

(1992) 04 AHC CK 0083
In the Allahabad High Court
Case No : C.M.W.P. No. 685 of 1977

Raja Ram and another	Vs	APPELLANT
Joint Director of Consolidation, Allahabad and others		RESPONDENT

Date of Decision : 27-04-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3
 Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 9
 Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 229B, 4

Citation : AIR 1993 All 72 : (1992) 2 AWC 1086

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Mr. G.N. Verma, Mr. N.C. Pandey and Mr. K.M.L. Srivastava, for the Appellant; S.C. and Mr. Sankatha Rai, for the Respondent

Final Decision : Partly Allowed

Judgement

1. The petitioners have filed the present writ petitions challenging the orders of the Consolidation authorities by which the claim of respondent No. 4 has been accepted regarding his 1/2 share in the disputed khatas.

2. The parties are related to each other as given in the following pedigree.

Elan		Shital		
-----				P Ram
Bakshi		Parsan		Ganesh Bodi Mahadeo
Gaji		-----		Rampher Angnu
-----				Raja Ram Sita Ram Jokhu

3. The dispute relates to two khatas namely, Khata No. 215 and Khata No. 220 situate in village Noorpur, Pergana Sikandara district Allahabad. Even prior to the start of the consolidation operation in the village in question, there was litigation between the parties and their predecessors-in-interest regarding Khata No. 215. In the year 1958 Raja Ram and Sita Ram filed suit under S. 229B of the U.P. Zamindari

Abolition and Land Reforms Act against Angnu for declaration that they were sole Bhumidhars of Khata No. 215 and the defendant had no right and title to the said Khata. Subsequently, Bodi father of respondent No. 4, was also impleaded as one of the defendants. He filed written statement in that suit and claimed that he had half share in the Khata in question. The trial court decreed the suit by judgment and decree dated 17th July, 1958 and it was held that the plaintiffs alone were Bhumidhars of Khata No. 215. Bodi filed Appeal No. 630 of 1958 against the said judgment before the Commissioner, Allahabad Division, Allahabad. The Gaon Sabha and the State of Uttar Pradesh did-not file any appeal. On 29th Nov. 1958 all the contesting parties namely, Bodi, Raja Ram, Sita Ram and Angnu filed a compromise application and in the said compromise application, they agreed that 1/3rd share be allotted to Raja Ram and Sita Ram, 1/3rd share to Angnu and 1/3rd share to Bodi. It was further agreed that they may get their names recorded separately but for the time being they may continue on record jointly. The said compromise was verified and the Additional Commissioner decided the appeal in terms of the compromise on 29-11-1958. None of the parties filed any appeal against the said compromise decree and that became final. Sometimes, in the year 1975 the village was notified u/s 4 of the U.P. Consolidation of Holdings Act 1953. In basic year Khatauni, in Khata No. 215, only names of Raja Ram, Jokhu and Angnu were recorded and in Khata No. 220 names of Raja Ram and Angnu were recorded Mahadeo son of Bodi, the respondent No. 4, filed an objection before the Assistant Consolidation Officer u/s 9 of the U.P. Consolidation of Holdings Act that he was a co-Bhumidhar to the extent of 1/2 share in both the Khatas. It was stated that Khata No. 215 was acquired by Shital and after his death it has been inherited by his sons and their branches and Khata No. 220 was acquired jointly by Raja Ram and Bodi and, therefore, he has also 1/2 share in the said Khatas.

4. The Consolidation Officer allowed the objection of respondent No. 4. He held that Khata No. 215 was ancestral land of the parties and, therefore, the respondent No. 4 had half share. He further held that so far as the compromise entered into between the parties and their predecessor-in-interest, before the Additional Commissioner, Allahabad Division, Allahabad in Revenue Appeal No. 630 was concerned, it was invalid in law. He was of the view that by entering into compromise natural shares of the parties was affected and as such the compromise was invalid. He further held that Khata No. 220 was joint acquisition of Raja Ram and Bodi and after death of Bodi his son Mahadeo had held share. Aggrieved against the said order, the petitioners filed an appeal before the Settlement Officer (Consolidation). The Assistant Settlement Officer (Consolidation) affirmed the view taken by the Consolidation Officer by his order dated 16th August, 1976. On revision being filed, the Joint Director of Consolidation, Allahabad, upheld the order of the Consolidation Officer and the Assistant Settlement Officer (Consolidation) by his order dated 14th February, 1977 and dismissed the revision. The present writ petition has been filed against these orders.

5. I have heard Shri G.N. Verma and Shri Sankatha Rai, learned counsel for the respective parties at length. The first submission of the learned counsel for the petitioners, is that the view taken by the Consolidation authorities that the compromise was invalid because it affected the natural share of the parties, is against the settled principle of law that parties can enter into an agreement affecting their shares as there is no prohibition under the law to enter into such an agreement. Reference may be made to Order XXIII, Rule 3 of the CPC which provides as follows:

"3. Compromise of suit -- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question, but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.-- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872) shall not be deemed to be lawful within the meaning of this rule."

6. A compromise on a disputed claim stands upon a different footing from transfer of vested interest. In *Trigge v. Lavellee* 11 WR 404 Lord Kingsdown observed as follows:

"A compromise is an agreement to put an end to disputes and terminating or avoid litigation; and in such case the consideration which each party receives is not the sacrifice of a right but the abandonment of a claim."

7. Where parties are related to each other and they settle their disputes, the Court leans to give effect to such settlement or arrangement which have the effect of bringing an end to a dispute in a family and it is taken as family settlement or arrangement.

8. The Supreme Court in *Kale and Others Vs. Deputy Director of Consolidation and Others*, while considering about the family settlement, laid its emphasis by making following observations:

"By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and

resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made."

9. In *Kale v. Deputy Director of Consolidation* (supra) a compromise was entered into before the revenue court and it was prayed that names of the parties be mutated in accordance with the compromise. The revenue court allowed the application and names of the parties were mutated accordingly. Subsequently, consolidation proceedings started in the village where the properties were situate and some of the parties challenged the entries in the revenue record and claimed that the compromise was invalid. The Consolidation Officer decided rights of the parties on merits. The parties went up in appeal before the Settlement Officer (Consolidation) who decided the rights of the parties on the basis of compromise as entered into between the parties before the revenue Court. The judgment was reversed by the Deputy Director of Consolidation. He restored the order of the Consolidation Officer. The order of the Deputy Director of Consolidation was confirmed by the High Court in writ petition. The Supreme Court held that the compromise should be given effect to and it did not require registration. The Court further took the view that even assuming that the document was compulsorily registrable the Court shall hold that the family arrangement between parties to it, operative as estoppel by preventing the parties for having taken advantage under the arrangement to resile from the same or try to revoke it. In view of the aforesaid decisions, it is clear that parties could settle their disputes abandoning their claim which they may be entitled under law and such compromise would not be, ineffective or invalid under law.

10. It was then urged by Sri Sankatha Rai learned counsel for respondent No. 4, that the decree passed on the basis of compromise was invalid inasmuch as the State of Uttar Pradesh and the Gaon Sabha who were respondents in appeal and co-defendants in the suit along with respondent No. 4, had not signed the compromise application and the compromise entered into between some of the parties alone, will be invalid and void under law.

11. A compromise entered into between the parties, is certainly binding upon such parties and in a compromise in which a person is not a party may not be binding against him. The question whether the compromise will be invalid as a whole has to be seen in the context of each case. In a case where the party who had not entered into the agreement has no other interest in the property in dispute, it is not necessary that he may enter into any such agreement. If a compromise does not adversely affect the interest of a party, then in spite of the fact that he is not a party to the compromise, the compromise could be recorded.

12. In AIR 1927 57 (Privy Council) , the Privy Council took the view that where the compromise is effected between the transferee and the opposite parties relating to the subject-matter, is valid though the transferor is not party to the compromise.

13. In Mathura Prasad Phool Chand and Others Vs. Parmanand Thakur Das and Others, the Court took the view that in case, the compromise did not affect the interest of a party who had not enter into the compromise, then in spite of his absence, the compromise could be recorded.

14. A similar view was taken in Pritam Singh v. Sunder Singh AIR 1934 Lah 34 (2) where a party had no further interest in the property in dispute it was held that his joining in compromise is not necessary and such person has no locus standi whatsoever to oppose the compromise.

15. When a suit is file for declaration of rights of a person claiming himself as a Bhumidhar of the land, he has to implead the State Government and the Gaon Sabha as a party because the declaration is sought claiming rights as against the State Government and the Gaon Sabha. All the estates have vested in the State under S. 4 of he U.P. Zamindari Abolition and Land Reforms Act and by issuing notification under S. 117 of the said Act by the State Government land and other properties are vested in the Gaon Sabha. The State Government and the Gaon Sabha shall be interested that only such person be declared as tenure holder of any and of which he may be entitled, but in a case where the contesting parties in a suit enter into agreement and agree that they may be declared as the Bhumidhar specifying their share normally it does not affect the interest of the State Government or Gaon Sabha. In case, the State Government or Gaon Sabha does not consent to the compromise, it can file objection and in case any decree is passed, it has right to challenge it. In case, no such appeal is filed, the compromise will be binding on parties who enter into the compromise and such compromise cannot be treated as void under law.

16. There is another aspect of the matter. The suit was filed by Raja Ram and Sita Ram against Angnu and Bodi. In the said suit, the Gaon Sabha concerned and the State of Uttar Pradesh were parties. The suit was decreed on 17th July, 1958. Neither the State of U.P. nor the Gaon Sabha filed an appeal. It was only Bodi the father of respondent No. 4 had filed an appeal. In case the compromise is not treated as valid, the judgment which was passed by the trial Court in the said suit is binding against the State of U.P. and the Gaon Sabha and in that case respondent No. 4 will have no right inasmuch as the State of U.P. and the Gaon Sabha accepted the judgment of the trial court as they did not file any appeal. Bodi had filed appeal against the judgment of the trial Court and impleaded the State of U.P. and Gaon Sabha as pro forma respondents.

17. Learned counsel for the respondent relied upon Surendra Narain Dubey v. Deputy Director of Consolidation 1973 RD 328. In this case a suit under S. 229C was filed in the year 1960 for declaration that the plaintiff was an Adhivasi. Admittedly in that case, the suit was not maintainable inasmuch as with effect from October 30, 1954 the Adhivasi became sirdars and the erstwhile Bhumidhars lost their interest. The parties had entered into compromise in the said suit. The State Government and the Gaon Sabha who were necessary parties in the suit, were not impleaded. The Court did not accept the compromise

decree passed in the said suit taking the view firstly, that the suit was not maintainable and secondly, the State Government and the Gaon Sabha were not parties.

18. This distinction also came up for consideration in *Sharda Devi v. Board of Revenue* U.P. 1985 RD 93: 1985 All LJ 135). In this case a compromise decree was passed and the vendors challenged the said decree on the ground that they had not signed the compromise. The Court repelled the contention and it was held that the compromise was binding and if any party wanted to challenge the decree it could have filed an appeal.

19. Learned counsel for the respondents then relied upon *Ferozi Lal Jain Vs. Man Mal and Another*, It was a case where a premises was governed by the Rent Control Act and the landlord and tenant entered into compromise, The Court took the view that Section 13 of the Delhi and Ajmer Rent Control Act provides certain restriction on ejection of tenant and by merely entering into compromise by the parties the Court was not competent to pass the decree unless other conditions prescribed under the Act were satisfied.

20. In the present case, learned counsel for the respondent has not shown that there was any such restriction in law under which parties were incapable of entering into compromise.

21. It was then urged that the agreement between the parties is only admission of certain shares in the disputed property and by making admission regarding certain shares in the property the party cannot be estopped from proving his rights and title in the property in question and the admission of a party regarding share in the property an admission based on certain notions of law and admission on a question of law is not binding upon parties. He has relied upon *Jagat Narain Singh v. Salik Ram Singh* AIR 1938 Oudh 110, *Sheo Nath v. Dy. Director of Consolidation*, 1983 RD 107 : 1982 All LJ 767), and *Ram Naresh v. Board of Revenue*, 1986 ALJ 157. This legal proposition is not applicable to the facts of the present case as I have already held that the compromise decree was valid and binding on the respondent No. 4.

22. The compromise decree was further assailed by learned counsel for respondent on the ground that it was vitiated on account of undue influence and fraud. There was no such pleading before the Consolidation authorities. The respondent No. 4 filed objection before the Consolidation Officer and in paragraph 4 of his objection he stated that at the time when his father Bodi, entered into compromise in 1958, he was minor and his father was ill and therefore under compelling circumstances his father had entered into compromise. There was no cogent evidence led by him to establish that the compromise was not an act of free-will. It may be noted that appeal was filed by Bodi and the judgment of the trial Court was against him. And even assuming that Bodi was ill for some time, that does not itself establish that the compromise was not an act of his free-will. Even after having entered into the compromise,

he never challenged the said decree by moving any application before the same Court for setting aside the compromise or by way of filing appeal before the competent Court. The argument of the learned counsel, therefore, has no substance.

23. The next submission of the learned counsel for the petitioners is that Gajr, the ancestor of the petitioners alone had acquired Khata No. 220 and as the land was settled in his favour by the Zamindar he alone should be treated as Bhumidhar of the land in question. His main contention was that the land is settled by the landholder in favour of a tenure holder and it is a matter of contract and no other person can claim any right in a holding which has been settled by the landholder in favour of that person. The ordinary law of contract that a person gets a right on the basis of contract is not disputed. In the case of tenancy laws, the principles of Hindu law have been made applicable. On the import of principles of Hindu Law, the acquisition of holding by one member of the family may ensure to the benefit of other members of the joint Hindu family. They may arise in the following circumstances:--

(I) The holding is acquired by Karta or head of the Joint Hindu family for himself and for other members of the family and he invests the amount from joint family fund or from ancestral property for such acquisition.

(II) The acquisition by one of the members of the Joint Hindu family but from joint family fund and such acquisition ensures to the benefit of all the members of the joint family.

(III) Acquisition by one of the members of the Joint Hindu family from his own fund but blended it with joint family property.

24. In the first two cases the principal question shall always be whether there was joint family fund and whether such fund was utilised for acquisition of such holding.

25. The question whether there was joint family property and from such property there was sufficient income from which the property could have been acquired has to be established, in each case.

26. In *Acharji Ahir Vs. Harai Ahir and Others*, it was held that the properties acquired while the family was joint and that whole of the ancestral or joint family property should be regarded as joint family property and that the burden of proof that it was self-acquired property should be on that member, is to be applied to a case where the property in question is a tenancy. The same view was taken in *Rajendra Misra and Others Vs. Tirathraj Misra and Others*, The view taken was that even though the occupancy holding was in the name of one of the members of the family but if the parties are members of the joint family there was presumption that it was a joint family property.

27. Learned counsel for the petitioners, relied upon *Bala Charan v. State of U.P.*, 1978 RD 51, *Ram Bhajan v. Assistant Director of Consolidation, Sultanpur*, 1983

RD202 and Jagdamba Singh v. Dy. Director of Consolidation, 1985 RD 281: 1985 All LJ 671) in support of his argument that the person claiming cotenancy rights on the principles of Hindu Law should prove that the joint family possessed nucleus and the property was acquired from such nucleus. In each case it has to be established that the property was joint at the time of acquisition and there was joint family fund which was applied for acquisition of such property.

28. In the present case the respondent No. 4 deposed that Gaji had acquired land covered by Khata No. 220 as head of the family. Gaji and Bodi father of respondent No. 4, were living together and were carrying on work together. His statement was supported by his two witnesses namely, Jagannath and Asha Ram. The initial burden which was on the respondent No. 4 was discharged. The petitioner No. 1, in his statement before the Consolidation Officer showed his complete ignorance as to whether Gaji was head or Karta of the family and similarly his witnesses namely, Babu Lal and Ram Saran showed their ignorance. The compromise application which was filed in Revenue Appeal No. 630 before the Additional Commissioner in the year 1958, itself indicates that the parties were joint at the time of filing of the compromise application. The Settlement Officer (Consolidation) and the Deputy Director of Consolidation had discussed the evidence of the parties in detail and have come to the conclusion that the land of Khata No. 220 was joint family holding. There is no legal infirmity in the said finding.

29. In the result, the Writ Petition is partly allowed. Shares of the parties shall be specified in accordance with the terms of the compromise which was entered into between parties and their predecessor-in-interest in Revenue Appeal No. 630 before the Additional Commissioner regarding Khata No. 215. The judgments of respondents 1 to 3, regarding Khata No. 220 is held to be perfectly justified and legal and the writ petition regarding this Khata is dismissed. The parties shall bear their own costs.

30. Petition partly allowed.