

(2011) 10 AHC CK 0118

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 47984 of 2000

Rikhvev and another

APPELLANT

Vs

A.D.M. (Finance), Azamgarh and others

RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 107, 59
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48(1), 53(B), 8, 9A(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 155, 158, 164, 189

Citation : (2011) 10 ADJ 629 : (2011) 114 RD 631

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This is an unfortunate case.
2. It is said that India lives in villages. The villagers are generally innocent and simple persons but there are some who are crooked and land grabbers amongst them. Many times, the Courts of law are used by such persons to get the seal of approval of their nefarious activities. They play fraud on Court as well on their fellowmen. It is really shocking, as in the present case the Presiding Officer who had retired, was hand in gloves with such persons and with the help of Ex Presiding Officer as it has been found, the Petitioners got fabricated a case file wherein ante-dated order has been prepared to grab the property in dispute.
3. The present writ petition arises out of the proceeding under the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act"). The dispute is with regard to 1/2 share of plot No. 326 (new Chak No. 295), area 3.363 Acre, which in the basic year, was recorded in the name of two brothers

Ramanuj and Rama Sankar.

4. Ramanuj Rai has expired on June, 1998. The contesting Respondents (sons) applied for mutation of their names in the revenue record then they came to know about an order dated 1st May, 1998 passed on the basis of compromise application. An application to recall and for setting aside the said order was filed by them along with another application for condonation of delay in filing the review application. The review of the order was sought for on the ground that the order dated 1st May, 1998 has been obtained by the present Petitioners by playing fraud and the said order is totally without jurisdiction and non est as it could not have been passed, in the absence of any reference made by the Assistant Consolidation Officer by the Consolidation Officer directly. It was stated that their father never executed any unregistered sale-deed nor he engaged any counsel nor he entered into any such compromise. In addition to filing of the restoration application, they reported the matter to the District Magistrate who is District Deputy Director of Consolidation. The District Magistrate directed the Additional District Magistrate (Finance & Revenue) to conduct inquiry and submit a report in this regard. On inquiry, the allegations of the Respondents No. 2 and 3 were found to be correct. The Additional District Magistrate (Finance & Revenue) treated the application as revision u/s 48(1) of the Act and after hearing the parties, passed the impugned order dated 30th October, 2000 whereby he quashed the order dated 1st May, 1998 which was obtained by the Petitioners, according to the impugned order by playing fraud.

5. It appears that the Petitioners herein Rikhdev and Satdev sons of Sri Jhuri filed a belated objection directly before the Consolidation Officer, though under the said Act it should have been filed before the Assistant Consolidation Officer, u/s 9-A(2) of the Act, claiming bhumidhari right over the aforesaid land on the basis of an unregistered sale-deed. A compromise purporting to have been signed by Ramanuj, father of Respondents No. 2 and 3 was filed accepting the claim of the Petitioners and the objections were decided in terms of the said compromise by the order dated 1st May, 1998 whereby their father allegedly entered into a compromise with the Petitioners for recording of their names. The said compromise order has been found to have been obtained fraudulently.

6. Heard Shri Bhagwati Prasad Singh along with Shri Raj Karan Yadav, learned Counsel for the Petitioners and Shri R.N. Singh, learned Senior Counsel assisted by Shri A.K. Rai, learned Counsel for the contesting Respondents.

7. Arguments of the learned Counsel for the Petitioners can be divided into two categories.

8. Firstly, the finding recorded in the impugned order with regard to fraud, is incorrect and is vitiated.

9. Secondly, the revision before the Respondent No. 1 was not maintainable as the application for setting aside the order dated 1st May, 1998 is pending consideration before the Consolidation Officer. It was submitted that unless and

until the delay in filing the restoration is condoned and the restoration application is decided on merits, the revisional power could not have been exercised by the Respondent No. 1. There is No. provision to file the restoration or misc. application under the U.P.C.H. Act and therefore, the application filed by the Respondents before the Consolidation Officer is not maintainable. Opportunity of hearing was not granted by the Respondent No. 1 who treated the misc. application dated 21st February, 2000 as a revision. Respondent No. 1 should not have exercised his revisional power as the right to file an appeal against the order passed by the Consolidation Officer, has been taken away. The Respondents never claimed possession over the land in dispute and in view of the mortgage with possession deed dated 12th March, 1975, the Petitioners become bhumidhar of the land in dispute u/s 155/164 of the U.P.Z.A. & L.R. Act.

10. In reply, learned Counsel for the contesting Respondents submits that it is a case of total fraud played by the Petitioners in collusion with Shri Badri Nath Pandey, who retired as Consolidation Officer on 30th June, 1998. After retirement, he passed ante dated order 1st May, 1998. There is definite evidence on record to show that No. such objection on behalf of the Petitioners was filed before the Assistant Consolidation Officer. It is statutory requirement that the objection u/s 9-A(2) of the Act is to be filed before the Assistant Consolidation Officer. If there is a dispute, the Assistant Consolidation Officer refers the matter to the Consolidation Officer. In other words, an objection cannot be directly filed in the Court of Consolidation Officer. In the case on hand, there is nothing to show that any such objection was filed by the Petitioners before the Assistant Consolidation Officer. By manipulation with the active connivance of Shri Badri Nath Pandey, a fictitious file was constructed and the order dated 01.05.1998 is not a judicial order but a got up order and therefore, it has No. existence in the eye of law. The said order is a nullity and is liable to be ignored.

11. On inquiry, it was found that the said compromise is forged and fictitious document and the order thereon has been passed by Shri Badri Nath Pandey, who has retired on 30th June, 1998, after retirement by ante dating order, the order dated 01.05.1998 was prepared. Submission is that it is a case of fraud and as such, No. interference under Article 226 of the Constitution of India is called for and the Petitioners should be dealt with with firm hands. It was also submitted that on merit also, even if, for the sake of argument, the Petitioners' case is accepted on its face value, No. right would flow. The document in question is admittedly an unregistered document said to have been unilaterally written by Ramanuj Rai. A sale-deed or the mortgage-deed necessarily requires registration if it is for more than Rupees One Hundred. There is No. evidence to show that the Petitioners are in occupation of the disputed land for the last 15 years as was pleaded by them.

12. Considered the respective submissions of the learned Counsel for the parties and perused the record referred by them.

13. The scheme of U.P. Consolidation of Holdings Act, 1953, relevant for the

present purposes be noticed in brief. Sections 9, 9-A and Rules 25-A & 26 are the relevant statutory provisions. u/s 9(2) any person interested may, within 21 days file an objection before the Assistant Consolidation Officer, disputing the correctness or nature of entries in the records. Under Rule 25-A, the Assistant Consolidation Officer will deal with the objections and shall decide them on the basis of conciliation in terms of Sub-section (1) of Section 9-A. He has No. power to pass ex parte orders or orders in default. In case of failure of conciliation, the Assistant Consolidation Officer will send a report to Consolidation Officer who will decide the rights of parties after taking evidence etc.

14. An objection therefore, has to be filed before the Assistant Consolidation Officer. There is No. provision to file an objection before the Consolidation Officer directly.

15. Rule 26(1) & (2) of the Rules framed under the Act, reads as follows:

26. Section 9-A.-(1) The cases received from the Assistant Consolidation Officer shall be entered in the Misalband register in C.H. form 6 in the office of the Consolidation Officer.

(2) On the date fixed under Sub-rule (2) of Rule 25-A, or on any subsequent date fixed for the purpose, the Consolidation Officer shall hear the parties, frame issues on the points in dispute, take evidence, both oral and documentary, and decide the objections.

16. Annexure-1 to the writ petition is the copy of objections filed by the Petitioners praying for recording of their names over 1/2 share of plot No. 326 area 3.363 Acres, as co-bhumidhar, on the pleas inter alia that they are in occupation of said plot on the basis of unregistered sale-deed for a period over 15 years but the name of opposite party i.e. Ramanuj Rai is still continuing in the revenue record. They had impression that their names would have been recorded during consolidation. They heard rumour yesterday on 10th August, 1998 in the village that the names of opposite parties are recorded in the revenue record. Therefore, the delay be condoned. The objections were filed on 27.11.1997. It was accompanied with an affidavit and was registered as Case No. 1365. In the said case, a compromise purporting to have been signed by Ramanuj Rai, father of Respondents No. 2 and 3 was filed. The case was decided on 1st May, 1998 in terms of compromise.

17. A complaint made by the contesting Respondents that No. such compromise was ever entered into by their father. He never signed any vakalatnama nor any such case was ever registered, the matter was inquired into by the District Magistrate. On inquiry, it was found as follows:

(i) The said case being Case No. 1956 has not been found to be registered in misalbandi register. Whenever a case is filed, the particulars of the case are registered in a register known as "Misalbandi Register". Misalbandi register does not contain the particulars of Case No. 1956 Rikhdev and Anr. v. Ramanuj.

(ii) The objection was filed on 27th November, 1997. The stamp affixed on the vakalatnama accompanying the objections is of the year 1998.

(iii) The accompanying affidavit is dated 27th November, 1997 has been affirmed before the Oath Commissioner, namely, Shri Nagendra Nath Rai. Shri Nagendra Nath Rai, Oath Commissioner has denied his signature on the said affidavit accompanying the objections of the Petitioners and he has stated that he has not verified the same. What is more interesting to note is that he was not Oath Commissioner at the relevant time i.e. 27th November, 1997.

(iv) Shri Ramanuj Rai was identified before the Consolidation Officer by Shri Kalpu Ram, Advocate. Shri Kalpu Ram, Advocate during inquiry stated that his signature on vakalatnama is forged. He did not file any such vakalatnama nor Ramanuj Rai came to him to engage him.

18. Shri Bhagauti Prasad Singh, learned Counsel for the Petitioners submits that in the statement, Shri Nagendra Nath Rai has given reference of the case as Rikhdev v. Satya Dev. The statement is to be read as whole. He has stated, in specific terms that he pursued the affidavit filed in proceedings u/s 9-A(2) of the U.P.Z.A. & L.R. Act relating to plot No. 326 area 3.363 Acre situate in village Pura Achanak, District Azamgarh. The said affidavit sworn on 29th November, 1997 was not verified by him. He was not Oath Commissioner on that period and his signature is forged thereon. There is No. material on record to contradict him. Therefore, the argument of the Petitioners' counsel is liable to be rejected.

19. A reference was also made to a document to show that judgment of the said file was consigned to record room as it finds mentioned in the list, has been filed as R.A.-4. The basic fact is that on inquiry, it was found that No. such Case No. 1956 was instituted and the file of the said case was manufactured with the help and connivance of Shri Badri Nath Pandey, the retired Consolidation Officer by then. These facts have not been disputed nor there is any evidence to show that they are incorrect. The fact as found is that Case No. 1956 wherein the impugned order was passed was not instituted. There is No. explanation with regard to the affidavit and vakalatnama. The counsel has stated that he did not sign the vakalatnama and his signature is forged. The Oath Commissioner has stated that he did not verify the affidavit and his signature on the affidavit, is forged. He was not even oath commissioner at the relevant date. Inquiry was conducted to find out the facts. It has been found that the order of the Consolidation Officer is a manufactured order. Noticeably, the objection was filed on 27th November, 1997 therefore No. rumour could be heard on 10th August, 1998, as stated therein. The other fact is that the objection purported to have filed on 27th November, 1997 could not accompany a vakalatnama of the subsequent year i.e. year 1998. Lawyers and Oath Commissioner have come forward to deny their signatures on the documents. These facts lead to only one conclusion that everything was manipulated by ante dating the documents as by that time, Shri Badri Nath Pandey had retired. To give colour that the compromise is genuine one, ante dating was done with the active connivance of

Shri Badri Nath Pandey. Stamp bearing a date of year 1998, could not be affixed on a document allegedly filed in the year 1997. The said finding in the impugned order is well considered finding and calls for No. interference.

20. Whole case of the Petitioners is based on falsehood and fraud. There are many things which remain unexplained, such as, as to how the objections were filed before the Consolidation Officer when the procedure is that it should be filed before the Assistant Consolidation Officer, who will refer the matter to the Consolidation Officer. In the case on hand, admittedly No. reference was made by the Assistant Consolidation Officer. The filing of the objection in question before the Consolidation Officer was done with the design to obtain a fraudulent ante dated order from the Consolidation Officer who had retired by then. The facts do show that the Petitioners along with Shri Badri Nath Pandey, who retired as Consolidation Officer on 30th June, 1998 conspired and managed to fabricate the order dated 1st May, 1998. During arguments, the Court was informed that the department initiated the criminal proceedings against Sri Badri nath Pandey.

21. There is practically No. explanation from the side of the Petitioners to the above facts. These are starting facts which are totally unexplained and leads to one and only conclusion arrived at by the court below. Unmistakable fraud played by the Petitioners is proved.

22. It is useful to notice a portion from an article titled as "The Arrears As Barometer" by Hon"ble Mr. Justice S.U. Khan published in (2010) 2 SCC J-1, wherein while commenting on the working of UP Consolidation of Holdings Act, 1953 in the State, has made the following observations as follows:

Unscrupulous farmers think that they may easily get undue benefit under the Act and they often succeed. It is assumed that there is No. concept of limitation under the Act. Preparation of forged orders and of certified copies of non-existent orders and seeking their implementation after about a decade or even after several decades in some cases (after weeding out of the original records) and manipulation in records is rampant in consolidation matters. This vice of fraud and manufacturing and manipulation of records is not so rampant in any other type of proceedings. It is assumed that in consolidation everything is possible and permissible.

23. Plea that the Petitioners are in possession over the disputed land in pursuance of the deed dated 12th March, 1975, somewhere it is described as sale deed and at other plea as mortgage deed, is frivolous and bogus plea. Indisputably, the Petitioners" name was found not recorded in revenue record, khasra or khatauni either, at any point of time. The Land Record Manual prescribes a procedure for recording of names in the revenue record. It also prescribes periodical partial, three times a year for recording name of unauthorized occupant as well, besides whether crop has been sown and if sown its nature etc. Even after commencement of consolidation operation in a village, provision u/s 8 of the Act has been made for revision of the field book and

current annual register. This section makes it mandatory to make a field to field partial so that the Consolidation Authorities may be able to gather correct facts in respect of records.

(See: Shyam Nath v. Bhaskar Pandey 1957 R.D. 416)

24. The Petitioners did not claim their possession over the disputed land, even at the time of partial. This shows in totality of the facts that the Petitioners were not in occupation till filing of their ante dated objections.

25. In view of the above, the argument that the restoration application is pending or is belated or the revision was not maintainable, are all liable to be rejected. An order obtained by playing fraud is nullity and it can be set aside at any time in any proceedings.

26. It is well settled principle of law that any judgment or order obtained by fraud, its validity can be challenged in any proceeding. Before three centuries, Chief Justice Edward Coke proclaimed;

Fraud avoids all judicial acts, ecclesiastical or temporal.

27. It is settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

28. In the leading case of Lazarus Estates Ltd. v. Beasley (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, Lord Denning observed:

No judgment of a court, No. order of a Minister, can be allowed to stand, if it has been obtained by fraud.

29. In Duchess of Kingstone, Smith's Leading Cases, 13th Edn., p.644, explaining the nature of fraud, de Grey, C.J. stated that though a judgment would be res judicata and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was "mistaken", it might be shown that it was "misled". There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

30. It has been said; Fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).

31. Fraud may be defined as an act of deliberate deception with the design of

securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants.

32. In *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, the Apex Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there was No. legal duty cast upon the Plaintiff to come to court with a true case and prove it by true evidence". B approached this Court.

33. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as "wholly perverse", Kuldip Singh, J. stated:

The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court -process a convenient lever to retain the illegal-gains indefinitely. We have No. hesitation to say that a person, who's case is based on falsehood, has No. right to approach the court. He can be summarily thrown out at any stage of the litigation.

34. The Court proceeded to state:

A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

35. The Court concluded:

The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants.

36. In *Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd.*, referring to *Lazarus Estates and Smith v. East Elloe Rural District Council* 1956 AC 336: (1956) 1 All ER 855: (1956) 2 WLR 888, the Apex Court stated:

22. The judiciary in India also possesses inherent power, specially u/s 151 Code of Civil Procedure, to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business.

37. In *United India Insurance Co. Ltd. Vs. Rajendra Singh and Others*, by practising fraud upon the Insurance Company, the claimant obtained an award of compensation from the Motor Accident Claims Tribunal. On coming to know of fraud, the Insurance Company applied for recalling of the award. The Tribunal, however, dismissed the petition on the ground that it had No. power to review its own award. The High Court confirmed the order. The Company approached the Apex Court.

38. Allowing the appeal and setting aside the orders, the Apex Court stated:

15. It is unrealistic to expect the Appellant company to resist a claim at the first instance on the basis of the fraud because Appellant company had at that stage No. knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

16. Therefore, we have No. doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No. Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.

17. The allegation made by the Appellant Insurance Company, that claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for, the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. Claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be

allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to serious miscarriage of justice.

(See: A.V. Papayya Sastry and Others Vs. Government of A.P. and Others,

39. In para-39 of the judgment of A.V. Papayya Sastry (supra), it has been laid down that it is established that when an order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs No. further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. and it has to be treated as non est by every Court, superior or inferior.

40. In Dalip Singh Vs. State of U.P. and Others, the Apex Court's following observations is fully attracted to the facts of the case:

1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahinsa" (non-voilence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

41. Viewed as above, it is not necessary to dwell up the case any further. Reprehensible conduct of the Petitioners is sufficient to non suit them. But I will be failing in my duty if the other part of the argument as was advanced by the learned Senior Counsel for the Respondents is not noticed and considered. The dead dated 12th March, 1975 whether a sale deed or mortgage deed being an unregistered consideration shown is Rs. 50,000/-(Rupees Fifty Thousand only) is a worthless and waste paper. No. right accrues on such document, submits the counsel.

42. The case of the Petitioners is that during consolidation operation they filed objection u/s 9-A(2) of the Act in respect of plot No. 326 area 3.363 Acres on the basis of mortgage with possession deed dated 12th March, 1975 and thus they have become bhumidhar u/s 155/164 of the U.P.Z.A. & L.R. Act. The right, title or interest of the Respondents extinguished u/s 189 (aa) of the U.P.Z.A. & L.R. Act. The alleged document is an unregistered document.

43. Contention of the learned Counsel for the Petitioners is that in view of the decision of this Court in Ramanand and Ors. v. Deputy Director of Consolidation Basti and Ors. 1993 RD 90 (H), non-registration of the document will not affect the sale-deed.

44. In the case of Ramanand (supra) it has been laid down that if a bhumidhar has taken some money from some one and in this regard possession on some land has been given to such a person, this type of transaction would be deemed to be valid transfer and the provisions of Registration Act or Evidence Act cannot be applied in consolidation proceedings, particularly in transaction u/s 164 of the U.P.Z.A. & L.R. Act. A reading of the judgment would show that that there is No. discussion at all as to why the provisions of Registration Act are not applicable. The only reason given is that u/s 53-B of U.P.C.H. Act, only Section 5 of the Limitation Act has been made applicable and there is No. mention of either Registration Act or Evidence Act.

45. Except making a reference to Section 53-B of U.P.C.H. Act, there is absolutely No. discussion in the judgment. In my considered view, there is No. ratio in the aforesaid judgment. The Court has jumped to the conclusion without any discussion that the provisions of Registration Act or Evidence Act are not applicable. Attention of the Court was not drawn to anyone of the earlier decisions on the point. Its attention was not drawn towards earlier judgment in Ajeet and Anr. v. Deputy Director of Consolidation and Ors. 1982 RR 50 . In this case, a dispute arose whether an unregistered mortgage deed attracts Section 164 of the U.P.Z.A. & L.R. Act or not. After considering the earlier judgments of this Court including Kedar Vs. District Judge and Others, and Data Ram v. Additional Civil Judge Bulandshahr and Anr. 1978 ALJ 840, it has been held that transfer of possession under unregistered mortgage deed will not amount "sale" u/s 164 of the U.P.Z.A. & L.R. Act. The transfer of immovable property for a value of Rs. 100/-either by sale or by mortgage necessarily requires registration under the Registration Act otherwise such a transfer is invalid. These decisions were not brought to the notice of the Hon"ble Judge who delivered the judgment in the case of Ramanand (supra). The judgment given in the case of Ramanand (supra) is therefore per incuriam, as it was given in ignorance of the earlier binding precedents. Except a solitary decision in the case of Ramanand (supra), all other decisions have taken different view i.e. registration of document of transfer for a value more than Rs. 100/-is necessary, under the Registration Act, even for agricultural land. There is good deal of discussion in Umesh Chand and Ors. v. Board of Revenue Uttar Pradesh at Allahabad and Ors. 2002 (93) R.D. 264. In

this case, after noticing the various provisions of U.P.Z.A. & L.R. Act and that of the Transfer of Property Act, the Court has laid down as follows:

16. Thus it is clear that the provisions of Transfer of Properties Act are fully applicable while effecting a transfer of holding by bhumidhar. In the Act wherever it is mentioned that particular meaning given in Transfer of Property Act or Indian Registration Act be not given to a transaction. Specific provision has been made in U.P. Zamindari Abolition and Land Reforms Act. Reference has been made to Section 158 of U.P. Zamindari Abolition and Land Refoms Act which provides that lease for a terms exceeding one year or from year to year may be made either by a registered instrument or in the prescribed manner. Section 158 of U.P. Zamindari Abolition and Land Reforms Act has overriding effects to the provisions of Transfer of Property Act and Indian Registration Act whereas Section 107 of Transfer of Properties Act provides that a lease of immovable property from year to year, or for any terms exceeding one year can be made only by the registered instrument. Section 158 clearly contemplates that applicability of Transfer of Property Act as well as Indian Registration Act is not ruled out in application to U.P. Zamindari Abolition and land Reforms Act and the provisions are overridden in specific case. Apart from Section 59 of Transfer of Property Act, Section 17 of Indian Registration Act also provides that registration of instruments of value of more than 100 Rupees or more of immovable property is required when such instrument purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent. Section 17(1) of Indian Registration Act is quoted below:

17. Document of which registration is compulsory.-(1) The following documents shall be registered if the property to which they relate is situate in a district in which, an if they have been executed on or after the date on which, Act No. XVI of 1964, or the Indian Registration Act, 1866, or the Indian Registration 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:

- (a) instrument of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- (c) non-testamantary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment limitation or extinction of any such right, title or interest; and
- (d) lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in

future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the official Gazette except from the operation of this Sub-section any lease executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

46. Thereafter, the Court has noticed a Division Bench decision in Mohd. Fasih v. Munir Khan 1987 R.D. 36, wherein it has been laid down that transfer of possession alone is not sufficient to attract such Section 164 of the U.P.Z.A. & L.R. Act.

47. The object of registration a document is to give notice to the world that such a document has been executed, to prevent fraud and forgery and to secure a reliable and complete account of all transactions effecting the title to the property.

48. The Registration Act strikes a document and not a transaction. It extends to the whole of India except State of Jammu & Kashmir. Its Section 17 provides a document of which registration is compulsory. Section 17(1)(e) provides that non testamentary instruments transferring or assigning any any right, title or interest of the value of one hundred rupees and upwards, to or in immovable property shall be considered.

49. Viewed as above, on the admitted case of the Petitioners that deed in question is unregistered document, the provisions of Section 164 of the U.P.Z.A. & L.R. Act, assuming what the Petitioners are saying is correct, will not be attracted.

50. Even otherwise also, there is No. material on record to show that the possession was ever delivered in pursuance of the alleged document dated 12th March, 1975 or the Petitioners were in occupation on the date of commencement of the consolidation operation in the village. The said document had not seen the light of the day earlier nor there is any evidence to show that it was executed by the father of the contesting Respondents. Also there is nothing on record to explain the delay except that the Petitioners were under impression that their names should have been recorded in the document relating to consolidation. In the objections, they have accepted that the land in dispute is recorded in the name of the father of contesting Respondents herein.

51. The argument that proper opportunity of hearing was not afforded to the Petitioners is liable to be rejected at threshold. The Petitioners were heard admittedly adequately before the impugned order could be passed. They did file the objection on 20.07.2000 regarding the maintainability of the revision application. On 28.08.2000 they filed objection on merit, vide para 20 of the writ petition. The copies of these objections have not been annexed either along with the writ petition or with the rejoinder affidavit. They were not placed before me during arguments even. In this fact situation, their worth, if any, one could

imagine.

52. In all the writ petition is confined in sixteen paras and sixteen annexures. A close reading of the writ petition discloses that there is No. pleading or proof challenging the findings as found in inquiry, discussed in the earlier part of this judgment. Prejudice, if any, caused to the Petitioners, even if the argument of Petitioners that opportunity of hearing was not given is accepted, has not been shown in any part of the petition.

53. It is an acknowledged legal proposition that Article 226 of the Constitution does not confer a right of appeal to any party. It confers discretion to refuse to interfere in appropriate cases. The Constitution has not made a writ Court, a Court of appeal. While exercising discretionary jurisdiction, the facts and circumstances of the case should be seen in their entirety to find out if there is miscarriage of justice. If the Petitioner has not come to Court with clean hands, the Court may non suit him. Copies of the relevant documents such as inquiry report dated 04.05.2000, order of District Magistrate dated 21.05.2000, copy of alleged mortgage deed. C.H. form, statements of advocate and oath commissioner etc. were withheld in the writ petition. Material facts have been concealed in the writ petition. In short, it is a case where the Petitioners have come to the Court not with clean hands. This is additional reason not to interfere in the present writ petition.

54. Time and again the Apex Court has laid down that in such matters of fraud exemplary cost should be awarded. Reference can be made to a recent decision in Rameshwari Devi and Others Vs. Nirmala Devi and Others, of the judgment is reproduced below:

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts.

55. The Apex Court in Indian Council for Enviro-Legal Action Vs. Union of India (UOI) and Others, has laid down the various principles of law to adjust the equities between the parties when one of the parties to the litigation has obtained some interim relief from order to the detrimental of the other party while passing a final order in a matter, for doing justice between the parties. The interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court by the mere circumstance that it has initiated a proceeding in the court, must be neutralized. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it. It has laid down the following principles which should be kept in mind by the Court while adjudicating the matter:

1. It is the bounden duty and obligation of the court to neutralize any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.

2. When a party applied and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigation party.

3. Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.

4. A person in wrongful possession should not be removed from the place as early as possible but be compelled to pay for wrongful use of that premises fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.

5. No litigant can derive benefit from the mere pendency of a case in a court of law.

6. A party cannot be allowed to take any benefit of his own wrongs.

7. Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.

8. The institution of litigation cannot be permitted to confer any advantage on a party be delayed action of courts.

56. The private Respondents have been deprived of their land, due to fraudulent act of the Petitioners for the last more than one decade. Learned standing counsel stated that at a modest estimate annual profit is @ Rs. 25,000/- (Rupees Twenty Five Thousand only) per acre. By that calculation it would be around Rs. 4,00,000/- (Rupees Four Lakhs only), the lawyer's fees etc also forms integral part of costs, as has been said in the case of Ramrameshwari Devi (supra). Taking a lenient view, the interest of justice would be served by imposing cost of Rs. 1,00,000/-(Rupees One Lakh only).

57. It is not out of place to mention here that in para-15 of the writ petition, the Petitioners have stated that they are in possession over the land in dispute for last twenty years.

58. Viewed as above, there is No. infirmity in the impugned order.

59. It is provided that the Petitioners shall hand over its vacant possession to the contesting Respondents within 30 days and shall pay the cost within the aforesaid period. It shall be open to the contesting Respondents to approach the District Magistrate and Superintendent of Police, Azamgarh who will evict the Petitioners from the disputed land and hand over its vacant possession to the contesting Respondents, if the Petitioners fail to comply with the order within the stipulated time.

60. The writ petition is dismissed with cost of Rs. 1,00,000/-(Rupees One Lakh only) payable by the Petitioners to the contesting Respondents.