
(1995) 07 AHC CK 0089

In the Allahabad High Court

Case No : Civil Miscellaneous WP. No. 1257 of 1974

Ram Ugrah Singh

APPELLANT

Vs

D.D.C., Varanasi and Others

RESPONDENT

Date of Decision : 20-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Contract Act, 1872 — Section 23
Evidence Act, 1872 — Section 115

Citation : (1995) 07 AHC CK 0089

Hon'ble Judges : G.S.N.Tripathi, J

Final Decision : Dismissed

Judgement

G.S.N. Tripathi, J.—This is a Ashok Kumar and thus they have no more interest in the disputed property. Their objection could stand dismissed. Ram Ugrah Singh would have one half share in the disputed property and remaining half would belong to Smt. Sohra Devi. The compromise was verified before the Consolidation Officer and an order writ petition under Article 226 of the Constitution praying for a writ in the nature of certiorari commanding opposite party No. 1 to produce the record of the case for perusal of the Court and quash the judgment of the Settlement Officer, Consolidation (S.O.C.) dated 5.9.73 (Annexure 3) and also the judgment of the Deputy Director of Consolidation dated 18.12.73 (Annexure 5).

2. The facts of the case are very simple. In the basic year, the name of Smt. Sohra Devi, wife of Hanumant was recorded. Smt. Ganga Devi, respondent No. 5 filed an objection under Section 9 of the U. P. Consolidation of Holdings Act claiming herself to be a cosharer with Smt. Sohra Devi, respondent No. 4 (now deceased) and Ashok Kumar Singh, respondent No. 6. She also set up a pedigree.

3. Ram Ugrah Singh, the petitioner (now deceased) initially did not file any objection. But Smt. Sohra Devi through him, filed an objection denying the interest of Smt. Ganga Devi and Ashok Kumar on 12.5.72. On 21.9.72 Ram

Ugrah Singh filed a timebarred objection claiming himself to be a cosharer to the extent of one half. He did not set up any pedigree nor he alleged as to how he got one half share in the disputed property or as to how he claimed himself to be a member of this family. Admittedly, the disputed property was sirdari, recorded in the name of Smt. Sohra Devi.

4. On 24.9.72 before the Consolidation Officer, a compromise was filed which had been entered into by Smt. Ganga Devi, Ashok Kumar Singh, Ram Ugrah Singh and Smt. Sohra Devi. It has been mentioned in the compromise that Ram Ugrah Singh has paid Rs. 8,000/ to Smt. Ganga Devi and

Ashok Kumar and thus they have no more interest in the disputed property. Their objection could stand dismissed. Ram Ugrah Singh would have one half share in the disputed property and remaining half would belong to Smt. Sohra Devi. The compromise was verified before the Consolidation Officer and an order dated 24.9.72 was passed by the Consolidation Officer in terms of the compromise.

5. On 5.9.73, Smt. Ganga Devi filed an application before the Consolidation Officer that, in fact, she had not entered into any compromise on 24.9.72 at all. The contents of the same were not read over and explained to her. A fraud had been played upon her. She had not received any money whatsoever from Ram Ugrah Singh. Ram Ugrah Singh does not belong to this family. He alleged to have become sirdar by virtue of an illegal transfer in the shape of a compromise.

6. Then the matter came up before the S.O.C. After hearing, the parties, the S.O.C. vide his judgment dated 5.9.83 (Annexure 3) firstly condoned the delay in filing this application by Smt. Ganga Devi under Section 5 of the Limitation Act. He found on merits that in the shape of this camouflaged compromise so-called, virtually a transfer of sirdari interest was effected. It had not been established that Ram Ugrah belonged to this family. Therefore, this document could not be termed as a family settlement. He accordingly found that it was an illegal transfer and the compromise should not be accepted as a valid act of the parties. He accordingly ordered the matter to be sent back to the Consolidation Officer for deciding the interest of the parties according to law on merits.

7. Feeling aggrieved against this 12.5.72. On 21.9.72 Ram Ugrah Singh filed a timebarred objection claiming himself to be a cosharer to the extent of one half. He did not set up any pedigree nor he alleged as to how he got one half share in the disputed property or as to how he claimed himself to be a member of this family. Admittedly, the disputed property was sirdari, recorded in the name of Smt. Sohra Devi.

4. On 24.9.72 before the Consolidation Officer, a compromise was filed which had been entered into by Smt. Ganga Devi, Ashok Kumar Singh, Ram Ugrah Singh and Smt. Sohra Devi. It has been mentioned in the compromise that Ram Ugrah Singh has paid Rs. 8,000/ to Smt. Ganga Devi and order, Smt. Sohra Devi and Ram Ugrah Singh filed a revision before the Dy. Director of Consolidation (D.D.C) Even in the grounds of revision, no pedigree was given nor it was alleged as to

how Ram Ugrah became a member of this family. Nay, in paragraph 9 of the memo of revision (Annex 1 e 4), he has alleged that Smt. Ganga Devi is neither daughter of Ram Surat nor in possession of the land in dispute and the compromise was moved only to save unnecessary litigation and for that handsome amount was paid to her and Ashok Kumar.

8. The learned D.D.C. vide his judgment dated 18.12.73 (Annexure 5) has recorded a categorical finding of fact that Smt. Ganga Devi and Ashok Kumar had entered into a compromise with Ram Ugrah and Smt. Sohra Devi. But he found this compromise against law and unenforceable. The main ground was that it has not been established that Ram Ugrah Singh belonged to this family. Secondly, he found that virtually after paying Rs. 8,000/ Ram Ugrah purchased sirdari land to the extent of interest of Ganga Devi and Ashok Kumar, which was not permissible in law, as sirdari and was not transferable. Therefore, he dittoed the findings of the S.O.C. and maintained the order of remand passed by him. The revision was dismissed. The matter was sent back to the court of Consolidation Officer for determination of the interest of the parties according to law.

9. Feeling aggrieved against this order and judgment of the D.D.C., the petitioner Ram Ugrah Singh, filed this petition. Being enlightened by the judgments of the S.O.C. and the D.D.C., he gave a pedigree for the first time in this petition and claimed himself to be the cosharer along with Smt. Sohra Devi, Ganga Devi and Ashok Kumar. It was stressed that it was not a transfer rather a recognition of preexisting interest and thus it was a valid family settlement.

10. I have heard learned counsel for the parties and gone through the record. I find that there is no force in this petition and it deserves to be dismissed.

11. The main thrust of the argument of Sri Sankatha Rai, who argued this case with his usual thoroughness and vehemence, was that this compromise was, in fact, a family settlement and it should be so recognised. Both the parties placed reliance upon the leading case Ram Charan Das. v. Smt. Girja Nandini Devi AIR 1966 SC 323. The property belonged to one Kanhiya Lai in that case. The plaintiff who was appellant before the Hon'ble Supreme Court was a collateral of Kanhaiya Lal. It was the common ground that the claim in both the suits was compromised. The document Exhibit Y13 embodied the terms of compromise, which was mainly the subjectmatter of consideration before the apex court. Everywhere in the body of this judgment, the Hon'ble apex court found that a family settlement amongst the members of the family howsoever distantly placed they might be, would be recognised. At page 328 in the last paragraph, it was found as follows :

?.....and we have definite evidence to show that there were disputes amongst the members of the family? (Stress supplied)

Applying the principles of estoppel, the apex court found that the pleas of the plaintiff should be shut out on the principles of estoppel because the court give effect to a family settlement upon the broad and general ground that its object is

to settle existing or future disputes regarding the property amongst the members of the family. ? (Stress supplied")

In paragraph 11, the following words are important :

?Here the transaction in question is a family settlement entered into by the parties bona fide for the purpose of putting an end to the dispute among family members.

(Stress supplied)

12. In the same paragraph, further it was observed at page 329 that ?All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as say affection. While dealing with the Privy Council case S. Misser v. Maheshrani Misrain AIR 1921 PC 107, the fact was discovered that ? In that case there were serious disputes in the family as to the title.....

?This way, this ruling does not help the petitioner. Because it is not at all established nor any attempt was made to establish upto the court of D.D.C. that Ram Ugarh belonged to this family. As against it, Smt. Ganga Devi gave a pedigree and claimed herself to be a co-sharer with Smt. Sohra Devi.

13. This case was again considered by the Hon"ble Supreme Court in Kale. v. Deputy Director of Consolidation, AIR 1976 SC 807. Those principles were upheld. There a compromise was entered before a Naib Tehsildar. In paragraph 9 at page 811, the following lines are very important:

?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 settled 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 object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family.?

Again the following lines are very relevant:

?That is why the term ?family? has to be understood in a wider sense so as to include within its fold not only the close relations and legal heirs but even those persons who may have some sort of antecedent title. On semblance of claim or even if they have a spes successions.?

At page 812, the following words are very important:

?Family arrangements are governed by principles which are not applicable to dealings between strangers.?

Concretizing the law, on this point, at page 813, their Lordships formulated as below under caption (1) :

?(1) Family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between various members

Under caption (5), the following lines are important :

?The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement.?

14. At page 815, in paragraph 18 quoting from AIR 1972 SC 2069, the Hon''ble Supreme Court observed as follows:

?If in the interest of the family properties or family peace the close relation* had settled their disputes amicably, this Court will be reluctant to disturb the same. The courts generally lean in favour of family arrangements.?

The facts of that case have been briefly narrated in paragraph 2 of the judgment. For our purpose,, the following words are important:

?Thus it would appear that after the death of Lachman the family consisted of his two unmarried daughters Har Pyari and Ram Pyari and his married daughter's son Kale. (Kale was the appellant before the Supreme Court).?

This way, admittedly the arrangement was amongst the members of the same family and not amongst strangers and some of the members of the family. So, naturally, it got the seal of the apex court.

15. These two rulings were considered by a Bench of this Court in Pt. Devi Sewak v. Yagya Datta, 1972 ALJ 89. In paragraph 11, the following lines are important:

"The meaning of the word "family" cannot be enlarged so as to include a stranger to the family, otherwise the very motion of a family settlement would be lost.?

16. Both the courts below have held categorically that Ram Ugrah was not a member of this family. This finding is based on evidence. Whereas, Smt. Ganga Devi gave a pedigrees at the earliest stage, Ram Ugrah desisted from giving it and for the first time, he gave a pedigree in the writ petition before the court after knowing the criticism by both the courts that he had lost on account of the fact that he had not been proved to be a member of this family. This is one important ground why the family settlement has been disregarded by the lower courts. I find that their conclusions are based on legal promise and there is no manifest error of law. Hence those judgments do not call for any interference by this Court under Art. 226 of the Constitution cause no miscarriage of justice has been established.

17. Reliance has been placed upon the case of Banwari v. State of U.P., 1974 ALJ 958. In paragraph 6, the following lines are important:

?...It is also wellsettled that the writ jurisdiction of this Court under Article 226 of

the Constitution cannot be invoked merely by showing that an order is wrong. It must further be shown that it has resulted in miscarriage of justice.?

The courts below have simply remanded the matter for decision of the interest of the parties on merits irrespective of their claims and after ignoring the so-called compromise. So miscarriage of justice is not apprehended.

18. It was urged by Mr. Sankatha Rai that since it is a very old matter, it should not be reopened after merely two decades. The golden principle enunciated by him is correct. But when one party is proved to be totally stranger to the family and wants to grab the property at the cost of natural family members, the court should not allow this thing to be perpetuated otherwise it will encourage lawlessness in the society. Hence although due to procedural wrangles, this litigation has protracted for such a long time, the law must have its own course. Moreover, it is not Smt. Ganga Devi but the petitioner himself who has evoked the jurisdiction of the High Court under Art. 226 of the Constitution. He cannot be allowed to say that since he has grabbed the property and has enjoyed its usufruct for over two decades, he should be allowed to perpetuate his wrong. I accordingly reject this argument of Mr. Sankatha Rai.

19. Another leg of Mr. Rai's arguments is that even if it is ignored as a family settlement, this document can be used as an agreement admission and it may stop the respondents from urging against the validity of the same. This argument is not tenable. There is no estoppel against law or statute.

20. Admittedly, the disputed property was a sirdari. It was not transferable under the law applicable at that time. Ram Ugrah says that he paid Rs. 8,000 to Smt. Ganga Devi and Ashok Kumar. This amounts to a purchase of the interest of these persons. So whatsoever colour may be given to this transaction, it turns out to be a sale of sirdari rights, which was against law and the agreement is hit by S. 23 of the Contract Act. The legal position that there is no estoppel against law has been upheld by this court in *Bhiire v. Peer Bux* 1973 ALJ 313. A sirdar could not Coopt another Sirdar by virtue of an agreement as has been done in the present case. This principle was laid down by this Court in 1983 AWC 447.

21. Apart from it, neither there is any miscarriage of justice nor is there any possibility of undue advantage being taken by one party, if the interest of the parties is decided by the proper courts, for which both the lower courts have given direction. Of course, since the factum of compromise has been upheld by the D.D.C. It will also be held that Ashok Kumar and Smt. Ganga Devi have received a sum of Rs. 8,000/ from Ram Ugrah. This findings has not been assailed by Ganga Devi and Ashok Kumar. This seem they could be obliged to return to them. But they are not being directed to return this amount, because Ram Ugrah has been enjoying possession over their interest for more than two decades. So he stands more than adequately recompensated. Accordingly, I hold that Smt. Ganga Devi and Ashok Kumar would not be obliged to refund this amount.

22. ?Biking the totality of the circumstances, I find that this petition has no force and it deserves to be dismissed. It is accordingly dismissed.

23. It is made clear that the Consolidation Courts while deciding the matter afresh, shall ignore the compromise/family settlement relied upon by, Ram Ugrah dated 24.9.72 . They shall decide after fresh evidence as to what was the share of Smt. Sohra Devi, Ganga Devi, Ashok Kumar and Ram Ugrah, if at all.

Under the circumstances of the case, cost is made easy.