the record. Whatever evidence was tendered by respondents is not authentic evidence which may be admissible in

evidence under the provisions of Indian Evidence Act inasmuch as extracts of revenue entries filed by them have not been issued from the record room and have been given to respondents by the village Lekhpal on which no reliance can legally be placed. The plea being one involving investigation into facts would not be allowed to be raised for the first time in writ jurisdiction. Therefore, respondents cannot be allowed to raise this plea for the first time. Since respondents are not allowed to raise this plea, it is not necessary for this Court to deal with the argument raised in the written submission on this plea.

22. Similarly, plea that respondents acquired cotenancy rights alongwith petitioners by acquiescence and estoppel inasmuch as their names continued to be so recorded in that capacity since 1356 F over the land in dispute. The argument advanced on respondents behalf is that since petitioners never took steps for expunging the names of respondents from the revenue records showing respondents and members of their branch as cotenants of the land in dispute for a considerably long time, therefore, now, they will be estopped from challenging those entries on any ground whatsoever with the result, respondents will have to be treated as cotenants of the land with petitioners.

23. Respondents can succeed on this plea if they prove that they were recorded as cotenants over the land in dispute strictly in accordance with the provisions of the Land Records Manual. Entry of their names in 1348 F, 1356 F and 1359 F etc. as claimed by them, has been held to lack authenticity as certified revenue extracts of these years were not filed by the respondents in the Consolidation Courts. Original revenue record relating to the years to which the entries related too was not summoned by the courts below to find out as to whether the names of respondents and their predecessors in interest had actually been recorded. Extracts of revenue entries issued by the village Lekhpal which had been filed by respondents bear no authenticity for establishing their right and title over the land in question as such a document is not admissible in evidence. For establishing right or title over land in respect of which record of rights are maintained under statutory provisions, it is necessary to produce authentic evidence of title. Private slips or uncertified extracts of revenue entries issued by village Lekhpal cannot be a substitute for certified extracts issued from the record room which bear authenticity as per Sections 76 and 77 of Indian Evidence Act, 1872. Since the extracts of revenue records issued by Lekhpal cannot prove the entries which stand recorded in the revenue records officially, maintained, therefore, it can be said and "believed that petitioners" name came to be recorded over the disputed land as cotenants with respondents since 1356F year or from a period earlier to that.

24. Plea of acquiescence and estoppel raised on behalf of respondents cannot also succeed for yet another reason. From the evidence available on record it is not proved by respondents that petitioners were aware of the entries of the names of respondents as cotenants alongwith them since 1348F. For making out a case of cotenancy on the ground of acquiescence and estoppel it is necessary

to establish by tendering positive evidence that petitioners were throughout aware of the entries which stood in respect of the land in dispute showing respondents as cotenants thereof with petitioners. The argument, therefore, is not available to the respondents in the absence of the requisite evidence and finding on the point.

25. There is no direct evidence also to establish that respondents continued in possession alongwith petitioners over the land in dispute. As a matter of fact, there is no evidence to establish their possession over the land in dispute at all. Deputy Director of Consolidation, however, held that respondents will be deemed to be in possession of the land in dispute on the principle that being cotenants of the land in dispute alongwith petitioners they need not prove their possession as possession of one cotenant will be possession of other cotenants. This principle, in my opinion, was wrongly applied by the Deputy Director of Consolidation in respondents' favour as from the evidence it was not proved that respondents were cotenants of the land in dispute with the petitioners and the, cotenancy of respondents was a hotly contested issue between the parties.

26. No other point remains to be examined.

27. Conclusion of the above discussion is that both Settlement Officer (Consolidation) and Deputy Director of Consolidation committed manifest illegality by discarding certified revenue extracts of Khatauni of 1355 F filed by petitioners on wholly flimsy ground though there was no good ground to reject the said revenue extract whereas at the same time they wrongly placed reliance on uncertified revenue extracts of 1346F and 1348F which were filed by respondents for proving their claim of cotenancy with petitioners in the land in dispute. These authorities also committed material irregularity while accepting respondents' claim of cotenancy on the basis of the surreptitious entry made in the Khatauni and Khasra of 1356 F though for the reasons discussed hereinabove in detail, these entries were proved to be fictitious which could not establish respondents' plea of cotenancy in the land in dispute.

28. In the result, the writ petition succeeds and is accordingly allowed. Orders dated 3181974, 651975, 14121981 and 9393, passed by Consolidation Officer, Settlement Officer (Consolidation) and Deputy Director of Consolidation, respectively, copies of which have been filed respectively as Annexure No. 1, 2, 5 and 6 to this writ petition, are quashed. The case is accordingly sent back to the Deputy Director of Consolidation with the direction that he shall again decide petitioners' revision in the light of the observations made above and on the basis of the law on the subject. Costs on parties.