

(2003) 09 AHC CK 0141
In the Allahabad High Court
Case No : C.M.W.P. No. 12039 of 2003

Sukhan and Another

APPELLANT

Vs

Deputy Director Consolidation and Others

RESPONDENT

Date of Decision : 30-09-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 42A, 9A

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 229B

Citation : (2004) 1 AWC 149

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : A.N. Bhargava, for the Appellant; T. Shanker, S.C., for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Present petition has been instituted seeking quashment of the impugned order dated 25.2.2003, passed by the Deputy Director of Consolidation by which the revision preferred by the opposite parties was allowed and direction was issued to rectify the revenue records in pursuance of the preliminary decree passed in Suit No. 56 of 1963.

2. The dispute in the instant petition pertains to plot No. 220 comprising in khata No. 108 situated in village Wazidpur Pargana Athgaon district Varanasi. The facts which are beyond the pale of dispute are that the entire holding comprising in Khasra Nos. 220, 252/4, 252/7, 219/6 and 219/7 originally belonged to one Harbalak. The aforesaid property descended to Parhu and Prabhu as co-parceners both sons of Harbalak. it is alleged that Parhu being karta of the joint family, contrived to secure mutation of his name in the revenue records as the sole tenure holder. Respondent No. 2 descendant of Prabhu instituted partition Suit No. 56 of 1963 u/s 229B/176 of the U.P.Z.A. and L.R. Act before the Sub-Divisional Officer/Assistant Collector for declaration and partition of his rights to the extent of 1/2 share in the holding aforesaid. The aforesaid suit escalated

into passing of preliminary decree vide order 25.5.1976 and name of Parhu was mutated in khatauni 1385-96 on 13.3.1979. An interim order was passed by Board of Revenue, which was recorded on 12.4.1979. However, consequent upon final order, the interim order aforesaid was vacated. It is alleged that during the subsistence of aforesaid suit for partition, Parhu executed sale deed in favour of petitioner Sahdei in relation to plot No. 220 admeasuring 1.40 acre out of five disputed plots who in turn sold off the said plot in favour of Smt. Maharaji by means of sale deed dated 24.2.1967. After the preliminary decree, the matter escalated upto the stage of Board of Revenue and it is claimed that decisions at all stages leaned in favour of respondents. It is further alleged that in the meanwhile village came under Consolidation Operation u/s 4 of the U. P. Consolidation of Holdings Act on 15.6.1991 and as a necessary consequence thereof, the suit for preparation of final decree stood abated vide order dated 5.9.1992. It would further transpire that while consolidation was in operation in village, respondent No. 2 filed objection u/s 9 of the U. P. Consolidation of Holdings Act before the Assistant Consolidation Officer for settlement of his rights and it is claimed that notwithstanding the fact that the objection aforesaid still remain undecided the respondent No. 2 moved some Misc. application on 15.4.1996 before the Collector, Varanasi for mutation of his name claiming genesis of his claim in the preliminary decree passed in the partition suit. This Misc. proceeding culminated in the order dated 2.7.1996 whereby it was directed to correct the revenue records by recording the name of respondent No. 2 in the basic year khatauni. It is alleged that on gaining awareness of the ex parte order, the petitioner moved application for setting aside the ex parte order. It is further alleged that the Deputy Director of Consolidation issued some direction to the Settlement Officer, Consolidation to scrutinize the matter and acting upon the direction, the Settlement Officer Consolidation took cognizance of the matter by registering three Misc. Cases Bearing Nos. 451, 452 and 453 u/s 42A of the U. P. Consolidation of Holdings Act. The proceeding in the Misc. case aforesaid reached its climax vide order dated 2.7.1996 by which amaldaramad was held invalid and the order of Consolidation Officer was set aside. This order grieved the respondent No. 2 who preferred revision before the Deputy Director of Consolidation. The Deputy Director of Consolidation, in the ultimate analysis, passed order dated 25.7.2003 holding action ordered by the Consolidation Officer on the basis of preliminary decree dated 25.6.1976 to be validly taken and directed consequential action for correction of revenue entries. The precise grievance in the instant petition is that notwithstanding the fact that objection u/s 9A of the U.P.C.H. Act was sub-judice before the Assistant Consolidation Officer, the respondent No. 2 took recourse to filing of a Misc. application purported to be u/s 42A of the Act and secured order for correction of entries in the revenue records on the basis of preliminary decree passed in partition suit in the year 1976.

3. The learned counsel for the petitioner has assailed the order that in the basic year khatauni the name of respondent No. 2 did not figure ; that objection u/s

9A was filed before the Assistant Consolidation Officer for correction of revenue entries and for declaration of rights to the extent of one half share and that while the said proceedings were still sub-judice, the respondents initially obtained orders from the Consolidation Officer and thereafter from the Deputy Director of Consolidation for correction of revenue entries which could not be done in Misc. proceeding when Consolidation Officer was still seized of the objection u/s 9A of the Act. It is further canvassed that cognizance of Misc. proceeding purported to be u/s 42A of the Act by the Consolidation Officer was wholly supererogatory and the authorities could not have overleaped the bounds of jurisdiction by entertaining misc. application in purported exercise of Section 42A of the Act. It is further canvassed that albeit the fact that the preliminary decree passed in the year 1976 had attained finality, still execution was not resorted to for mutation of name of the basic year record. In opposition, Sri Triveni Shanker learned counsel for the opposite parties tried to vindicate the impugned orders on the premises that the preliminary decree passed in original suit u/s 229/176 of the U.P.Z.A. and L.R. Act had attained finality and as a sequel thereto, the revenue entries came to be corrected and the names of the respondents came to be recorded in the revenue record. It was further contended that the names recorded in the revenue records were wrongly expunged subsequently owing to unsustainable orders passed by the superior authority and further submitted that the Deputy Director of Consolidation has merely vindicated the earlier position and given effect to the order of the Consolidation Officer regard being had to the fact that there was in existence a preliminary decree in favour of the respondents. It has lastly been canvassed that the action pursuant to the orders of the Deputy Director of Consolidation is not fraught with any consequence detrimental to the interest of the petitioners. It has also been canvassed that the equity does not lean in favour of the petitioners and that the petitioners have instituted the present petition on hypertechnical grounds and the court of Justice being a court of equities also, the petition is not sustainable nor commends itself for being entertained for the reliefs claimed therein.

4. The precise question that intrudes upon my attention in the perspective of rival submissions, is whether the authorities could pass the impugned orders effecting correction in the revenue records notwithstanding the fact that decision on objection in proceeding u/s 9A before the Assistant Consolidation Officer was still awaited.

5. Before appraising the respective submissions, it would be useful to delve into Section 9 of the U. P. Consolidation of Holdings Act in order to get hang of what this section envisages :

"Section 9.--Issue of extracts from records and statements and publication of records mentioned in Sections 8 and 8A and the issue of notices for inviting objections :

(1) Upon the preparation of the records and the statements mentioned in Sections 8 and 8A, the Assistant Consolidation Officer shall-

(a) correct the clerical mistakes, if any, and send, or cause to be sent, to the tenure- holders concerned and other persons interested, notices containing relevant extracts from the current annual register and such other records as may be prescribed showing-

(i) their rights and the liabilities in relation to the land ;

(ii) mistakes (undisputed cases of succession) and disputes discovered u/s 8 in respect thereof ;

(iii) specific shares of individual tenure holders in joint holdings for the purposes of effecting partitions, were necessary, to ensure proper consolidation ;

(iv) valuation of the plot ; and

(b) publish in the unit the current khasra and current annual register, the khasra chakbandi, the statement of principles prepared u/s 8A and any other records that may be prescribed to show, inter alia, the particulars referred to in Clause (a),

(2) Any person to whom a notice under Sub-section (1) has been sent, or any other person interested may, within 21 days of the receipt of notice, or of the publication under subsection (1), as the case may be, file before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished therefrom or in the Statement of Principles or the need for partition.

6. Section 9A also being germane to the point at issue is being excerpted below for ready reference :

"9A. Disposal of cases relating to claims to land and partition of joint holdings.--

(1) The Assistant Consolidation Officer shall-

(i) where objections in respect of claims to land or partition of joint holdings are filed, after hearing the parties concerned ; and

(ii) where no objections are filed, making such enquiry as he may deem necessary ;

settle the disputes, correct the mistakes and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of conciliation :

Provided that where the Assistant Consolidation Officer, after making such enquiry as he may deem necessary, is satisfied that a case of succession is undisputed, he shall dispose of the case on the basis of such enquiry."

7. Sections 12, 42A and 48 of the U. P. Consolidation of Holdings Act should also be noticed in the perspective of the dispute and they being germane to the proper adjudication of the controversy are being quoted below :

"12. Decision of matters relating to changes and transactions affecting rights or interests recorded in revised records.--(1) All matters relating to changes and transfers affecting any of the rights or interests recorded in the revised records published under Sub-section (1) of Section 10 for which a cause of action had not arisen when proceedings under Sections 7 and 9 were started or were in progress, may be raised before the Assistant Consolidation Officer as and when they arise, but not later than the date of notification u/s 52 or under Sub-section (1) of Section 6.

(2) The provisions of Sections 7 to 11 shall mutatis mutandis, apply to the hearing and decision of any matter raised under subsection (1) as if it were a matter raised under the aforesaid sections.

x x x

42A. Correction of clerical or arithmetical errors. -- Notwithstanding anything contained in any law for the time being in force, if the Consolidation Officer or the Settlement Officer, Consolidation, is satisfied that a clerical or arithmetical error apparent on the face of record exists in any document prepared under any provision of this Act, he shall, either on his own motion or on the application of any person interested, correct the same.

48. Revision and reference.--(1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings ; or as to the correctness, legality or propriety of any order other than interlocutory order passed by such authority in the case of proceeding and may, after allowing the parties concerned an opportunity of being heard, make such order in the case of proceedings as he thinks fit.

(2) Powers under Sub-section (1) may be exercised by the Director of Consolidation also on a reference under Sub-section (3).

(3) Any authority subordinate to the Director of Consolidation, may after allowing the parties concerned an opportunity of being heard, refer the record of any case of proceedings to the Director of Consolidation for action under Sub-section (1)."

8. From a cumulative reading of the afore-extracted provisions, it would be obvious that consequent upon publication of extracts of record, it was open to any person to raise a dispute and file objection for correction of clerical mistakes as to rights, liabilities in relation to the land ; mistakes and dispute discovered u/s 8 of the Act ; specific shares of individual tenure holders in joint holdings for the purpose of effecting partitions, where necessary to ensure proper consolidation. In substance, adjudication could be sought from the Consolidation Officer for the disputes of the aforesaid nature u/s 9A of the U. P. Consolidation of Holdings Act. Section 10 of the aforesaid Act envisages provisions for preparation and maintenance of revised annual registers on the basis of orders passed under Sub-section (1) and Sub-section (2) of Section 9A. Likewise,

Section 12 contemplates raising matters before the Assistant Consolidation Officer relating to changes and transfers affecting any of the rights or interests recorded in the revised records published under subsection (1) of Section 10 for which a cause of action had not arisen when proceedings under Sections 7 to 9 were started or were in progress as and when they arise, but not later than the date of notification u/s 52 of the Act. Section 42A of the U.P.C.H. Act relates to correction of clerical or arithmetical errors in the record prepared by Consolidation Authorities. In the perspective of the provisions extracted above, it is now useful to advert to the facts of the present case. In the instant case, it brooks no dispute that the respondents were not recorded in the basic year and when the village came under consolidation operation, they invoked the jurisdiction under the U. P. Consolidation of Holdings Act and preferred objection u/s 9A for correction in the basic year entry claiming themselves as co-tenure holders and in vindication of their stand, placed reliance on preliminary decree passed in suit u/s 229B/176 of the U.P.Z.A. and L.R. Act. Before analytically examining the propriety of exercise of power by the Deputy Director of Consolidation u/s 42A of the Act, it would be apt to scan the scope of the relevant provisions. Section 42A was added by Act XXXVIII of 1958 with explicit object of correcting clerical or arithmetical error apparent on the face of record existing in any document prepared under the provisions of the Act. The expression "clerical error" has been expounded in *Daya Ram v. D.D.C.* 1982 ACJ 568 *Master Construction Co. (P) Ltd. Vs. State of Orissa and Another*, and *Kedar v. Brij Kishore* 1980 (2) RD 80 and the quintessence of what has distilled from the ratio flowing from the aforesaid decisions is that a clerical mistake is a mistake in writing or typing of a document. In *Gang a Prasad v. Consolidation Officer* 1966 RD 283, clerical mistake has been interpreted to the effect that grant of excess area in chak by appellate court is not a clerical error. Likewise expression arithmetical error has been expounded by the Apex Court in *Master Construction Co. v. State of Orissa*, aforesaid and it has been observed that an arithmetical mistake is a mistake of calculation. Again expression "Apparent on the face of record" has been dealt with and explained by the Apex Court in *Master Construction Co.* aforesaid and it was summed up by the Apex Court that it means that it is not an error, which depends for its discovery on elaborate arguments on question of fact or law. The accidental slip or omission must be attributed to the Judge himself. He may omit. The cause for such a slip or omission may be the Judge's inadvertence on question of facts or law, or permit a party to raise new arguments, which he has not advanced at the first instance. In *Sripat v. Haridwar* 1980 RD 107, it has been observed that in the absence of any specific provision under the Act for any act to be done by any authority, nothing can be done by the Deputy Director of Consolidation. From the scanning of the above authorities, it leaves no manner of doubt that the provisions of this section operate to correct clerical and arithmetical errors apparent on the face of record and does not involve any facet which may warrant cognizance and exercise of power to direct correction of the revenue entries on the basis of preliminary decree passed in suit in the year 1976 in ignorance of the fact that

objection u/s 9A preferred by the respondent No. 2 was pending decision before the Consolidation Officer concerned. The scheme of the Act does not empower the consolidation authorities to stretch the power envisaged in Section 42A to the extent of correcting the revenue entries which do not have any element of the error of clerical nature in the records prepared under the U. P. Consolidation of Holdings Act. It is manifestly clear from the conspectus of the Act that for the nature of the dispute, it was open to the aggrieved party to invoke the provisions of Section 9A of the Act when the village has come under operation of consolidation and during pendency of the proceeding u/s 9A of the Act, the recourse to Section 42A of the Act by moving some misc. application which the Deputy Director of Consolidation entertained and issued direction for correction of records. constitutes material irregularity inasmuch as it is an error of procedure or breach of provisions of the Act which may affect the ultimate decision in the proceeding u/s 9A of the Act inasmuch as for the dispute of the nature, it is envisaged in the Act that the aggrieved party may invoke the provisions of Section 9A of the Act. The learned counsel has not been able to Justify that application u/s 42A of the Act was entertainable or was maintainable except saying that under the provisions of Section 42A of the Act, the Deputy Director of Consolidation had very wide powers and could grant relief in view of the circumstance that Parhu got himself wrongly recorded in the revenue records to the exclusion of the respondents and also in the circumstance that preliminary decree having been passed in the suit filed in the year 1976, had not yet been given effect to. In connection with this proposition. I am of the view that the Deputy Director of Consolidation, u/s 42A, cannot entertain misc. application for correction of revenue entries not prepared during consolidation operation on the basis of preliminary decree ignoring the proceeding pending before the Consolidation Officer u/s 9A of the Act.

9. In the conspectus of the above discussion, it follows that since opposite parties were not recorded tenure holders in the basic year and objection u/s 9A were pending, the claims of the opposite parties could be adjudicated upon in the proceeding u/s 9A of the Act and basic year entry could be corrected as a consequence of decision in the proceeding. The view, which I am taking, receives reinforcement from a Full Bench decision of this Court in Amir Husain and Ors. v. Dy. Director of Consolidation and Ors. 1978 RD 204. The consolidated substance of what has been held in this decision is that the basic year entry is a document, which can be altered or modified in accordance with the findings reached in proceedings arising on an objection u/s 9 (2) of the U.P. C.H. Act, in the face of pending proceeding u/s 9A of the Act, proclivity displayed by the Consolidation Authorities to entertain misc. application u/s 42A of the Act would be supererogatory and would not be in congruity with the scheme of the Act. Such a course, in my opinion, would render the efficacy of title proceeding u/s 9A of the Act, otiose and meaningless and would constitute material irregularity. As stated supra, it is clear from the provisions that the provisions u/s 9A provides for correction and adjudication of rights and liabilities and settle dispute, in my

opinion, proclivity and zeal displayed by the Consolidation Authorities to take cognizance of misc. application u/s 42A of the Act would be a backdoor intervention to whittle down the efficacy of a fair procedure of seeking remedy u/s 9A of the Act and in consequence, I am of the view that the Deputy Director of Consolidation indiscreetly intervened in purported exercise of power u/s 42A by entertaining application without regard being had to the fact that objection as to the claims preferred by the respondents were already pending and the Consolidation Officer was seized of the matter and the Deputy Director of Consolidation committed material irregularity and he ought not to have passed this order on an application u/s 42A of the U. P. Consolidation of Holdings Act on the dint of preliminary decree passed by revenue authority in Original Suit No. 56 of 1963 thereby directing the Consolidation Officer to effect correction in the revenue entries on the basis of preliminary decree passed in suit u/s 229B/176 of the U.P.Z.A. and L.R. Act and in obedience to true intent as embodied in the scheme of the Act should have relegated the matter for expeditious disposal of objection u/s 9A of the Act.

10. The next aspect to be reckoned with is as to whether preliminary decree passed by the Revenue Court in the year 1976 has to be implemented in obedience by the Consolidation Courts or not. In this connection, it is worthy of notice here that though a decree passed for declaration of rights and partition in the proceeding u/s 229B/176 of the U.P.Z.A. and L.R. Act carries the weight of a command to the competent authority to act upon it but in my opinion, the preliminary decree may by, necessary implication, be acted upon by the consolidation authorities for effecting correction in the revenue records in appropriate proceeding, of course, subject to the postulates that the respondent No. 2 had pressed home the point that the decree had attained finality and in case, it is conclusively established by the respondent No. 2 in the appropriate proceeding before the consolidation authorities, it would be open to the consolidation authorities to weigh up this aspect and decide the matter. In the perspective of above discussion, it is explicit that the respondent No. 2 could press home his plea before the Consolidation Officer u/s 9A of the U.P.C.H. Act and objection u/s 9A having already been preferred, recourse to preferring application for purported exercise of power u/s 42A was not warranted under the scheme of the Act. In order to give prop to his contention that preliminary decree could be given effect to, the learned counsel for the respondents placed credence on Mool Chand v. Dy. Director of Consolidation 1995 RD 490. The essence of what has been held in this decision by the Apex Court is that where a preliminary decree has already been passed and only the proceedings relating to the preparation of final decree are pending it cannot be said that proceedings relating to declaration or determination of rights in the land within the meaning of Section 5 (2) of the Act are pending and that the preliminary decree can nevertheless be given effect to in proceedings before the consolidation authorities in view of the provisions contained in Sections 9 and 9A of the Act which enables the consolidation authorities to specify the share of individual

tenure holders in joint holding for purpose of settling the dispute between the parties with regard to their claims to land. In another decision cited by the learned counsel for the respondents in *Mohan Lal and Ors. v. Dy. Director of Consolidation, Kanpur* 1981 ALJ 350, it has been held by a single Judge of this Court that where in a suit for partition the preliminary decree declaring rights and shares of the parties in the disputed land was passed before issuance of notification u/s 4 which had become final and the proceedings for preparation of the final decree was pending after issuance of notification, the suit would not abate so far as declaration of rights under the preliminary decree was concerned. Consequently, it was further held, the shares of the parties could not be readjusted by the consolidation authorities after final adjudication of the shares in the preliminary decree by reference to facts existing before the decree as there was no sanction in law for reopening a controversy which has become final with passing of the preliminary decree. Yet another decision cited by the learned counsel for the respondents is *Sobaran Singh v. Dy. Director of Consolidation* 1991 (2) AWC 1033 : 1992 RD 359. The essence that flows from the above decision is that a preliminary decree remains binding on parties and its effect cannot be subsequently ignored or whittled down even if the preparation of final decree were abated u/s 5 of the Act, 1953. In this very decision it was also held that preliminary decree which became final between the parties is as good and effective and binding on parties as the decree passed after content and that it shall operate as *res indicata*, for subsequent proceedings. The consolidated essence of the above decisions lends countenance to the view that preliminary decree would not be ignored and would be taken into consideration for adjudication of rights of the parties, of course, in proceeding u/s 9A of the Act by the consolidation authorities.

11. In the next limb of argument, the learned counsel for the opposite parties canvassed before me that petitioners are transferees from Parhu and Prabhu could transfer land to the extent of his share in plot No. 220 and instead, taking advantage of his dominant position as karta, he executed sale deed in relation to entire plot. In connection with this proposition I would like to quip that it brooks no dispute that pending suit, if any transfer has taken place, title of petitioners will be valid to the extent of share of transferee if ultimately found in proceeding u/s 9 of the Act. The suit itself was instituted in the year 1963 in which preliminary decree was passed declaring contesting opposite parties entitled to the extent of one half share and according to own showing of the learned counsel for the opposite parties, the decree is still intact. I would not flinch from observing that purported exercise of power u/s 42A cannot be stretched to mean as an alternative option open to the consolidation authorities to grant relief in the pursuit of speedy disposal of a long-drawn dispute in ignorance of remedy prescribed in Section 9A of the Act. Speedy disposal in litigation is desirable thing but it cannot be done at the altar of fair procedure prescribed in the Act. The procedure prescribed in the Act is something designed to facilitate justice and further its ends and not a thing designed to trip people up. Too technical or too

liberal a construction of sections beyond the intendment should be guarded against provided that justice is done to both sides lest the very means designed for the furtherance of justice be used to frustrate it. To sum up, the laws of procedure should be construed reasonably in the light of principles of fair play and natural justice. The action envisaged for the consolidation authorities in the dispute of the nature was to allow proceeding u/s 9A to be taken to some finality expeditiously and then in revisional jurisdiction he should have issued appropriate directions consistent with the resultant decision of subordinate consolidation authorities for being acted upon and the Court would not appreciate recourse to ancillary backhanded proceeding u/s 42A to effect preliminary decree rendered in suit under U.P.Z.A. and L.R. Act in order to notch up the object which the grieving party should have sought from proceeding u/s 9A of the Act.

12. At this stage, I feel called to refer to the decisions cited by the counsel for the parties on both sides in support of their respective contentions in addition to the decisions referred to above. Sri Triveni Shanker for the respondents placed credence upon decisions in Kunj Behari Vs. Board of Revenue, U.P. Lucknow and others, ; Sobaran Singh and Ors. v. Deputy Director of Consolidation and Ors. 1991 (2) AWC 1033 : 1992 RD 359 ; Mohan Lal and Ors. v. Deputy Director of Consolidation, Kanpur and Ors., 1981 ALJ 350 ; Ram Ugrah Singh v. Deputy Director of Consolidation 1995 UPRJ 367 and Mool Chand and Ors. v. D.D.C. and Ors. 1995 RD 490. I have scanned the substance of all the decisions cited by the learned counsel for the respondents and am of the view that none of the decisions involve any of the facet of the controversy involved in this petition. In support of his contention, the learned counsel for the petitioner relied upon Amir Hussain and Ors. v. Deputy Director of Consolidation 1978 RD 204 and the substance flowing from this decision is that the basic year entry could be altered or modified on the objection filed by a person u/s 9A (2) of the Act. The learned counsel also relied upon Chhedi Prasad Tiwari v. Collector/D.D.C, and Ors. 1990 RD 213. I have been taken through all the above decisions by both the parties in support of their respective contentions. I would prefer not to swell this judgment by copious citations and discussions of all the decisions relied upon by the respective parties and I would confine myself to saying that I have derived considerable assistance from the above decisions.

13. In the above conspectus, I consider it essential to protect the interest of parties pending disposal of objection u/s 9A before the Consolidation Officer having regard to the fact that it is borne out from the record that during the pendency of the proceeding in the suit Parhu transferred the land comprising in plot No. 220 in favour of petitioner No. 2 and subsequently, petitioner No. 2 in turn, passed on the land to petitioner No. 1 by means of a sale deed to the detriment of the respondents. Both the parties have common genealogy and descend from common ancestors and in consequence, the respondents claimed co-tenancy in the entire holdings being ancestral property in pursuance of which suit under the Z.A. and L.R. Act came to be instituted and it culminated in

preliminary decree in the year 1976. In this perspective, it is ordered that both the parties shall refrain from alienating or changing the nature of the entire holdings in any manner whatsoever pending disposal of objection u/s 9A before the Consolidation Officer.

14. Before parting with the case, I would not flinch from saying that it is distressing to note that the village came under consolidation operation in the year 1991 by means of notification u/s 4 of the Act and ever since then the matter for correction of record and claim of co-tenancy rights on the basis of common genealogy by reason of being descendants of Harbalak and propped up by preliminary decree in proceeding u/s 9A of the U.P.C.H. Act has been protracting before the Consolidation Officer without there being any indicia indicative of solicitude of the consolidation authorities for early disposal of the dispute. In the fact-situation, it would be but appropriate to direct the Consolidation Officer to adjudicate upon the dispute and take it to some finality expeditiously preferably within a period of three months from the date of production of a certified copy of this order. It needs hardly be said that objection shall be decided after affording due opportunity of hearing to both the parties and after delving into all aspects as may be pressed into service by the parties concerned. If it does not impinge upon the calendar and board of the Court, the Consolidation Officer concerned shall take the matter to some finality on "de die and diem" basis.

15. As a result of foregoing discussion, the petition succeeds and is allowed in part and in consequence, the impugned order is quashed and it is directed that concerned Consolidation Officer, Varanasi, shall decide the proceedings u/s 9A of the U.P.C.H. Act within a period of three months from the date of production of a certified copy of this order by any of the parties. The Deputy Director of Consolidation shall ensure that directions of this Court are complied with and compliance report is submitted to this Court immediately after expiry of the aforesaid period. The office shall communicate this order to the Deputy Director of Consolidation, Varanasi, for information and necessary action in the light of the directions contained in the body of this Judgment.