

(1975) 12 AHC CK 0007

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 4017 of 1973

Dalip Singh and Others

APPELLANT

Vs

The Deputy Director of
Consolidation, Moradabad Camp
and Others

RESPONDENT

Date of Decision: Dec. 5, 1975

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 4, 5

Citation: AIR 1976 All 433 : (1976) AWC 112

Hon'ble Judges: K.B. Asthana, C.J; Satish Chandra, J

Bench: Division Bench

Advocate: Krishna Murari Sinha, for the Appellant; G.N. Varma, for the Respondent

Final Decision: Allowed

Judgement

Satish Chandra, J.

Harbans Singh, respondent No. 2, purchased the plots in dispute by a sale deed dated September 15, 1956 for Rs. 4,000-00. The sale deed mentioned not only Harbans Singh but also his two minor sons, namely, Kiran Pal Singh and Kiran Singh, respondents Nos. 3 and 4, as purchasers. Subsequently, Harbans Singh, on March 15, 1962, sold a two-third share in the plots in dispute to Dalip Singh, petitioner No. 1, for Rs. 9,000-00. The remaining one-third share in the plots was sold to petitioners Nos. 2 and 7 for a sum of Rupees 4,500-00.

2. In 1967, Harbans Singh's sons, namely, respondents Nos. 3 and 4, filed a suit for the cancellation of the aforesaid two sale deeds executed by Harbans Singh, on the ground that they being minors, the sale deeds were invalid in respect of their shares in the plots. During the pendency of the suit, a notification u/s 4 of the U. P. Consolidation of Holdings Act was published. Thereupon the suit was abated by the Court.

3. The two sons of Harbans Singh filed an objection in the consolidation proceedings which was partly allowed by the Consolidation Officer. The matter was taken up in appeal. The Settlement Officer held :

"In the sale deeds, he (Harbans Singh) has admitted that the land was purchased by him with his own money in his name and also in the name of his sons."

The Settlement Officer held that the real purchaser of the land was Harbans Singh, his sons being only Benamidars. He was, therefore, entitled to sell the land to the petitioners. On this view, the sale deeds were upheld and the objections of the two sons of Harbans Singh were repelled.

4. The respondents went up in revision. At the hearing, the petitioners were not represented because their counsel was ill. The Deputy Director proceeded to hear the revision in their absence. He went into the merits of the revision and held that it was not open to the Settlement Officer to give a finding on the question whether the names of the two sons of Harbans Singh were entered as Farzi because there was no such plea taken in the objections by them. On this principal finding, the revision was allowed and it was directed that the names of Kiran Pal Singh and Kiran Singh, the two sons of Harbans Singh, will be recorded along with Jhutha Singh and Dalip Singh.

5. Aggrieved, the purchaser Harbans Singh filed a writ petition in this Court. At the hearing of the writ petition, it was, inter alia, urged before the learned Single Judge that in view of the decision of the Supreme Court in [Gorakh Nath Dube Vs. Hari Narain Singh and Others](#), the question of the validity of the two sale deeds could not be adjudicated upon by the consolidation authorities and that the sale deeds are binding on the parties unless they are set aside by a decree of the regular court. The learned Single Judge felt that there was some conflict between the decision of this Court in Jagarnath Shukla v. Sita Ram Pande 1969 All LJ 768 which decision was specifically approved by the Supreme Court and, certain observations made by the Supreme Court in Gorakh Nath Dube's case.

6. It has been seen that the suit filed by the respondents covered both the sale deeds. The suit was for cancellation. It was abated u/s 5 of the Consolidation of Holdings Act. Section 5 aforesaid applies when a court finds that in view of Section 49 of the Act, a regular suit is not maintainable because the points for adjudication can be adjudicated upon by the consolidation authorities. The necessary effect of this order of abatement was that subject-matter of the suit namely, the validity of the two sale deeds, could be adjudicated upon by the consolidation authorities. It is well settled that a decree or order which has become final, operates as res judicata even though it may proceed upon an erroneous decision of a question of law. In view of the doctrine of res judicata, none of the parties could object to the consolidation authorities going into the validity of the two sale deeds. They were entitled to adjudicate upon their validity.

7. On merits, the position is that the Deputy Director has held that the Settlement Officer's finding was that the sale deeds were Farzi. We have seen the order of the Settlement Officer and we are unable to uphold this view of the Deputy Director. The Settlement Officer held:--

"In the sale deeds he (Harbans Singh) has admitted that the land was purchased by him with his own money in his name and also in the name of his sons. Sri Harbans Singh sold this land with a great benefit and with this money he purchased the land in village Salampur Bitara. It is admitted by Kiran Pal Singh that they live with their parents in village Salempur Bitara and live upon that land. This clearly shows that Harbans Singh himself purchased this land originally for himself with his own money and got the names of his sons also entered in a Farzi manner."

The finding is not that the sale deeds were Farzi but that the names of the two sons were entered Farzi. In other words, the minors were Benamidars. The actual purchaser was Harbans Singh.

8. The Deputy Director was of the opinion that there was no issue on the specific point and so the Settlement Officer ought not to have gone into this question. Issue No. 3 was "are the sale deeds invalid"? In our opinion, this issue covered the question whether the sale deeds could be held to be invalid and whether Harbans Singh was alone the owner or whether the minors were also vendees with him. The Deputy Director, in our opinion, was in error in short-circuiting the finding of the Settlement Officer on the view that there was no issue on this point. The Deputy Director did not go into the merits of this finding. Under the circumstances, his order cannot be sustained.

9. In the result, the petition succeeds and is allowed. The impugned order of the Deputy Director is set aside. The matter is sent back to him for a decision of the matter afresh in accordance with law and in the light of the observations made above. Parties shall bear their own costs.