

## Ram Asrey Vs Deputy Director of Consolidation & Ors.

**Court:** Allahabad High Court

**Date of Decision:** Feb. 10, 2006

**Acts Referred:** Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 48

**Hon'ble Judges:** Krishna Murari, J

**Final Decision:** Allowed

### Judgement

Krishna Murari, J.

Heard Sri R.C. Singh appearing for the petitioner.

2. Though the case has been taken up in revised list, no one has appeared on behalf of contesting respondent No. 2 nor there is any

counteraffidavit on this behalf on record.

3. The dispute relates to the plot No. 67/13.19 situate in village Bhairapur, Tappa Khuriya, Tehsil Haraiya District Basti which was sirdari of the

respondent Nos. 3 and 4 and was transferred by them in favour of petitioner after obtaining Bhumidari Sanad. Though the SubDivisional Officer in

Case No. 569/698 passed an order for mutation of the name of the petitioner on the basis of saledeed but somehow the revenue records were not

corrected and the plot in dispute continued to be recorded in the name of the respondent Nos. 3 and 4. During consolidation proceedings the

petitioner filed objection under Section 9A(2) of the Act claiming rights on the basis of the saledeed. The respondent No. 2 also filed objection

claiming rights over the plot in dispute on the basis of adverse possession. The Consolidation Officer vide order dated 26 31973 allowed the

objection filed by the petitioner whereas the objection filed by the respondent No. 2 was dismissed. The appeal filed by the respondent No. 2 was

also dismissed by the Settlement Officer, Consolidation on 2061974. Feeling aggrieved the respondent No. 2 filed revision. During pendency of

the revision an alleged compromise was filed on the basis of which the claim of respondent No. 2 was allowed by the Deputy Director of

Consolidation vide impugned order dated 311975. The petitioner having come to know about the said order moved an application dated 1091975

to recall the same on the ground that he never entered into any compromise and his alleged signature on the said compromise is forged.

4. It has been stated in the writ petition that the aforesaid application was moved before District Deputy Director of Consolidation who passed the

order on 14/1/1976 that the application be sent to the Court of Deputy Director of Consolidation (II) Basti for necessary action. However, when

nothing was done petitioner moved another application before the District Deputy Director of Consolidation who passed an order on 22/5/1976

directing the Deputy Director of Consolidation to take appropriate action.

5. The proceedings started before the Deputy Director of Consolidation. The petitioner moved an application under Section 5 of Limitation Act

duly supported by an affidavit explaining the delay. He also moved an application for comparison of his admitted signatures with alleged signatures

on compromise and vakalatnama said to have been executed in favour of one Sri Someshwar Yadav, Advocate to appear on his behalf. Sri T.H.

Siddiqui, handwriting expert submitted a report on 31/10/1981 that specimen signature did not tally with the signature made on the alleged

compromise and vakalatnama. The Deputy Director of Consolidation dismissed the application filed by the petitioner vide order dated 25/6/1982

on two grounds, firstly, the petitioner failed to give any reasonable explanation for delay and secondly, he disbelieved the report of handwriting

expert.

6. I have perused the impugned judgment of the Deputy Director of Consolidation.

7. In so far as first ground is concerned the Deputy Director of Consolidation has held that petitioners has failed to give any explanation for the

period of 22/8/1975 to 4/5/1976. The averments made by the petitioner that he moved an application before the District Deputy Director of

Consolidation, Basti on 10/9/1975 on which, orders were passed on 14/1/1976, when nothing was done he again approached the District Deputy

Director of Consolidation who again passed an order on 22/5/1976 have not been considered. The Deputy Director of Consolidation recorded a

finding that question answer obtained from the officer of the District Deputy Director of Consolidation shows that an application was moved by the

petitioner on 10/9/1975 which was disposed of on 14/1/1976, but treating it to be a complaint and not a recall application the Deputy Director of

Consolidation held that the said explanation is not reasonable and refused to condone the delay. In my opinion the Deputy Director of

Consolidation has taken a very technical view. The petitioner had approached authorities with his grievances and the delay in such circumstances

was liable to be condoned. The Deputy Director of Consolidation committed a gross illegality in dismissing the application as time barred.

8. In so far as the second ground is concerned, the Deputy Director of Consolidation disbelieved the expert's report on the ground that the expert

made a request for some more specimen signatures. The finding of the Deputy Director of Consolidation that since more specimen signatures were

required by the expert goes to show that petitioner who is a literate person made variations in the signatures on account of which same did not tally

with the signatures on compromise and vakalatnama is based on imagination, surmises and conjectures. The other reasons recorded by the Deputy

Director of Consolidation for disbelieving the expert's report that Advocate who verified the signatures of the petitioner on compromise appeared

in the witness box and said that he knows petitioner and has verified his signatures is also not acceptable in view of expert report. The statement

made by the Advocate cannot constitute a ground for rejecting the expert's opinion particularly when there was nothing on the record to prove the

said report as wrong or biased. I have gone through the expert's report which has been filed as Annexure E to the writ petition. The expert has

clearly opined that two signatures do not tally with each other and has not been made by one person. I see no ground to disbelieve or doubt to the

said report.

9. In view of the aforesaid discussions the impugned judgment of the Deputy Director of Consolidation dated 25/6/1982 cannot be sustained and is

hereby quashed.

10. The writ petition stands allowed.

11. The case is remanded back to the Deputy Director of Consolidation to decide the revision afresh on merits in accordance with law after notice

and opportunity of hearing to all concerned parties within a period of one year from the date of production of certified copy of the order before

him.

12. No order as to costs.