

(2005) 10 UK CK 0011
In the Uttarakhand High Court
Case No : Writ Petition No. 18 (T-B) of 2000

Sadiq Hussain

APPELLANT

Vs

Additional District Magistrate (Finance) and Others

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48, 9A(2)

Citation : (2006) 1 UC 289

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : S.S. Negi, for the Appellant; Vinay Kurnar, holding brief of Abdul Wahid, Learned Counsel, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—Heard Sri S.S. Negi, learned Counsel for the Petitioner and Sri Vinay Kumar holding the brief of Sri Abdul Wahid, learned Counsel for the Respondents.

2. By the present writ petition, the Petitioner has prayed for a writ of certiorari quashing the order dated 08-01-1991 passed by the Respondent No. 1.

3. Briefly stated, the objections have been filed by the Respondents No. 2 and 3 u/s 9-A(2) of the Consolidation of Holdings Act. The Consolidation Officer vide his order dated 3rd February, 1990 allowed the objections of the Respondents No. 2 and 3 and thereby allowed his claim.

4. Learned Counsel for the Petitioner has submitted that in good faith, he gave necessary papers and required money for filing the appeal but the appeal was not filed in time and on making an inquiry, the Petitioner could not get anything in connection of filing of his appeal. The Petitioner took back the papers and he filed the appeal before the Settlement Officer Consolidation on 29-05-1990. He

also filed an application u/s 5 of the Limitation act duly supported with an affidavit. The Petitioner has explained the cause of delay.

5. The Settlement Officer Consolidation after considering the bonafides of the Petitioner's illiteracy condoned the delay in filing the appeal by order dated 18-08-1990.

6. Against the said order, the Respondent No. 2 filed a revision before the Deputy Director of Consolidation. The revisional court allowed the revision.

7. It is well established that the revisional court sitting in a revisional jurisdiction should not interfere the jurisdiction u/s 48 of the Consolidation of Holdings in para materia with Section 115 of the CPC and the Settlement Officer was having satisfied and condoned the delay, there was no error of jurisdiction so as to interfere u/s 48 of the Consolidation of Holdings Act.

8. It is also settled law that in the matter of condoning the delay a liberal approach should be taken and further in the consolidation matters villagers are the resident of the village and they are illiterate and as such in such matter, a liberal approach should have been taken in condoning the delay. Technicalities of law should not come in the way of dispensation of justice while deciding the application filed u/s 5 of the Limitation Act.

9. It is also well established that the Chaks which are being consolidated under the consolidation scheme are being beneficial legislation meant for the public at large and if the orders are passed depriving them from hearing, it will be unjust and violation of the principles of natural justice for which U.P. Consolidation of Holdings Act was enacted. Even the preamble of the Act provides for the consolidation of agricultural land for the development of agriculture and as such the Petitioner having been deprived from hearing the matter requires that it should be heard on merits.

10. Relying upon the judgment of M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, in Ram Murti v. Deputy Director of Consolidation 1995 RD 249 High Court of Allahabad has held as under:

It may be notice that the Deputy Director of Consolidation was exercising revisional power u/s 48 as distinguished from an appellate power. Section 48 of the U.P. Consolidation of Holdings Act, 1953 is no doubt couched in a language of wide amplitude but that does not mean that the Deputy Director of Consolidation may act as an appellate Court. In K.A. Anthappai Vs. C. Ahammed, the Supreme Court was considering the scope of revisional power of the High Court u/s 20 of Kerala Building (Leases and Rent Control) Act, 1965 whereunder the High Court can "call for and examine the records relating to any order passed or proceedings taken under this Act by such authority for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings and may pass such order in reference thereto as it thinks fit" a provision similar to the one

contained in Section 48 of the U.P. Consolidation of Holdings Act, 1953. It was held as under:

It is no doubt true that the scope of the revisional jurisdiction conferred u/s 20 is wider than that conferred u/s 115, CPC but at the same time a revision u/s 20 cannot be equated with an appeal. Moreover, the revisional power conferred u/s 20 also embraces an order passed by the appellate authority. While considering the provisions conferring revisional power couched in a language similar to that contained in Section 20 of the Act this Court has laid down that the power conferred on the High Court is essentially a power of superintendence and despite wide language employed, the High Court should not interfere with the finding of fact of the subordinate court merely because it does not agree with the said findings see *Dattonpani Gopalvarao Deva Ratte v. Vithabrao Maruthirao Jagangawal* 1975 Supp. SCR 67, *Sri. Raja Lakshmi Dyeing Works and Others Vs. Rangaswamy Chettiar*, . The Supreme Court further held:

The revisional court must be reluctant to embark upon an independent reassessment of the evidence and supplant a conclusion of its own, so long as evidence on the record admitted of an supported the one reached by the Court below. *Rajbir Kaur and Another Vs. S. Chokesiri and Co.*, at Page 37.

11. Relying upon the judgment of Apex Court in *Ram Dular v. Dy. Director of Consolidation, Jaunpur and Ors.* 1994 RD 290, in *Ranbir Singh and Ors. v. Dy. Director of Consolidation Muzaffarnagar and Ors.* 1997 (88) RD 191 High Court of Allahabad has held as under:

Learned Counsel for the Petitioner submitted that the S.O.C. had held that the alleged agreement dated 26-10-1961 was not acted upon and this was a finding of fact which could not be validly reversed by the D.D.C. Learned Counsel for the Petitioner has relied on a decision of the Supreme Court in *Ram Dular v. Dy. Director of Consolidation Jaunpur and Ors.* 1994 RD 290. The Supreme Court in that decision held that the Deputy Director of Consolidation cannot interfere with the findings of fact recorded by the S.O.C. This view has been followed by this Court in *Krishna Pratap Singh v. Deputy Director of Consolidation* 1996 (87) RD 216.

12. In the case of *Ram Avtar and others Vs. Ram Dhani and others*, , the Apex Court has held as under:

We are surprised as to how the Deputy Director while exercising the revisional power entered into all questions of fact and came to the conclusion on pure conjecture that the Appellants before this Court shall be deemed to be in possession of the lands since 1932. This Court has repeatedly pointed out that howsoever wide the power under statutory revision may be in contrast to Section 115 of the Code of Civil Procedure, still while exercising that power the authority concerned cannot act as court of appeal so as to reappraise the evidence on record for recording findings on questions of fact.

13. In view of the above, the order dated 08-01-1991 passed by the Deputy Director of Consolidation is quashed. The matter is sent back to the Settlement Officer Consolidation for deciding the case on merits.

14. Writ petition is allowed. No order as to costs.