

(2004) 09 AHC CK 0204

Allahabad High Court

Case No: C.M.W.P. No. 9131 of 1983

Sheo Pujan

APPELLANT

Vs

Deputy Director of Consolidation
and Another

RESPONDENT

Date of Decision: Sept. 2, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226
- Succession Act, 1925 - Section 33
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 12, 48

Citation: (2005) 2 AWC 1265 : (2004) 97 RD 482

Hon'ble Judges: Krishna Murari, J

Bench: Single Bench

Advocate: A.S. Diwekar, for the Appellant; Ranjit Asthana and Swaraj Prakash, S.C., for the Respondent

Final Decision: Allowed

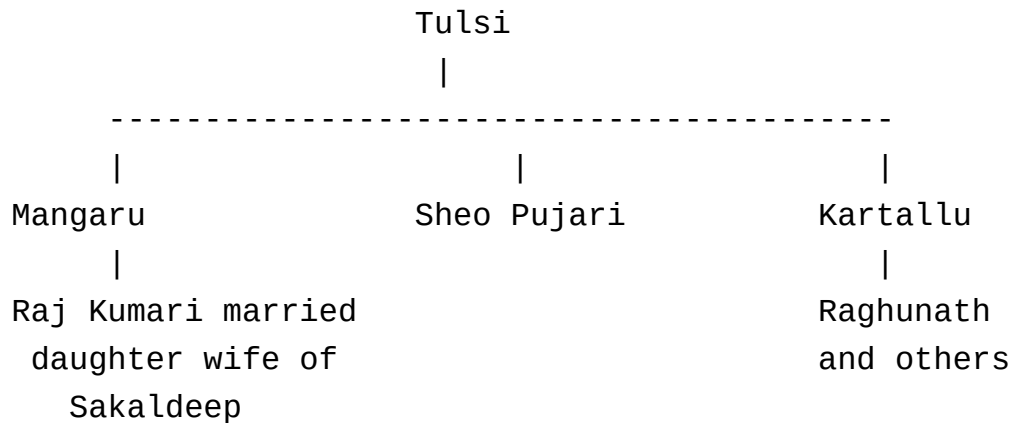
Judgement

Krishna Murari, J.

This writ petition filed under Article 226 of the Constitution of India is directed against the judgment of the Deputy Director of Consolidation dated 21.7.1983 allowing the revision filed by respondent No. 2 and setting aside the order passed by the Settlement Officer Consolidation as well as Consolidation Officer.

2. The facts are that during consolidation proceedings chak Nos. 210 and 161 were carved out in favour of one Mangaru s/o Tulsi. He died in 1975. After his death petitioner moved an application u/s 12 of the U. P. Consolidation of Holdings Act (hereinafter referred to as "the Act") for mutation of his name as a legal heir claiming himself to be the brother of deceased Mangaru. Two more applications were filed ; one by respondent No. 2 claiming mutation of her name as daughter of the deceased and another by one Raghunath claiming himself to be the son of the

brother of deceased. Both the aforesaid applications were moved on 24.10.1975. Undisputed pedigree of the parties is as follows :



3. The Assistant Consolidation Officer vide order dated 31.10.1975 allowed the application of the petitioner while application moved respondent No. 2 and Raghunath remained pending. Subsequently, respondent No. 2 as well as Raghunath moved applications dated 3.6.1976 and 22.6.1976 respectively for recalling the order dated 31.10.1975 passed on the application of the petitioner. For the first time in her recall application respondent No. 2 made a reference of a Will dated 23.2.1975 in her favour by deceased Mangaru. There was no whisper about this Will in her application dated 24.10.1975 filed u/s 12 of the Act. The said applications were dismissed by the Consolidation Officer vide order dated 7.2.1977 against which appeals were filed. The Settlement Officer Consolidation vide order dated 11.7.1977 allowed the appeals and remanded the matter back to the Consolidation Officer. After considering the claim of all the parties the Consolidation Officer vide order dated 17.3.1979 rejected the claim of respondent No. 2 as well as Raghunath. Feeling aggrieved contesting respondent No. 2 and Raghunath both filed appeals before the Settlement Officer Consolidation. The two appeals were consolidated and dismissed by the Settlement Officer Consolidation on 29.7.1981. Raghunath did not challenge the judgment of the Settlement Officer Consolidation and the same became final as against him. However, the contesting respondent No. 2 filed a revision which was allowed by the Deputy Director of Consolidation vide impugned judgment dated 21.7.1983.

4. I have heard Sri A. S. Diwekar, learned counsel for the petitioner and Sri Ranjit Asthana, learned counsel for the contesting respondent No. 2.

5. It has been contended by the learned counsel for the petitioner that the Consolidation Officer as well as the Settlement Officer Consolidation, the two fact finding authorities, after considering the evidence, adduced for proving the Will have recorded a finding that the Will was not genuine. The Deputy Director of Consolidation had no authority or jurisdiction to reassess the evidence himself and to disturb the finding of facts. It has further been contended that except where the

findings recorded by the Consolidation Officer and Settlement Officer Consolidation are perverse or without any evidence or totally against the weight of the evidence on record, the Deputy Director of Consolidation has no jurisdiction to reverse the finding of facts. In the present case, it has nowhere been pointed out by the Deputy Director of Consolidation in the impugned judgment that concurrent finding of facts recorded by the Consolidation Officer and Settlement Officer Consolidation are either perverse or against the weight of evidence on record. On the contrary the Deputy Director of Consolidation had reappraised the evidence and arrived at a different conclusion for which he had no authority or jurisdiction.

6. Sri Ranjit Asthana, learned counsel for the contesting respondent No. 2 has urged that in the facts and circumstances the Deputy Director of Consolidation after considering the entire evidence on record has rightly set aside the judgment of the Consolidation Officer and the Settlement Officer Consolidation and accepted the Will as genuine.

7. The Consolidation Officer after considering the oral evidence adduced by the contesting respondent No. 2 discarded the Will and disbelieved its validity. The said findings have been affirmed by the Settlement Officer Consolidation in appeal. Before the Consolidation Officer three attesting witnesses of the Will namely, Dudh Nath, Bhagwan Rai and Raghunath were produced to prove the Will. The contesting respondent No. 2 who is the beneficiary and her husband also appeared in the witness box. The Consolidation Officer has noted material contradictions in their statements. One of the marginal witnesses namely, Bhagwan Rai gave the date of death of Mangaru as 3.1.1975 whereas the Will is dated 3.2.1975. He also stated that at the time of execution of the Will only witnesses of the Will were present whereas appellant in her statement stated that apart from the witnesses many other people of the village were present. She has also stated that at the time of execution of the Will Bhagwan Rai was not present whereas he has been shown as marginal witness. The husband of the appellant also appeared in the witness box and stated that at the time of execution of the Will one Bajrangi Rai was present. Bajrangi Rai in his statement has stated that no Will was executed by deceased in favour of Raj Kumari. Taking into consideration these material contradictions in the statement of the witnesses, the Consolidation Officer came to the finding that the Will was not genuine and discarded the same. The appellate authority namely, the Settlement Officer Consolidation after discussing the entire evidence also came to the same conclusion.

8. The Deputy Director of Consolidation vide impugned judgment has held that minor contradictions in the statement of the witnesses do not affect the genuineness of the Will. He has further held that since deceased Mangaru had only one daughter as such it was natural for him to have executed the Will in her favour. The Deputy Director of Consolidation has failed to meet out the reasonings given by the Consolidation Officer and the Settlement Officer Consolidation for discarding

the Will while passing the order of reversal.

9. The law is very well settled that the mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement prescribed in the case of a Will by Section 33 of the Indian Succession Act. If there are suspicious circumstances, the conscience of the Court must be satisfied that the Will in question was executed and attested in a manner required by the provisions of the Indian Succession Act. If there are any suspicious circumstances about the execution of the Will, it is the duty of the person seeking declaration about the validity of the Will to dispel such suspicious circumstances. The Apex Court in the case of [Rani Purnima Devi and Another Vs. Kumar Khagendra Narayan Dev and Another](#), has observed that broad statement by the witness that he had witnessed the testator admitting execution of Will was not sufficient to dispel suspicion recording due execution and attestation of the Will. In the case of Smt. Guro v. Atma Singh and Ors. 1992 (2) AWC 1076, the Apex Court while noticing material contradictions in the statement of the witnesses produced to prove the Will, set aside the judgment of the High Court which had ignored the contradictory statement on the ground that lapse in the statement of the witnesses may be due to faulty memory and to avoid a criticism. It has been observed by the Apex Court as follows :

"Another significant feature which has been brushed aside by the High Court is about the role of respondent No. 1 in the execution of the Will under which he is the sole legatee. It has been stated by Manohar Lal, P.W. 1, that Tara Singh, the son of respondent No. 1 had come to call him. To the same effect is the testimony of Kehar Singh, P.W. 2 and Surjan Singh, P.W. 3, the attesting witnesses. The Will was executed outside the residence of respondent No. 1 on a bahi brought by Tara Singh, the son of respondent No. 1. The respondent No. 1 has made contradictory statements about his presence at the time of execution of Will. The High Court has ignored these contradictions in the statement of respondent No. 1, by a simple observation that this lapse on the part of respondent No. 1 may be due to faulty memory or may be he was trying to avoid the criticism that he has tried to exercise some influence to get the Will executed in his favour.....Taking into consideration the aforesaid features, we are of the view that the High Court was not justified in reversing the findings of the fact recorded by the appellate court that Will is not proved to be a genuine document executed by Ganga Singh and in holding that the execution of the Will had been satisfactorily proved by respondent No. 1."

10. In view of the law laid down by the Apex Court, it is clear that conscience of the Court must be satisfied about the genuineness of the will and the obligation is cast on the propounder of the will to dispel suspicious circumstances if any surrounding the Will.

11. The Consolidation Officer and the Settlement Officer Consolidation after considering the material contradictions in the statement of the witnesses came to

the finding that Will was not proved to be a genuine document. The Deputy Director of Consolidation on reappraisal of evidence reversed the findings recorded by the two courts below only on the ground that it was natural for the deceased to have executed the Will in favour of her only daughter ignoring the contradictions in the statement of the witnesses.

12. Now coming to the question whether the Deputy Director of Consolidation while exercising revisional power conferred by Section 48 of the Act can disturb the findings of fact recorded by the two fact finding courts by re-appraising the evidence himself. The Hon"ble Apex Court while, considering the scope of the powers of Deputy Director of Consolidation conferred by Section 48 of the Act in the case of *Ram Dular v. Deputy Director of Consolidation Jaunpur and Ors.* 1994 (Suppl) 2 SCC 198 has observed that in considering the correctness, legality or propriety of the order or correctness of the proceedings, the Deputy Director of Consolidation cannot assume the jurisdiction of the original authority as a fact finding authority by appreciating the fact de novo. He has to consider whether the legally admissible evidence has been considered by the authorities in recording of finding of fact or law or any patent illegality or impropriety has been committed or there was any procedural irregularity which goes to root of the matter.

13. Again the Apex Court in the case of [Sheo Nand and Others Vs. The Deputy Director of Consolidation Allahabad and Others](#), observed as follows :

"Normally, the Deputy Director of Consolidation in exercise of his powers is not expected to disturb the finding of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation) but where the findings are perverse, in the sense that they are not supported by the evidence brought on record by the parties or that they are against the weight of evidence. It would be the duty of Deputy Director to scrutinize the whole case again so as to determine the correctness, legality or propriety of the orders passed by the authority subordinate to him.

14. In the case of *Gayadeen (deceased) through L.Rs. and Ors. v. Hanuman Prasad and Ors.* 2001 (1) AWC 344 Hon"ble Apex Court has observed as follows :

"Thus, it is clear that notwithstanding the fact that Section 48 has been couched in wide term, it only permits interference where the finding of subordinate authority are perverse in the sense that they are not supported by the evidence brought on record or they are against law or where they suffer from vice or procedural irregularity."

In the present case, the Deputy Director of Consolidation has not pointed out anywhere that finding recorded by Settlement Officer Consolidation were perverse or contrary to the evidence or not supported by evidence. On the contrary the finding recorded by the Deputy Director of Consolidation are totally perverse and against the weight of evidence on record and based on surmises and conjectures.

15. In view of aforesaid discussions, the writ petition succeeds and is, allowed. The impugned order of the Deputy Director of Consolidation dated 21.7.1983 is quashed and that of the Settlement Officer Consolidation dated 29.7.1981 and Consolidation Officer dated 17.3.1979 are affirmed.

16. In the circumstances, there shall be no order as to costs.