**(2014) 12 AHC CK 0021**

**In the Allahabad High Court**

**Case No :** Writ B No. 64922 of 2014

Vinod Kumar and Others — APPELLANT

Vs

D.D.C., Varanasi and Others — RESPONDENT

**Date of Decision :** 02-12-2014

**Acts Referred:**

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 10, 10, 11, 12, 4

**Citation :** (2015) 126 RD 709

**Hon'ble Judges :** Anjani Kumar Mishra, J

**Bench :** Single Bench

**Advocate :** K.D. Singh, Advocates for the Appellant; Vinay Singh, Advocates for the Respondent

## Judgement

Anjani Kumar Mishra, J.—Heard Sri A.P. Tiwari holding brief of Sri K.D. Singh, learned Counsel for the petitioners and Sri P.C. Srivastava holding brief of Sri Vinay Singh, who has filed caveat on behalf of Sohan Lal Seth, respondent No. 4. This petition arises out of an objection under section 12 of the U.P. Consolidation of Holdings Act and has been filed challenging the order dated 27.10.2014 passed by the Deputy Director of Consolidation.

2. Briefly stated the facts of the case are that the petitioners filed an objection under section 12 claiming on the basis of an alleged registered sale-deed, said to have been executed by the father of the respondents 4 and 5 in favour of his brother Shitala Prasad, the father of the petitioners, in 1954. This objection is said to have been decided by the Assistant Consolidation Officer by his order dated 22.2.1995, on the basis of a compromise entered into between the parties.

3. Aggrieved by the compromise order of 1995, an appeal was filed by the respondents 4 and 5 challenging the compromise order. The Settlement Officer, Consolidation by his order dated 5.8.2010 affirmed the compromise order. It appears that this order was set aside on a restoration application and the Set-dement Officer, Consolidation again decided the matter and by his order dated 20.5.2011, dismissed the same on the ground of limitation and maintainability.

The consequential revision filed by respondents 4 and 5 was allowed by the Deputy Director of Consolidation, Varanasi on 27.10.2014. Hence this writ petition.

4. Learned Counsel for the petitioners has submitted that the reasoning, given by the Deputy Director of Consolidation in the order impugned, cannot be sustained. The Deputy Director of Consolidation has allowed the revision primarily on two grounds. First that the objection was filed under section 12 of the U.P. Consolidation of Holdings Act, claiming on the basis of a registered sale-deed, said to have been executed in the year 1954. He has also recorded that the village was brought under consolidation operations in the year 1991 and, therefore, the objection should have been filed under section 9-A(2) and not under section 12. The second reason given by the Deputy Director of Consolidation is that the objection that was filed is shown to have been filed on 3.1.1995 but the application has been signed by the Counsel and the date, put under the signature, is 20.12.1994. He has also categorically recorded that the affidavit filed in support of the objection was also shown to have been sworn on 20.12.1994. He has therefore held that the affidavit is prima facie forged and, therefore, allowed the revision.

5. In this connection, it would be relevant to note that there is absolutely no challenge to the finding, recorded by the Deputy Director of Consolidation that the affidavit filed along with the objection under section 12 was sworn on 20.12.1994.

6. Confronted with the situation, Sri A.P. Tiwary has argued that the date mentioned by the Counsel while signing the application is nothing but a typographical error. There was no requirement under law for filing any affidavit in support of the objection under section 12. He has next submitted that no coupons were available and, therefore, the affidavit had not been sworn.

7. I am not prepared to accept the submissions because no such plea has been raised in the body of the writ petition itself and merely arguments are being put forward.

8. Sri A.P. Tiwary has next submitted that the powers under section 9-A(2) as also under section 12 of the U.P. Consolidation of Holdings Act are analogous. Under both the proceedings, the question of title is determined by the Consolidation Courts and, therefore, it is immaterial as to whether the order was passed in proceedings under section 9-A(2) or under section 12, as the effect of the orders passed under both these provisions of law would be the same.

9. Insofar as this submission that the powers under section 9-A(2) and under section 12 are analogous, it would be relevant to examine section 12 of the Act, which reads as under:--

"Section 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 to 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 under section 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 sub-section (1) as if it were a matter raised under the aforesaid sections."

10. It is therefore clear that section 12 is to be invoked only in cases of succession, transfer or assignment, which takes place during the currency of consolidation operations in the village. In the instant case, the registered sale-deed, which is the basis of the claim of the petitioner, having been executed in 1954, almost 35 years prior to the issuance of notification under sections 4 and 9 and, therefore, the provisions of section 12 could not have been invoked and the objection should necessarily have been filed under section 9A. Moreover, if contention of learned Counsel for the petitioner is accepted then section 12 would be rendered redundant.

11. The next submission of learned Counsel for the petitioners is that the Settlement Officer, Consolidation had recorded a categorical finding that the compromise order was just and proper, having been passed after due compliance of the provisions of Rule 25-A of the Rules framed under the U.P. Consolidation of Holdings Act. These findings recorded by the Settlement Officer, Consolidation while deciding or dismissing the appeal, have neither been adverted to by the Deputy Director of Consolidation nor reversed and, therefore, the impugned order is patently illegal.

12. In this connection, it would be further relevant to notice that the operative portion of the appellate order dated 20.3.2011 indicates that the appeal has been dismissed on the ground of limitation and maintainability. In case, the appeal was being dismissed on the ground of laches, it was not open for the Settlement Officer, Consolidation to have recorded any findings on the merits of the claim and in such view of the matter, any finding that there was due compliance of the provisions of Rule 25-A, necessarily has to be ignored. The Settlement Officer Consolidation would get jurisdiction to address the merits of the dispute between the parties only after he had condoned the delay in filing the appeal. This was not done and that is why the appeal has been dismissed on the ground of laches and, therefore, the submission of learned Counsel for the petitioner on this count also lacks substance.

13. The next submission of learned Counsel for the petitioners is that the compromise order could have been set aside by the Deputy Director of Consolidation only on categorical finding that the compromise was either forged, fictitious or had been obtained by either coercion or undue influence and in the

 

absence of such a categorical finding, the compromise could not have been set aside.

14. The finding returned by the Deputy Director of Consolidation that the application and affidavit, whereupon the case under section 12 of the U.P. Consolidation of Holdings Act was registered, has been found to be Farzi. Once the very basis of a case is found to be forged and fabricated, any subsequent proceedings must necessarily fall within the same category and, therefore, I am not impressed by the submissions made by learned Counsel for the petitioners in this regard.

15. The last submission is that in case the compromise order was being set aside, the Deputy Director of Consolidation should have remanded the matter back for a decision on the merits of the rival claims. The Assistant Consolidation Officer is alleged to have passed an order on the basis of an alleged compromise. The consequential appeal was dismissed as being barred by time and not maintainable. The Deputy Director of Consolidation has reversed the aforesaid two orders on the finding that the application as also the affidavit, on the basis of which the case was instituted, is Farzi. This finding, as already noticed hereinabove, has not been specifically challenged in the writ petition.

16. Once a finding has been returned that the proceedings have been initiated on the basis of a Farzi application/affidavit, there appears no justification for remanding the matter for a fresh decision on such a Farzi application/affidavit and, therefore, even this last submission of learned Counsel for the petitioners is repelled. Accordingly and for the reasons given above, the writ petition is devoid of merits and is accordingly dismissed.

 