

(2005) 01 AHC CK 0106
In the Allahabad High Court
Case No : C.M.W.P. No. 5902 of 1987

Smt. Dharam Biri

APPELLANT

Vs

Dy. Director of Consolidation and Others

RESPONDENT

Date of Decision : 03-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2005) 2 AWC 1251 : (2005) 98 RD 240 : (2005) 1 RD 240

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Advocate : V.S. Chaudhary, for the Appellant; Dhan Prakash, S.C., for the Respondent

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard Sri V. S. Chaudhary, learned counsel for the petitioner, Sri Dhan Prakash appearing for respondent Nos. 4, 5 and 6 and learned standing counsel for respondent Nos. 1 to 3.

2. The dispute relates to khata No. 73. The parties to the writ petition are related to each by following pedigree :

Kallu		-----	/	/	Mani Chajju	/	/
----- / / / / Dharam Singh Kanwal Singh Vijay							
Singh Siriya	/	/	/	-----	Jagpal Singh	-----	/ / / / /
Satyavir		Mahavir		Jasbir		Bhajan	Babu Rajpal /
----- / / / / Rampal Sukhpal Atal Singh Bhopal							

3. During consolidation proceedings Jaipal s/o Kanwal Singh filed objection u/s 9A (2) of the U. P. Consolidation of Holdings Act (for short "the Act") claiming 1/4th share in the disputed khata. His claim was contested by Satyavir and Mahavir s/o Dharam Singh on the ground that their uncle Kanwal Singh had executed sale deed dated 19.11.1965 of half of his 1/4th share in the property in

dispute in their favour and in favour of other brother Jasbir as such they are entitled to 1/8th share and Jaipal Singh has 1/8th Share. The Consolidation Officer vide order dated 31.3.1982 disbelieved the sale deed and determined the share of the parties in accordance with the pedigree. Respondent No. 4 Satyavir filed an appeal which was allowed by the Settlement Officer, Consolidation vide order dated 16.7.1984. Feeling aggrieved Jaipal Singh filed a revision which came to be decided by the Deputy Director of Consolidation vide order dated 19.8.1996, Jaipal Singh died during the pendency of the revision. The petitioner who is wife of Jasbir Singh claims to be his legal heir on the basis of Will executed in her favour. After dismissal of the revision she moved an application for recall of the order dated 19.8.1986 on the ground that an application for substituting her in place of deceased Jaipal was filed but the revision was dismissed ex parte without hearing her. The Deputy Director of Consolidation vide order dated 27.2.1987 dismissed the application on the finding that she was substituted in place of deceased Jaipal on 2.7.1986 and was represented by Jagdish Prasad, advocate who was heard in the matter. Feeling aggrieved she has filed the writ petition challenging the order dated 16.7.1984 passed by the Settlement Officer Consolidation and order dated 19.8.1996 and 27.2.1987 passed by Deputy Director of Consolidation.

4. It has been urged by the learned counsel for the petitioner that the Settlement Officer, Consolidation and the Deputy Director of Consolidation while reversing the findings of the Consolidation Officer have failed to consider the oral and documentary evidence which formed the basis of the findings of the Consolidation Officer. It has further been urged that the alleged sale deed was discarded by the Consolidation Officer on the basis of the oral evidence of one of the vendees namely, Jasbir and also on the ground that the same was not duly approved in accordance with law. However, the Settlement Officer, Consolidation and the Deputy Director of Consolidation without taking into account the fact have accepted the sale deed only on the ground that it was a registered document.

5. Learned counsel appearing for the respondents has tried to justify the impugned orders by saying that the sale deed was registered document and has rightly been accepted by the Settlement Officer, Consolidation and the Deputy Director of Consolidation.

6. I have considered the contention advanced on behalf of the rival parties and perused the record of the writ petition.

7. Before the Consolidation Officer Jasbir one of the alleged vendees appeared as a witness and stated that no sale deed was executed by Kanwal Singh. Such a statement by a vendee of the sale deed creates a doubt regarding the genuineness of the sale deed. The Consolidation Officer also found material contradiction in the statement of one Govind who appeared as a witness of respondent No. 4 and the statement of respondent No. 4 himself. He also discarded the sale deed on the ground that it has not been proved in accordance

with law. The Settlement Officer, Consolidation and the Deputy Director of Consolidation have not even referred to the oral evidence which formed the basis of the findings recorded by the Consolidation Officer.

8. The findings recorded by the Settlement Officer, Consolidation that the sale deed is a registered document and Jaipal has failed to prove it illegal and invalid are without reference to any evidence oral or documentary. The Deputy Director of Consolidation has proceeded on the assumption that if the sale deed was forged Jaipal Singh ought to have got it cancelled by a competent court and since he failed to do so for a long time as such it cannot be said that it is a forged or invalid document. Again this finding of the Deputy Director of Consolidation is based on no evidence.

9. It is well-settled that while setting aside the judgment of an inferior court or Tribunal the appellate or revisional court or the Tribunal has to deal with the findings given by the inferior court or Tribunal and is required to consider the entire evidence on record. While recording a contrary finding the Settlement Officer Consolidation and the Deputy Director of Consolidation were under an obligation to consider the evidence on record as well as findings recorded by the Consolidation Officer passed on the said evidence and to record reasons for differing with the findings of the court below. I am fortified in my view by a decision of the learned single Judge in the case of Paras Nath and Ors. v. Waijiul Hasan and Ors. 1974 URC 655 ; Soran Singh v. State of U. P. and Ors. 1987 RD 45 , Reference may also be made of the following observation of the Full Bench of this Court in the case of Nanha and Another Vs. Deputy Director of Consolidation, Kanpur and Others,

"If it appears that the court of fact has in substance based its finding on no evidence or that finding is perverse in the sense that no reasonable person could possibly come to that conclusion or that it erroneously ignores a vital plea or material evidence which affects the result, a manifest error of law apparent on the face of the record leading on failure of justice can be said to be established. But if a Court or a Tribunal bases its finding on a consideration of all relevant evidence but an appellate or a revisional court or Tribunal while affirming the finding does not refer to some material or some contrary evidence in its order it cannot be said that it has been ignored from consideration so as to entitle the High Court to interfere under Article 226 of the Constitution."

10. In view of the aforesaid legal position, the order of the Settlement Officer, Consolidation and the Deputy Director of Consolidation being not an order of affirmance of the order of the Consolidation Officer required consideration of the evidence on record by them before recording a contrary finding. Since both the Settlement Officer, Consolidation and the Deputy Director of Consolidation have not taken care to even look into the oral evidence on record which were definitely material, their orders cannot be sustained.

11. In the result, the writ petition succeeds and is allowed. The order dated

16.7.1984 passed by the Settlement Officer, Consolidation and 19.8.1986 passed by the Deputy Director of Consolidation are hereby quashed. The order dated 27.2.1987 dismissing the restoration application of the petitioner also stands quashed. The case is remanded back to the Deputy Director of Consolidation for decision afresh on merits in accordance with law and the observation made in this judgment after affording opportunity of hearing to all the parties concerned.

12. No order as to costs.