
(1968) 03 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3197 of 1962

Tribeni and others

APPELLANT

Vs

The State of U.P. and others

RESPONDENT

Date of Decision : 28-03-1968

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5(b)(i), 5(b)(ii)

Citation : (1968) 38 AWR 425

Hon'ble Judges : Jagdish Sahai, J;Gangeshwar Prasad, J

Bench : Division Bench

Advocate : A. Banerji s, for the Appellant; K.C. Agarwal for opposite parties, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—This writ petition has been referred to us by a learned single Judge of this Court.

2. By means of this petition the order of the Settlement Officer (Consolidation) holding that the Respondents Nos. 4 and 5 are entitled to a one third share in the agricultural plots in dispute has been challenged.

3. There was a partition suit between the parties. The decree of the learned Munsif, who decided the suit, was appealed against before the learned Civil Judge. While the appeal, was still pending before the learned Civil Judge, the village, in which the plots in dispute lie, was notified u/s 4 of the UP Consolidation of Holdings Act (hereinafter referred to as the Act). Neither party drew the attention the learned Civil Judge to the notification u/s 4 of the Act and it was never urged before him that the hearing of the appeal be stayed, u/s 5(b) (i) of the Act. In ignorance of the notification u/s 4 of the Act the learned Civil Judge decided the appeal. A second appeal was brought to this Court against the decree passed by the learned Civil Judge, but it was dismissed summarily.

4. Before the Settlement Officer (Consolidation) the Respondents placed reliance

upon the decree passed by the learned Civil Judge. On the basis of that decree he decided the case in favour of the Respondent. The Petitioners approached the Deputy Director (Consolidation) "in" revision, but the revision application was dismissed. Thereafter the instant writ petition Was filed, in this Court.

5. The submission that was made on behalf of the Petitioners before the learned single Judge and has also been pressed before us is that the decree passed by the learned Civil Judge was a nullity. It is contended that inasmuch as there Was an automatic stay of the hearing of the appeal before the learned Civil Judge, the learned Civil Judge had no Jurisdiction to hear the appeal and the decree passed by him is a nullity. Reliance is placed upon Section 5(b)(i) of the Act which, at the relevant time, read:

5. Effect of notification u/s 4(2). Upon the publication of the notification Under Sub-section (2) of Section 4 in the official gazette, the consequence as hereinafter set forth, shall subject to the provisions of this Act, from the date specified thereunder till the publication of notification u/s 52 or Sub-section (1) of Section 6, as the case may be, ensue in the area to which the notification under Sub-section (2) of Section 4 relates; namely--

(a) ...

(b)(i) all proceedings for correction of the record's and all suits for declaration of rights and interests over land, or for possession of land, or for partition, pending before any authority, or court, whether of first "instance" appeal, or reference or revision, shall stand stayed, but without prejudice to the right of the persons affected to agitate the right or interests in dispute in the said proceedings or suits before the Consolidation authorities under and in accordance with the provisions of this Act and the Rules made thereunder.

...

(Italicised by us)

Section 5(b)(ii) of the Act read:

5(b)(ii).1 The findings of consolidation authorities in proceedings under this Act in respect of such right or interest in the land, shall be accepted by the authority or court before whom the proceeding or suit was pending which may, on Communication thereof by the parties concerned, proceed with the proceeding or suit, as the case may be.

6. Mr. A. Banerji strenuously contends that the expression "shall stand, stayed" occurring In Section 5(b)(i) of the Act can only mean that there is an automatic stay and an order that the hearing of the appeal" has been stayed was not necessary. In this connection he invites our attention to Section 5(2)(a) of the Act as it stands today and reads:

Every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for

declaration or adjudication of any other right in regard to which proceedings can- or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending, stand abated; (*Italicised by us*).

Learned Counsel contends that a comparison of the language of the two provisions shows that whereas the amended provision requires an order to abate a proceeding, under the original Section 5(b)(i) of the Act, an order was not required in order to stay the proceeding and for this reason it must be concluded that stay was automatic. In our opinion the only difference in the two provisions in this respect is that whereas under the original provision the proceedings pending before a "court were to be stayed, now they have to" be abated. In our opinion, the amended provision expressly provides for an order of abatement because by that order the entire proceedings are finally concluded and the matter is completely disposed of. In case of stay under, the unamended provision, the proceedings were not finally concluded and a final order had to, be passed after the consolidation authorities had disposed of the matter.

7. Admittedly we are concerned in the present case with the original provision, By virtue of the amendment it is no longer necessary that the findings of the consolidation authorities be brought, to the notice of the authority before whom the original proceedings were pending because once the village had been notified, the proceedings have to be abated.

8. It is clear from the language of the unamended Section 5(b)(i) and (ii) of the Act that merely because a, village came under, consolidation, operations, the Court seized of a suit or an appeal was not divested of the jurisdiction to hear and decide it. All that the, law required was that, the proceedings before it should be stayed and after the matter had been decided by the consolidation authorities the decision was to be communicated to the court who shall "proceed with the proceeding or suit as the case may be." It is, therefore, clear that the effect of Section 5(b)(i) of the Act was not to destroy or take away the jurisdiction of the court before whom, a suit or an appeal, was pending, It remained seized of the case throughout and ultimately it had to, pass a judgment or order or decree in the case. It was that court and that court alone which had the jurisdiction to and could finally dispose of the matter. We therefore, find it extremely difficult to accept that a decree or order or judgment passed by such a court would be nullity even though it alone had the jurisdiction to pass the order or the decree or the judgment.

9. Assuming that the effect of the expression "shall stand stayed" occurring in Section 5(b)(i) of the Act is that there is an automatic stay, it does not advance the case of the Petitioners at all. Clearly if heirs of a deceased party are not impleaded, the suit or appeal as the case may be not only abates as against that party, but also becomes incompetent as a whole on the ground that it might result in conflicting decrees. However in case no objection is taken to that effect

and a decree actually comes to be passed against the survivors the same is not a nullity, Again if a suit ought to have been stayed u/s 10, CPC but is not in fact stayed...a decree does not become a nullity. See *Sheopatrai v. Warakchand*. 46 IC 419.

10. The question whether or not a decree becomes a nullity would depend upon the answer of the question whether the court which passed that decree had Jurisdiction to pass it or not. In the present case there cannot be any manner of doubt, that the learned Civil Judge had jurisdiction to pass the decree though before passing it he had to take into consideration the decision of the consolidation authorities. We are therefore unable to agree with the Learned Counsel that the decree passed by the learned Civil Judge, being a nullity, could not have, been looked into by the consolidation authorities. Mr. Banerji placed reliance, upon *Bahadur v. Bachai* 1962 AWR 680. In this case it was never held that a decree passed in ignorance of the notification u/s 4 of the Act is a nullity. All that the learned Judges did was that, they reviewed their earlier order, when it was brought to their notice that a notification u/s 4 of the Act had been issued.

11. The unreported decision of Oak and Seth, JJ. in *Jalal Uddin v. Ishaque* Review Application No. 50 of 1962 in S.A. No. 1686 of 1955 dated 2-9-1961 is also a case where the order passed by a learned single Judge was vacated by Oak and Seth, JJ. on a review application, being made and on the fact that a notification u/s 4 had been issued being brought to their notice. These cases therefore do not help Mr. Banerji.

12. We are, satisfied that the decree passed by the learned Civil Judge was not a nullity.

13. There, is another way of looking at the matter. In *Parsottam Saran v. Barhma Nand and Ors.* 5 ALJR 530 (FB), the question, was whether an auction sale made by a court, in ignorance of an order passed by this Court staying the holding of the sale, was or was not valid. It was held by the Full Bench that the sale was not without jurisdiction and was valid. This decision was approved by the Supreme Court in *Mulraj v. Murti Raghunathji Mahraj* 1967 AWR 594. We see no difference between a case where the Stay order passed by the High Court was not brought to the notice of the court concerned and a case where a notification u/s 4 of the Act is not brought to the notice of the court. In this view of the matter also the decree passed by the learned Civil Judge cannot be assailed and it certainly cannot be described as a nullity. That being the position, we are satisfied that no error was committed by the consolidation authorities.

14. No other point is raised before us.

15. The result is that the writ petition is dismissed. But in the circumstances of the case, the parties are directed to bear their own costs.