
Nagendra Pal Singh Vs Bhadrapal Singh

Second Appeal No. 762 of 2012

Court: Allahabad High Court

Date of Decision: July 5, 2013

Acts Referred:

Limitation Act, 1963 & Article 59#Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 & Section 49

Hon'ble Judges: Sudhir Agarwal, J

Judgement

Sudhir Agarwal, J.

Heard Sri Anil Sharma, Advocate, for appellant and Sri S.N. Tripathi, Advocate, for respondents.

2. This is defendant's appeal under Section 100 C.P.C. which has arisen from judgment and decree dated 11.7.2012 passed by Sri Razi Ahmad,

Addl. District Judge, Court No. 2, Bijnor allowing plaintiff's Civil Appeal No. 51 of 2009 and setting aside judgment and decree dated 3.10.2009

passed by Smt. Adesh Nain, Judge, Small Causes Court, Bijnor whereby she has dismissed the Original Suit No. 26 of 1998 but Lower Appellate

Court (hereinafter referred to as "LAC") has decreed the suit by setting aside decree of Trial Court (hereinafter referred to as "TC").

3. This Court formulated following three substantial questions of law on 7.8.2012 after hearing the appeal under Order 41 Rule 11 C.P.C.:

(i) Whether the suit filed by the plaintiffrespondent was barred by Section 49 of U.P. Consolidation Holdings Act, 1953 (hereinafter referred to as

Act, 1953")?

(ii) Whether the suit filed in the year 1998 for cancellation of the sale deed executed in the year 1987 was barred by limitation in view of Article 59

of the Limitation Act?

(iii) Whether the claim of the plaintiffrespondent that the property which was the subject matter of the impugned sale deed was ancestral could be

accepted in the face of the admitted factual position that no such claim was raised by him before the consolidation authorities?

4. The dispute relates to agricultural land forming plot of Khasra no. 2658, area 3 bigha 14 biswa, situate at Village Sheralipur, Pergana Syohara,

District Bijnor. A saledeed dated 18.2.1987 was executed by Sri Ranveer Singh, son of Sri Keval Singh in respect to the aforesaid property in

favour of Nagendra Pal Singh, son of Sri Gyanendra Pal Singh (the defendantappellantthereinafter referred to as ""appellant"") for a consideration of

Rs. 13,500/ and it was duly registered. The plaintiffrespondent Sri Bhadrpal Singh, son of Sri Satpal Singh Pal Singh (hereinafter referred to as

plaintiff"") instituted Original Suit No. 26 of 1998 vide plaint dated 11.1.1998 for cancellation of aforesaid saledeed in the Court of Civil Judge

(Senior Division), Bijnor. The family genealogy has been given in para 1 of the plaint at the top whereof is Chaudhary Keval Singh, who had two

sons, Digvijay Singh and Ranveer Singh. Digvijay Singh had two sons Satpal Singh and Gyanendra Singh, who in turn had two sons and three

daughters and four sons and three daughters respectively. Bhadra Pal Singh is the son of Satpal Singh while Nagendra Pal Singh is son of

Gyanendra Pal Singh.

5. The plaint case set up is that Khasra No. 2658 was allotted numbers 2658/1, 2658/2, 2658/3 and 2658/4 during consolidation proceedings.

The plot no. 2658/3, area 7 biswa 10 biswansi came to vest in State of U.P. and therefore was already separated. Rest of the property remain

with successors of Chaudhary Keval Singh. Digvijay Singh, one of the two sons of Keval Singh, had 50 per cent share in the property which was

transferred by sale to Jameen Ahmad, Akhtar Husain, Shahadat Husain and Bahajuddin, all sons of Nazzu Khan who were recorded as cotenure

holders with Chaudhary Ranveer Singh. The land forming part of Khasra No. 2658/2 area 1 bight 13 biswa and 2658/4 area 10 biswansi was

declared abadi and hence was excluded from consolidation proceedings on an objection raised by defendant no. 1 under Section 9 Act, 1953.

Hence the saledeed dated 18.2.1987 could not have been executed by treating the aforesaid land to be an agricultural one but to evade stamp

duty etc. the land was disclosed as an agricultural land and the saledeed was executed though, as a matter of fact, it was abadi, being used for

residential and commercial purposes. Further defendant no. 2 had no right to transfer the aforesaid land on his own individually since he was not

the sole owner in possession over the aforesaid property. Defendant no. 2 was only entitled to a share of 1/6 in the disputed property and could

not have executed saledeed for a larger share. Plaintiff's date of birth being 8.2.1951, he also had coparcenary rights therein and, therefore, the

property came in his share could not have been transferred by sale by means of impugned saledeed. Plaintiff could not get any information about

the aforesaid saledeed since he was residing outside and acquired knowledge only in November" 1997 when defendant no. 1 started plotting and

sale in the disputed land.

6. Suit was contested by defendant no. 1 filing his written statement wherein he disputed that land was excluded from the consolidation operation

and it continued to be an agricultural land throughout. Defendant no. 2, Ranveer Singh, was the sole owner of property and he has rightly executed

sale deed on 18.2.1987. Since the saledeed was executed at the time when consolidation operation was going on, permission from consolidation

authorities was also obtained under Section 5C2 of Act, 1953 on 22.1.1987. Plaintiff has no concern over the property in dispute and had

knowledge of saledeed dated 18.2.1987 since the date it was executed.

7. An additional written statement was also filed stating that the defendant no. 2 was entered as Kashtkar Bhumidhar in 1987 during the

consolidation proceeding after observing all the requisite formalities and plaintiff or his father did not lodge any objection or protest thereagainst.

The decision of consolidation authorities, therefore, is final and now plaintiff cannot reagitate that matter.

8. TC formulated following 7 issues:

English translation by the Court:

1. Whether the disputed saledeed dated 18.02.87 is a document liable to be cancelled on the basis of grounds mentioned in the plaint? If yes, its

effect.

2. Whether the suit is barred under section 49 of U.P. Consolidation of Holdings Act?

3. Whether defendant no. 1 does not have possession over the property in dispute?

4. Whether the suit is barred by provisions of the U.P. Zamindari Abolition Act?

5. Whether the suit is time barred?

6. Relief, if any, for which plaintiff is entitled?

7. Whether the suit is barred by the principles of estoppel and tacit consent, as contended by the defendant? If so, its effect.

9. The TC decided issues no. 1, 2, 3 and 5 against plaintiff as a result whereof suit stood dismissed vide judgment and decree dated 3.10.2009,

whereagainst, the plaintiff preferred Civil Appeal No. 51 of 2009 which has been allowed by LAC.

10. Now I take up question no. 2, first, which is regarding limitation. Before TC Issue no. 5 was in regard to limitation. Admittedly, the saledeed in

question was executed on 18.2.1987 and suit for its cancellation was instituted on 11.1.1998 which was apparently barred by time. Plaintiff,

however, contended that he had no knowledge of execution of aforesaid saledeed since he was staying outside and got knowledge thereof only in

1997. It is not in dispute that it is Article 59 of Limitation Act, 1963 (hereinafter referred to as ""Act, 1963"") which shall govern period of limitation,

for the suit in question. It is three years therein. Plaintiff has pleaded lack of information about saledeed by stating that he and his other brothers etc.

were residing outside. Where he was residing, what he was doing has not been stated anywhere in the plaint. In his oral statement also, except of

his bare assertion that he was staying outside, and, therefore, could not get knowledge, nothing has been stated as to where he was staying and for

what purpose. Whether he was employed elsewhere or was doing any profession, vocation etc., neither there is any pleading nor in this regard

there is any evidence at all. TC, while discussing Issue No. 2, has clearly said that to prove the fact pleaded by the plaintiff that he was residing

outside, he has not placed any evidence, and, therefore, this statement is not creditworthy. However, LAC has reversed findings of TC on Issue

No. 5 in a very cursory manner by observing that since plaintiff claimed that he got knowledge of saledeed only in 1997 and defendants could not

prove that plaintiff had the information of consolidation proceeding or execution of saledeed in 1987, hence the suit cannot be said to be barred by

time.

11. In my view, LAC has clearly misdirected itself by placing burden upon defendant. The limitation once starts cannot be postponed. If the

plaintiff pleaded that limitation would have commenced not on the date when the disputed document was executed, but at some later point of time,

the burden of proof would lie upon him by virtue of Section 101 of Indian Evidence Act, 1872 (hereinafter referred to as ""Act, 1872"" to prove

this fact. A bare statement in the plaint is not a proof thereof. In the oral deposition of plaintiff, this Court did not find anything to show that the

plaintiff could prove that he was actually residing outside and had no knowledge either of the consolidation proceedings or that of execution of

saledeed. The onus could have been shifted upon the defendants only if the plaintiff is able to discharge his initial burden and not otherwise. In my

view, the suit having been filed after almost 11 years, it was apparently barred by time and LAC has clearly committed a manifest error in holding

otherwise and that too without referring to any evidence. Its inference is based on no reasoning and in reversing the findings of TC by misplacing

burden upon defendant, it has committed serious legal error. Question No. 2, therefore, is answered in affirmative, i.e., in favour of appellant and it

is held that suit in question is barred by time.

12. Now Coming to question no. 1, whether the suit is barred by Section 49 of Act, 1953, a perusal of copy of Akar Patra 2A of the consolidation proceedings would show that the application to keep plot no. 2658 outside the consolidation operation was rejected for want of

prosecution by Consolidation Officer's order dated 15.1.1987. Thus the property in dispute continued to be an agricultural holding in 1987 and

onward. It is also evident from record that there is no declaration under Section 143 of U.P. Zamindari Abolition and Land Reforms Act, 1950

(U.P. Act, No. 1 of 1951) (hereinafter referred to as ""Act, 1950"" so as to cease it to be an ""agricultural land"". It is also not in dispute that before

execution of saledeed in question, permission from competent authority under Section 5C2 of the Act, 1953 was obtained by the parties

concerned and only thereafter disputed saledeed was executed.

13. Section 49 of Act, 1953 reads as under:

49. Bar to civil jurisdiction. Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of

right of tenureholder in respect of land lying in an area, for which a notification has been issued (under subsection (2) of Section 4 or adjudication

of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act,

shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to

rights in such land or with respect to any other matters for which a proceedings could or ought to have been taken under this Act:

Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122B of the Uttar Pradesh

Zamindari Abolition and Land Reforms Act, 1950 in respect of any land, possession over which has been delivered or deemed to be delivered to

a Gaon Sabha under or in accordance with the provisions of this Act.

14. All adjudications and declarations of rights of tenure holder after close of consolidation proceedings shall be barred and no Court shall take

cognizance of such dispute which has been decided by consolidation Court or which could have been decided. Sri Anil Sharma, learned counsel

for appellant, contended that the land was recorded in the name of defendantappellant during consolidation proceedings and no objection was

raised before the consolidation authorities, hence, after close of consolidation proceedings, the suit in question challenging the right of petitioner in

respect to the property in dispute is barred inasmuch such a dispute, if raised, could have been decided by consolidation authorities.

15. In Narendra Singh and others Vs. Jai Bhagwan and others 2006 (100) RD 69, the Court said that jurisdiction of Civil Court to adjudicate

upon dispute upon rights and title relating to lands included in consolidation proceedings is barred by Section 49 of Act, 1953. The jurisdiction to

decide dispute of rights and title of lands in consolidation proceedings has been conferred by the Act exclusively on the authorities under the said

Act.

16. In Kailash Chandra Vs. State of U.P. and others 2007 (102) RD 301, the Court said that the plea of a son that he was a cosharer in

agricultural land held by his father by virtue of being a family member is barred by 49 of Act, 1953 and if such plea is not raised during the

consolidation proceedings then it cannot be raised subsequently.

17. In Madan Mohan Mishra Vs. Chandrika Pandey (Dead) by Legal Heirs 2009 (107) RD 2 (SC), referring to Section 49 of Act, 1953, the

Court said:

Jurisdiction of the Civil Court not only in respect to matters which are specified therein but also the matters which could and ought to have been

the subject matter of the proceedings under the said Act is barred.

The Court relied on its earlier two decisions in Audhar and others Vs. Chandrapati and others 2003 (11) SCC 458 and Narender Singh and

others Vs. Jai Bhagwan and others 2005 (9) SCC 157.

18. Learned counsel for plaintiffrespondent, however, on the contrary, submitted that certain part of disputed land was already declared abadi,

hence it was excluded from the consolidation proceedings and, therefore, it cannot said that the suit was barred by Section 49 of Act, 1953. It is,

however, not in dispute that no document supporting the plea of declaration is an exhibit before the Courts below. It is, however, also not in

dispute that the defendant was recorded Kashtkar bhumidhar during continuance of consolidation proceedings in 1989 and no objection etc. was

filed by plaintiff. The LAC, however, has reversed finding of TC by considering the question of bar of suit under Section 49 of Act, 1953 in the

reformulated Issue No. 5 in appeal, in a very cursory manner and has decided the same by observing that since it was not proved that defendant"s

name was entered as Kashtkar bhumidhar after giving notice to plaintiff, it would mean that the order was obtained by fraud and, hence, suit would

not be barred by Section 49 of Act, 1953. It is a sheer presumption and conjecture on the part of LAC in proceeding to decide question no. 5

regarding application of Section 49 of Act, 1953 in such a manner without showing as to how the plea of fraud could be substantiated by plaintiff.

In the plaint, there is no such averment. When a provision is prima facie applicable but its applicability is disputed by plaintiff, by pleading certain

special circumstances, the onus would lie upon plaintiff to prove those circumstances. What has been observed by LAC is that Section 49 of Act,

1953, ex facie, is applicable but since the orders of consolidation authorities were allegedly obtained by fraud by defendant, hence Section 49 of

Act, 1953 would become inapplicable. If the plea of fraud was taken by plaintiff, he was under an obligation to prove it. While deciding Issue No.

5, I don"t find that any such onus has been discharged by plaintiff so as to exclude the scope of Section 49 of the Act, 1953.

19. It also appears that LAC has mixed the issue of fraud firstly in respect to that pleaded for challenging saledeed and secondly, in respect to the

order of consolidation authorities which would have made the suit non maintainable by virtue of Section 49 of Act, 1953. In respect to Section 49

of Act, 1953, the alleged plea of fraud, which is just discovered by LAC, has neither been discussed nor any evidence etc. has been referred to so

as to show as to how Section of Act, 1953 is not attracted. In other words, I have no hesitation in holding that on the question of application of

Section 49 of Act, 1953 without reversing findings of TC, by recording its own findings after discussing pleadings and evidence, to show that

plaintiff has proved and discharged his burden and the defendant has failed to meet those pleadings and evidence, LAC in reversing finding of TC

with regard to bar attracted by application of Section 49 of Act, 1953 has committed a patent illegality. The question no. 1 is, thus, answered in

favour of appellant and against the plaintiffrespondent by holding that suit in question was barred by Section 49 of Act, 1953.

20. In view of what has been said with regard to question no. 1, for the same reasoning, I return question no. 3 also against the plaintiffrespondent

and in favour of appellant.

21. In view of above, the judgment and decree passed by LAC cannot sustain.

22. In the result, the appeal is allowed. Judgement and decree dated 11.7.2012 passed by LAC in Civil Appeal No. 51 of 2009 is hereby set

aside and judgment and decree dated 3.10.2009 passed by TC in Original Suit No. 26 of 1998 is hereby restored and confirmed, as a result

whereof, the Original Suit No. 26 of 1998 of plaintiffrespondent stands dismissed. Cost is made easy.