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**(1967) 09 AHC CK 0020**

**Allahabad High Court**

**Case No:** Spl. Appeal No. 490 of 1962

Rama Shankar

APPELLANT

Vs

Mst. Hubraji and Others

RESPONDENT

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**Date of Decision:** Sept. 13, 1967

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 11
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 12(4)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 332, 332(2), 332(3)

**Citation:** AIR 1969 All 407

**Hon'ble Judges:** R.S. Pathak, J; Jagdish Sahai, J

**Bench:** Division Bench

**Advocate:** Gauri Shankar Srivastava, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

Jagdish Sahai, J.

This special appeal is directed against the judgment of V. G. Oak, J. (as he then was) dated 20-4-1962, allowing writ petition no. 3584 of 1958.

2. The plots in dispute in this case are situate in village Hansrajpur, district Allahabad, It is under consolidation operations. Before the village was notified for consolidation operations u/s 4 of the U. P. Consolidation of Holdings Act (hereinafter referred to as the Act), a revenue suit had been filed in the court of the Assistant Collector 1st class by Smt. Hubraji, the respondent to this special appeal and the petitioner in the writ petition mentioned above. One of the allegations of Smt. Hubraji was that she was the Bhumidhar of the disputed plots.

3. The learned Assistant Collector, therefore, remitted an issue to that effect to the Court of the Munsif (East), Allahabad for decision. The Munsil recorded his finding

on that issue on 24-7-1957 holding that Smt. Hubraji was the Bhumidhar of the plots in dispute.

4. However, before the revenue suit mentioned above could be decided by the Assistant Collector 1st class, the village came under consolidation operations and the hearing of that suit was staved under the provisions of Section 5 of the Act. Before the Consolidation Officer an objection was made by Smt. Hubraji u/s 12 (4) of the Act that she was the Bhumidhar of the plots in dispute. The Consolidation Officer, referred the matter to the learned Civil Judge who referred it to the Arbitrator. The Arbitrator gave his award, but against Smt. Hubraji and in favour of the appellant. Ram Shanker. Thereupon Smt. Hubraji filed an objection against the award of the Arbitrator before the learned Civil Judge, who upheld the award.

5. Smt. Hubraji filed writ petition no. 3564 of 1958. The writ petition was allowed by Oak, J. on the ground that there was already a decision of a competent civil court, that is, the Munsif (East) Allahabad, to the effect that Smt. Hubraji was the Bhumidhar of the land in dispute with the result that the Consolidation Officer was incompetent to refer that matter to the learned Civil Judge, who, in his turn, was incompetent to refer that matter for decision to an Arbitrator. Oak, J. held that a reference by the Consolidation Officer to the Civil Judge and by the latter to an Arbitrator could be made only if the question of title had not already been decided and inasmuch as the Munsif (East) had recorded his finding on 24-7-1957 holding that Smt. Hubraji was the Bhumidhar of the plots in dispute, no reference could have been "made.

6. We find merits in the submission of Sri Gauri Shanker Srivastava that the view taken by Oak, J. is not correct. The issue was remitted in this case by the learned Assistant Collector 1st class to the learned Munsif (East) Allahabad, u/s 332 of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the U. P. Z. A. and L. R. Act). That provision reads:

"332. (1) Notwithstanding anything contained in Section 331, if in any suit or proceedings mentioned in column 3 of Schedule II, a question is raised regarding the title of any party to the land which is the subject matter of the suit or proceedings and such question is directly and substantially in issue the court shall, unless the question has already been decided by a competent court, (frame an issue on the question of the title and submit the record to the competent civil court for the decision of that issue only).

Explanation-- A plea regarding the title to the land which is clearly untenable and intended solely to oust the jurisdiction of the revenue court shall not be deemed to raise a question regarding the title to the land within the meaning of this section.

(2) The civil court, after refraining the issue, if necessary, shall decide such issue only and return the record together with its "finding thereon to the revenue court which submitted it.

(3) The revenue court shall then proceed to decide the suit, accepting the finding of the civil court on the issue referred to it.

(4) An appeal from a decree of a revenue court in a suit or proceeding in which an issue regarding title has been decided by a civil Court under Sub-section (2) shall lie to the civil court which having regard to the valuation of the suit has jurisdiction to hear appeal from the court to which the issue of title has been referred."

7. Sub-section (2) of this provision is clear that the civil court after reframing the issue, if necessary, shall decide such issue only and return the record together with its finding thereon to the revenue court which submitted it. This provision clearly shows that the finding of the learned Munsif (East), Allahabad, was not a decision, but only a finding. Sub-section (3) of section 332 of the U. P. Z. A. & L. R. Act provides that

"the revenue court shall then proceed to decide the suit, accepting the finding of the civil court on the issue referred to it".

This reinforces the conclusion that the civil court only records a finding and the suit is to be decided by the revenue court alone though it has to accept the finding of the civil court on the issue referred to it. Sub-section (4) of this provision provides that

"a decree of a revenue court in a suit or proceeding in which an issue regarding title has been decided by a civil court under Sub-section (2) shall lie to the civil court which having regard to the valuation of the suit has jurisdiction to hear appeal from the court to which the issue of title has been referred".

8. These provisions, therefore, clearly show that what the learned Munsif (East) had done on 24-7-1957 was to record a finding in respect of one particular issue and the suit had yet to be tried by the learned Assistant Collector 1st class.

9. The suit was never tried because of the village being notified for consolidation operations. That being the legal position, we are, with great respect, of the opinion that Oak J. was in error when he thought that the effect of the finding of the Munsif (East) Allahabad dated 24-7-1957 was to record a decision on the question of title.

10. A clear distinction has to be maintained, and in fact has been maintained by the U. P. Z. A. & L. R. Act between a finding and a decision or a decree. The finding of the learned Munsif by itself was not operative. It was not even appealable by itself. It cannot also operate as res judicata because the case in which the finding has been recorded has not been finally decided within the meaning of section 11, C. P. C. Actually it is not decided at all. It is well settled that there can be a bar of res judicata only if there is an executable judgment. (See AIR 1925 34 (Privy Council) . It is trite that the bar of res judicata flows not from a finding, but from a decision. In the present case the learned Munsif (East) Allahabad, had only recorded a finding and had not given a decision.

11. The words used in section 12 (4) of the Act are "and such question has not already been determined by a competent court". Determination connotes the idea of final determination and not a mere opinion or finding. The finding of the learned Munsif (East) could receive a binding effect only if the Assistant Collector decided the suit and passed a decree. Without the decision or the decree in the case, the finding remained a mere opinion. It is neither an order nor a decree. It can bind none nor can it be treated as a judicial and enforceable determination of a matter.

12. That being the position, we allow this appeal," set aside the judgment of Oak, J. dated 20-4-1962 and dismiss writ petition no. 3564 of 1958 with costs. We further direct that the Consolidation Officer shall give effect to the award given by the Arbitrator.