

(2018) 12 UK CK 0092

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 444 Of 2015

**Ram Kishun & Others @APPELLANT@Hash Deputy Director Of
Consolidation & Others**

Date of Decision : 05-12-2018

Acts Referred:

Uttar Pradesh Consolidation Of Holdings Act, 1953 — Section 5(c), 48
Constitution Of India, 1950 — Article 227

Citation : (2018) 12 UK CK 0092

Hon'ble Judges : Manoj K. Tiwari, J

Bench : Single Bench

Advocate : I.P. Gairola, Ramji Srivastava

Final Decision : Dismissed

Judgement

Manoj K. Tiwari, J

1. This civil petition under Article 227 of the Constitution of India has been filed against the order dated 15.12.1983 passed by Deputy Director of

Consolidation, Saharanpur.

2. It transpires that petitioners were Bhumidhar in respect of agricultural land situate in Village Kalyanpur @ Narsan Kalan, Paragana Manglore,

Tehsil Roorkee, District Saharanpur (now District Haridwar). Petitioner no. 3, who is the mother of petitioner nos. 1 and 2 sold a part of land

to respondent nos. 2 to 5 and, on the strength of the sale deed, respondent nos. 2 to 5 applied for mutation of their names in revenue records.

Petitioners filed objection to the mutation application filed by respondent nos. 2 to 5. The Consolidation Officer rejected the mutation application vide

order dated 26.04.1977 on the ground that share of petitioner nos. 1 & 2 was sold, who were minor at the time of sale without obtaining permission

from the District Judge. Feeling aggrieved by rejection of their mutation

application, respondent nos. 2 to 5 filed an appeal before the Settlement Officer (Consolidation), which too was dismissed vide order dated 15.02.1978. Respondent nos. 2 to 5 thereafter filed revision under Section 48 of the Uttar Pradesh Consolidation of Holdings Act, 1953, which was allowed by learned Deputy Director of Consolidation, Lucknow Camp, Saharanpur vide judgment and order dated 15.12.1983, which is challenged by the petitioners in this petition.

3. Heard learned counsel for the parties and perused the record.

4. Learned Deputy Director of Consolidation has considered all aspects of matter in great detail. Learned Deputy Director of Consolidation has rightly

held that sale of minor's share in the property is voidable at the instance of minor and since the minor have not challenged the sale within three

years of attaining majority, therefore, this cannot be a ground for declaring sale, as invalid. Learned Deputy Director of Consolidation has further

considered the facts that the entire sale consideration received by petitioner no. 3, mother of petitioner nos. 1 and 2, was invested by her in purchasing

land in the name of the family members, therefore, no prejudice was caused to the interest of the minor children. Learned Deputy Director of

Consolidation has further held that the sale made by petitioner no. 3 in favour of respondent nos. 2 to 5 is not hit by Section 5(c) of Uttar Pradesh

Consolidation of Holdings Act, 1953 as petitioner no. 3 sold her entire family holding to respondent nos. 2 to 5. Learned Deputy Director of

Consolidation has given cogent reason for allowing the mutation application filed by respondent nos. 2 to 5. The view taken by the Revisional Court is

in consonance with a full Bench decision of Hon'ble Allahabad High Court rendered in the case of Smt. Rajeshwari v. Deputy Director of

Consolidation, U.P. Lucknow Camp, Mirzapur reported in 1971 (41) AWR 107. The aforesaid judgment is extracted below:

“In these two petitions a single question has been referred for opinion to this Bench. The question is:

Do the sale deeds in present case infringe the provisions of S. 5 (c) (ii) of the Consolidation of Holdings Act.

The sale deed were executed after the statement of proposals had been confirmed and chaks had been allotted. The vendor sold the entire chak to the

vendees. The facts of these cases are similar to the facts of Smt. Ashrafunisa

Begum v. Deputy Director of Consolidation (1970 AWR 706). Smt.

Ashrafunisa Begum's case is a recent Full Bench decision. The Full Bench has held that S. 5(c) (ii) requires the permission of the Settlement

Officer, Consolidation in the case of sale of a part of holding and not in the case of sale of the entire holding. We are in full agreement with the opinion

of the Full Bench. Accordingly, we answer the question referred to us in the negative.

5. This Court finds no reason to interfere with the impugned judgment dated 15.12.1983. Hon'ble Supreme Court in case of R adhey Shyam &

another Vs. Chhabi Nath & others reported in (2009) 5 SCC 616 has held that power under Article 227 of the Constitution should be exercised very

sparingly when manifest miscarriage of justice has been occasioned. Paragraph No. 31 of the said judgment is extracted below:-

Under Article 227 of the Constitution, the High Court does not issue a writ or certiorari. Article 227 of the Constitution vests the High Courts with

a power of superintendence which is to be very sparingly exercised to keep tribunals and courts within the bounds of their authority. Under Article

227, orders of both civil and criminal courts can be exercised only in very exceptional cases when manifest miscarriage of justice has been

occasioned. Such power, however, is not to be exercised to correct a mistake of fact and of law.

6. Even otherwise, mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only

enables the person in whose favour mutation is ordered to pay the land revenue.

7. In such view of the matter this Court does not find any reason to interfere with the impugned judgment rendered by Deputy Director of

Consolidation. Accordingly, the writ petition is dismissed.