

(1976) 08 AHC CK 0008
In the Allahabad High Court
Case No : Civil Misc. Writ No. 10610 of 1975

Smt. Dharam Devi

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 25-08-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Contract Act, 1872 — Section 25

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 48, 5(2)

Citation : (1976) AWC 795

Hon'ble Judges : K.N. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.N. Singh, J.—Smt. Dharam Devi was Bhumidhar of the land in dispute. She executed a registered sale deed on December 30, 1969, transferring an area of about 18 bighas of land situated in two different villages, namely, Gahar-pur and Udhrenga in district Allahabad in favour of Tribhuwan Nath son of Inder Bahadur, her husband's real brother. In pursuance of the sale deed the name of Tribhuwan Nath was mutated in the revenue records. Smt. Dharam Devi filed a suit on 27-12-1970 for cancellation of the sale deed on the allegation that a fraud and misrepresentation was practised on her in obtaining the sale deed and no consideration was paid to her. During the pendency of the civil suit notification u/s 4 of the U.P. Consolidation of Holdings Act was issued in respect of the two villages where the land, in dispute is situated. Tribhuwan Nath who was Defendant in the suit raised an objection that the civil court had no jurisdiction to proceed with the suit instead it should be abated u/s 5(2) of the U.P. Consolidation of Holdings Act. The civil court upheld his objection and passed order on 1st May, abating the suit.

2. Smt. Dharam Devi thereafter filed objection before the consolidation authorities raising the same pleas which she had raised before the civil court

challenging the validity of the sale deed in pursuance of which Tribhuwan Nath's name was recorded in the village papers over the land in dispute. The Consolidation Officer repelled the plea raised by Smt. Dharam Devi and upheld the validity of the sale deed and rejected her objection. In appeal, the Settlement Officer (Consolidation) set aside the order of the Consolidation Officer on the finding that the sale deed was executed by practising fraud and misrepresentation and it was executed without there being any consideration for the transfer of the land. He further held that Tribhuwan Nath was not entitled to any interest in the land in dispute. Tribhuwan Nath thereafter preferred a revision u/s 48 of the U.P. Consolidation of Holdings Act before the Deputy Director of Consolidation. The Deputy Director of Consolidation however did not decide the validity of the sale deed on merits. He allowed the revision and set aside the order of the Settlement Officer (Consolidation) on the finding that the consolidation authorities had no jurisdiction to cancel or set aside the sales deed executed by Smt. Dharam Devi. Aggrieved Smt. Dharam Devi filed this petition under Article 226 of the Constitution challenging the validity of the order of the Deputy Director of Consolidation.

3. Learned Counsel for the Petitioner urged that since the Settlement Officer (Consolidation) had recorded a positive finding that the sale deed was executed without any consideration, the sale deed was void and the consolidation authorities had jurisdiction to consider the validity of the sale deed and to disregard the same. For the Respondents it is urged that the allegations contained in the objection of Smt. Dharam Devi merely indicated that the sale deed was voidable. The allegations did not make out any case that the sale deed was void. Since the sale deed was voidable the consolidation authorities had no jurisdiction to consider the validity of the sale deed or to disregard the same in proceedings under the Consolidation of Holdings Act. The Consolidation authorities were bound in law to give effect to the sale deed unless it was set aside by a court of law.

4. In Jagarnath Shukla v. Sita Ram Pandey 1969 AWR 435, a Division Bench of this Court held that suits for cancellation of sale deed in respect of agricultural plot which may be pending on the date of the issue of the notification u/s 4 of the U.P. Consolidation of Holdings Act should be abated u/s 5(2). The decision lays down the principle that if the sale deed is in respect of right or interest in respect of land then the Consolidation authorities alone have jurisdiction to determine the binding nature of a sale-deed.

In Gorakh Nath Dube Vs. Hari Narain Singh and Others, the Supreme Court upheld the view expressed by the Division Bench of this Court in Jagarnath Shukla's case but the Supreme Court made the following observations;

We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent

of the excess of power, invalid. Adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land to declare such documents effective or ineffective, but where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation. It could be urged that the consolidation authorities have no power to cancel the deed, and therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it. In the case before us, the Plaintiff's claim is that the sale of his half share by his uncle is invalid, inoperative and void, such a claim could be adjudicated upon by the consolidation courts.

5. The above observations of the Supreme Court make it amply clear that the consolidation authorities have jurisdiction to disregard a sale deed in respect of agricultural land and that a suit pending before the Civil Court for the cancellation of such sale deed must abate as held by this Court in Jagarnath Shukla's case. In *Ram Nath v. Munna* 1976 AWC 412, a Full Bench of this Court considered the effect of the judgment of the Supreme Court. The Full Bench observed that the documents which are voidable can be cancelled by the civil court only and the consolidation authorities have no jurisdiction to ignore those documents, instead they are under a duty to give effect to those documents till they are cancelled by a competent Court of law. The effect of the Full Bench judgment is that if a sale deed or document of transfer is void the consolidation authorities have jurisdiction to disregard the same while determining title to the land but if the document is voidable then the consolidation authorities have no jurisdiction to disregard a sale deed and in that event the civil court is the only proper forum to adjudicate upon the validity of the sale deed and the consolidation authorities are bound to give effect to the sale deed. In Second Appeal No. 1909 of 1972 decided on 4-9-1974, G.C. Mathur, J. expressed similar view. In writ petition No. 6035 of 1972 *Bind Basi v. D.D.C. Azamgarh*, decided on 11-10-1973, Ojha, J. also expressed a similar view.

6. It is necessary to keep in mind that the Respondent Tribhuvan Nath himself raised objection to the jurisdiction of the civil court and his objection was upheld as a result of which Smt. Dharam Devi challenged the sale deed before the consolidation authorities. Admittedly, both the parties produced oral and documentary evidence before the consolidation authorities in support of their case. The Settlement Officer (Consolidation) recorded finding that the sale deed was void for want of consideration. In revision the Deputy Director of Consolidation did not consider or record any finding on that question. He did not consider the evidence produced by the parties, nor he recorded any finding as to whether the sale deed was void or voidable. He set aside the order of the

Settlement Officer (Consolidation) on the ground that the consolidation authorities had no jurisdiction to disregard the sale deed. As already discussed the consolidation authorities have jurisdiction to disregard a void sale deed but if the sale deed is voidable they have no jurisdiction to ignore the same. The Deputy Director of consolidation failed to appreciate this aspect of the question. The S.O. (C) had already recorded a finding that the sale deed was void for want of consideration. The Deputy Director of Consolidation should have considered that finding on merits on appreciation of evidence. Since he failed to do that, his order is liable to be quashed.

7. Section 25 of the Indian Contract Act lays down that a contract without any consideration is void unless it falls within the exception laid down therein. On the findings recorded by the S.O. the case does not fall under any of the three exceptions contemplated by Section 25 of the Contract Act. The Settlement Officer (Consolidation) held that the sale deed was executed without consideration, hence it was void. So long this finding is not reversed by the Deputy Director the Respondent-transferee cannot derive any right or title in the land in dispute. It was open to the Deputy Director of Consolidation to re-appraise the evidence and come to a different conclusion, but in the absence of any contrary finding recorded by him the order of the Settlement Officer could not be set aside.

8. I therefore, allow the petition and quash the order of the Deputy Director of Consolidation and direct that the revision shall be heard on merits in the light of the observations made above. The Petitioner is permitted to withdraw the amount of Rs. 2300 deposited by her in pursuance of the interim order dated 29 9-1975. Parties shall bear their own costs.