
(1964) 10 AHC CK 0016
In the Allahabad High Court
Case No : Writ Petition No. 376 of 1964

Smt. Kanizan

APPELLANT

Vs

Ghulam Nabi and Others

RESPONDENT

Date of Decision : 05-10-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 226

Citation : AIR 1965 All 296 : (1967) RD 101

Hon'ble Judges : R.N. Sharma, J

Bench : Single Bench

Advocate : N. Banerji, for the Appellant; Standing Council, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Sharma, J.—This is a petition for a writ of certiorari quashing the order dated 20-2-1964 passed by the Deputy Director of Consolidation. On the death of one Habib Ullah a dispute over his succession arose between his nephew and Srimati Kanizan alias Haidari Begam who claimed to be his widow, having been his wedded wife. In the Consolidation proceedings in village Bawan, Ghulam Nabi filed objections u/s 9(1) of the U. P. Consolidation of Holdings Act claiming to be entitled to certain plots of land as a legal help of Habib ullah. Srimati Kanizan alias Haidari Begam contested the objection. The main issue that arose for consideration before the Consolidation Officer was whether the deceased Habibullah was succeeded by his alleged nephew Ghulam Nabi of his alleged widow Srimati Kanizan alias Haidari Begam. The Consolidation Officer took into consideration the fact that this question had already been decided in another proceeding under the U. P. Consolidation of Holdings Act between the same parties relating to another village in which it was decided that Srimati Kanizan alias Haidari Begam was not the legally wedded wife of the deceased and that Gulam Nabi being the nephew of the deceased, was entitled to inherit his property. The Consolidation Officer held that the question has become res

Judicata and could not be reagitated in the proceedings before him. Consequently he allowed the objection of Ghulam Nabi and ordered that the land in dispute of village Bawan be recorded in the name of Ghulam Nabi by expunging the name of Srimati Kanizan alias Haidari Begam. This lady went to appeal before the Settlement Officer Consolidation and then in revision before the Deputy Director of Consolidation but without success. Thereupon, she has filed this writ petition contending that the Consolidation Courts acted illegally in holding that the matter in dispute was barred by the principle of res judicata, that the Consolidation Courts had acted without jurisdiction and with material Irregularity in not deciding the issue as to who was the legal heir of Habibullah deceased and that the Consolidation Courts should have held that the petitioner was the widow and legal heir of Habibullah. The final order of the Deputy Director of Consolidation dated 20-2-1964 is sought to be quashed by a writ of certiorari.

2. I have heard Sri H. Banerji, learned counsel for the petitioner. He has contended that the Consolidation authorities who decided the matter cannot be deemed to be Courts and so the rules of res judicata do not apply to these proceedings. This contention has been urged before me even though in the writ petition itself the Consolidation authorities have been described as "Consolidation Courts". The learned counsel has taken me through the provisions of the U. P. Consolidation of Holdings Act and has pointed out that under the provision of the Act the Consolidation authorities have been deemed to be courts. He has pointed out that only for the limited purpose of the application of Sections 193, 228 and 196 of the Indian Penal Code Section 40 of the U. P. Consolidation of Holdings Act lays down that the proceedings before the Deputy Director etc. shall be deemed to be judicial proceedings. From this he has attempted to Infer that for no other purpose whatsoever any authority acting under the U. P. Consolidation of Holdings Act shall be deemed to be a civil Court or a court at all and that no proceedings under the Act would for any other purpose be deemed to be Judicial proceedings. I am unable to agree with the learned counsel.

3. Proceedings under the U. P. Consolidation of Holdings Act are essentially judicial proceedings inasmuch as under certain provisions of the Act the Consolidation authorities have been given the power to decide questions of title. Obviously, a question of title cannot be decided by administrative orders or by administrative officers. The questions of title are decided on the evidence, oral and documentary, produced before the Consolidation authorities and decision is taken by them on consideration of all the evidence and facts of a case.

4. It is not necessary that the principle of res Judicata should apply to a certain proceeding only when the provisions of Section 11 of the CPC have been specifically made applicable. It was held by a learned Judge of this Court in Raghbir Singh v. The Deputy Director Consolidation, 1960 R. D. 323 that whether or not Section 11 of the CPC applies to proceedings under the U. P. Consolidation of Holdings Act, the principles of res Judicata apply. In that case

the Board of Revenue had held in a dispute between the parties u/s 27 of U. P. (Act 10 of 1947) a person to be khudkasht holder of the plots and had also directed that his name should be recorded as bhumidar over those plots but subsequently during the Consolidation proceedings a dispute arose about the same subject-matter. It was held that the question of res judicata was clearly raised in the case. No doubt the matter had previously been decided by the Board of Revenue which according to the learned counsel is a Revenue Court but the Question. of applicability of the principles of res Judicata arose in the Consolidation proceedings. If the Consolidation authorities did not hold that character of a Court there would have been no question of applicability of the principle of res Judicata in a matter decided by a Revenue Court.

5. As observed by the Supreme Court in *Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another*, the principle of res Judicata is based on the need of giving a finality to Judicial decisions. What it says is that once a res is judicata it shall not be adjudged again. It was further observed that this principle of res judicata is embodied in relation to suits in Section 11 of the CPC but even where Section 11 does not apply, the principle of res judicata has been applied by Courts for the purpose of achieving finality in the litigation.

6. A similar view was taken in another case of the Supreme Court in *Daryao and Others Vs. The State of U.P. and Others*, . It was observed that it is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation.

7. Even though Section 11 of the CPC has not been made applicable specifically to proceedings under the Consolidation of Holdings Act the principle will no doubt govern proceedings under this Act. It will create an anomalous position if one Consolidation officer in a Consolidation proceeding with respect to one village decides a question of fact between the two parties in one manner and another Consolidation officer decides the same question of fact between the same parties with respect to a Consolidation proceeding in another village in a different manner. The law would never contemplate such an absurd position. In my view, the Consolidation Officers deciding questions of fact between the parties act as Courts and their proceedings are judicial proceedings. A question of fact decided by one Consolidation Court in a particular manner should operate as res judicata between the same parties in Consolidation proceedings with respect to another village otherwise there would be no finality or sanctity to the orders of a Consolidation authority.

8. Thus, the Consolidation authorities acted within jurisdiction by holding that the question of succession to Habibullah's property decided in earlier Consolidation proceedings between these parties operated as res judicata and it could not be re-agitated by the parties in the subsequent Consolidation proceedings. The Impugned order was not without jurisdiction and cannot be quashed by

certiorari. The writ petition is, therefore, dismissed in limine.