

(2006) 07 AHC CK 0183

Allahabad High Court

Case No: None

Shiv Prasad

APPELLANT

Vs

Deputy Director of Consolidation
and Others

RESPONDENT

Date of Decision: July 18, 2006

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 3(4C), 8

Citation: (2006) 4 AWC 4141

Hon'ble Judges: S.N. Srivastava, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.N. Srivastava, J.

By means of this writ petition, the petitioner has assailed the order dated 19.5.2006, passed by the Deputy Director of Consolidation, Ghazipur setting aside order dated 26.6.1999 of Consolidation Officer passed on the basis of compromise dated 8.6.1999 as well as order dated 18.6.2003, passed by the Assistant Settlement Officer, Consolidation in Appeal whereby the matter was remanded to Consolidation Officer attended with direction to decide the matter on merits in accordance with law after affording opportunity of adducing evidence as also of hearing to the parties.

2. The facts beyond the pale of controversy are that the land in dispute was acquired by one Babu Lal , a common ancestor of all three branches of Hira Lal , Kamta and Moti. It would thus appear that all the three Branches inherited the property. It would further appear that some compromise-dated 8.6.1999 came to be entered into between the parties and on the basis of said compromise, the Consolidation Officer passed an order dated 26.6.1999 according approval to the compromise centring round the land situated in Villages Ramval, Khuthan, Suhwal and Brumua.

It further appears that by the said compromise instead of portioning out shares to the parties in accordance with law, the parties were given land on the basis of some family settlement allegedly entered into between the parties. An appeal preferred by Hari Shanker heir of Hira Lal on the ground that no such compromise was entered into and that someone impersonating himself as Hari Shanker was set up by the petitioner to obtain compromise attended with the relief that the order passed by the Consolidation Officer on the basis of compromise by which rights of opposite parties were affected in all the Villages be set aside. The Appellate authority by an order dated 18.6.2003 rejected appeal on the ground that the order was rightly passed on the basis of compromise entered into between the parties. A revision was also filed by Hari Shanker on the ground that the revisionist was entitled to get one third share in all the properties of Hira Lal including properties situated in Bengal and Madhya Pradesh and further the alleged compromise relied upon by petitioner was the outcome of fraud. In the ultimate analysis, revision was allowed by the Deputy Director of Consolidation, which order is impugned in the present petition. While allowing the Revision and remanding the matter to Consolidation Officer for deciding the same afresh, the Deputy Director of Consolidation recorded categorical findings to the effect that there was no date mentioned in the order-sheet of 8.6.1999 on which alleged compromise was claimed to have been entered into between the parties and verified; that the first date in the order sheet was 11.5.1999 and thereafter 19.6.1999 was the date fixed; that on 26.6.1999 order was passed by the Consolidation Officer on the basis of alleged compromise that the matter has been protracting since long; that the alleged compromise appears to be a forged compromise, which was entered into between the parties on the date on which case was not fixed and further that there was also nothing on record to show that how it was verified. Finally, it was held that the alleged compromise was not a lawful compromise entered into between the parties and in consequence the said compromise was set aside and the matter was remanded to determine the shares of the parties on merits in accordance with law after giving opportunity to adduce evidence and of hearing to the parties.

3. Heard learned Counsel for petitioner and learned Counsel for caveator-opposite parties as well as learned standing counsel.

4. Learned Counsel for petitioner urged that as the parties had arrived at a compromise filed before Consolidation Officer, it was not open for any of the party to retreat from the compromise even if it be assumed that the compromise was not entered into between the parties. He further urged that the finding recorded by the Deputy Director of Consolidation that the compromise was not signed by the parties, and further that it was forged and unlawful is wholly perverse and renders itself liable to, be set aside and the order passed by the Deputy Director of Consolidation is liable to be quashed. It was also urged that the share of the parties could only be determined on the basis of a family settlement entered into between the parties and the orders were rightly passed by the Consolidation Officer as well

as Assistant Settlement Officer, Consolidation in accordance with law according approval to the family settlement by way of compromise entered into between the parties before Consolidation Officer. It was finally urged that the order of Deputy Director of Consolidation remanding the matter is vitiated in law.

5. Per contra, learned Counsel for the caveator-opposite parties as well as learned standing counsel urged that compromise which is not lawful could not be relied upon by the Consolidation Officer. They urged that lawful compromise implies that it shall not be one militating to the provisions of law. It was further urged that right of a party or his share is defined in the statute and the compromise which is contrary to statute falls short of acceptability. It was further urged that in the present case Hari Shanker did not enter into compromise and the alleged compromise was entered into by setting up some one who Impersonated himself as Hari Shanker and affixed false signature posing it to be that of Hari Shanker on the date on which case was not fixed. The learned Counsel also alleged that the entire web of deceit was woven behind the back of opposite parties. Lastly, it was urged that the Deputy Director of Consolidation rightly set aside the compromise and lightly remanded the matter to decide the matter afresh in accordance with law.

6. In rejoinder to the above submissions, the learned Counsel for the petitioner asserted that the compromise was entered into between the parties on the basis of a settlement in the family and the shares of the parties were given due consideration including the rights/share of a party who had already executed sale deeds in favour of different persons were also taken note of while determining respective shares of the parties in the land in dispute and further that the finding that opposite parties did not enter into any compromise is perverse. It was also asserted that Hari Shanker himself was a party to the compromise and the orders of Consolidation Officer as well as Assistant Settlement Officer, Consolidation were set aside illegally by the Deputy Director of Consolidation.

7. I have bestowed my anxious considerations to the respective arguments of learned Counsel for the parties and have also perused the materials on record as well as relevant provisions of law on the point.

8. On the basis of pleadings and arguments of the parties, the first question that arises for consideration is whether under the U.P. Consolidation of Holdings Act a compromise could be entered into between the parties as contemplated under the C.P.C. at any stage in proceedings arising out of Section 9A(2) Section 11/Section 12/Section 21/Section 48 of the U.P. Consolidation of Holdings Act, secondly, whether title of the parties in the land which is creation of a statute could be determined on the basis of a compromise for exclusive title or for determination of share in a Joint holding and, thirdly, whether a person could be declared as Bhumidhar, Sirdar or Asami on the basis of a compromise in the proceeding under the U.P. Consolidation of Holdings Act or any other proceeding under the U.P. Zamindari Abolition and Land Reforms Act without any title in law.

9. Before delving into this question, I feel called to advert to certain provisions of U.P. Consolidation of Holdings Act. Section 3(4C) of the U.P. Consolidation of Holdings Act defines land, same is being reproduced as under:

3(4C) "Holding" means a parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holders.

Section 3(11) defines tenure-holder which runs as under:

3(11) Tenure-holder" means a (bhumidhar with transferable rights or bhumidhar with non-transferable rights), and includes:

(a) an asami,

(b) a Government lessee or Government grantee, or

(c) a co-operative farming society satisfying such conditions as may be prescribed.

10. Definition in Section 3(12) also makes it clear that "Words and expressions not defined in this Act but (used or) defined in the U.P. Land Revenue Act, 1901, but (used or) in the U.P. Zamindari Abolition and Land Reforms Act, 1950 shall have the meaning assigned to them in the Act in which they are so (used or) defined."

11. Under the U.P. Consolidation of Holdings Act, the procedure prescribed is that after spot verification, as required under the Act and the Rules, Consolidation Officer shall prepare a statement of principles u/s 8A as well as statement u/s 8 of the U.P. Consolidation of Holdings Act on verification of map and land record, thereafter, Record shall be published and the statement showing the mistakes (undisputed cases of succession) and disputes discovered during the test and verification of the record of right during the course of the field to field partial shall be published in the village. Any objection to that shall be filed on publication of record u/s 9 of the U.P. Consolidation of Holdings Act before Assistant Consolidation Officer disputing the correctness and nature of the entries in the record or in the extract furnished therefrom or in the statement of principles, or the need for partition. At the stage of Assistant Consolidation Officer, the only provision under which a compromise, by way of conciliation, could be entered into is Rule 25A of the U.P. Consolidation of Holdings Rules which is being reproduced below:

25A. Sections 9A, 9B and 9C. ♦ (1) The Assistant Consolidation Officer shall, as far as possible, deal with all the objections filed by a tenure-holder with regard to matters referred to in Clause (i) of Sub-section (1) of Section 9A and Sub-section (1) of Section 9B in village itself. In decided dispute on the basis of conciliation in terms of Sub-section (1) of Section 9A, he shall record the terms of conciliation in the presence of at least two members of the Consolidation Committee of the village. These terms shall then be read over to the parties concerned and their signatures or thumb impressions obtained. The members of the Consolidation Committee present shall also sign the terms of conciliation. The Assistant Consolidation Officer shall

then pass orders deciding the dispute in terms of conciliation specifying the precise entries to be made in the records. Details of the operative part of the orders passed by the Assistant Consolidation Officer shall be noted in the Misilband register. No ex parte order or orders in default shall be passed by the Assistant Consolidation Officer.

(2) In all cases In which the Assistant Consolidation Officer sends a report, under the provisions of Sub-section (2) of Section 9A, or Sub-section (1) of Section 9B to the Consolidation Officer for disposal, he may fix a date and place for the disposal of the cases by the Consolidation Officer and communicate the same to the parties present before him and issue notices in C.H. Form 6A to the parties not so present. The report of the Assistant Consolidation Officer in such cases clearly brings out the points in dispute between the parties and the efforts made by him to reconcile them.

12. The quintessence of the above rule, i.e., Rule 25A of the U.P. Consolidation of Holdings Rules at the risk of repetition is that at the stage of Assistant Consolidation Officer conciliation may take place in terms of Clause (i) of Sub-section (1) of Section 9A and Sub-section (1) of Section 9B and Assistant Consolidation Officer shall record terms of conciliation in the presence of two members of Consolidation Committee. The terms shall then be read over to the parties concerned and their signature and thumb impression shall be obtained. The members of Consolidation Committee shall also sign the terms of conciliation and then Assistant Consolidation Officer shall pass orders deciding dispute in terms of conciliation. The details of the operative part of the order passed by the Assistant Consolidation Officer, it is further envisaged in the Rule, shall be noted in the Misilband Register. No ex parte order or order in default shall be passed by the Assistant Consolidation Officer. All disputed cases received from the Assistant Consolidation Officer shall be entered in the Misilband Register in the office of the Consolidation Officer and the Consolidation Officer shall hear the parties, frame issues on the points in issue and take evidence and then decide the dispute. In the case of partition in case any objection is filed, the Consolidation Officer shall proceed with the partition, only after recording reasons in writing if he considers it in the interest of better consolidation.

13. There is no provision under the U.P. Consolidation of Holdings Act or Rules framed thereunder by which provisions of Order XXIII, Rule 3 of C.P.C. have been made applicable to consolidation proceedings. The intention of the Legislature while enacting U.P. Consolidation of Holdings Act was development of agriculture land as is eloquent from the preamble of the Act, 14. As stated supra, the only provision under the U.P. Consolidation of Holdings Act and the Rules framed thereunder for conciliation is Rule 25A. Rule 25A of the U.P. Consolidation of Holdings Rules, as discussed above, provides that a person could get his rights settled through conciliation in case his rights are recognized by a statute. A person cannot get any right settled or declared in conciliation proceedings under Rule 25A of the U.P.

Consolidations of Holdings Rules if his rights are not recognized by statute. The intention of Legislature while framing Rule 25A of the U.P. Consolidation of Holdings Rules clearly is that the parties may not be drawn into avoidable and unnecessary litigation relating to their legitimate rights created under U.P. Zamindari Abolition and Land Reforms Act and for correction of the entries in the revenue records. Intention of Legislature while enacting Rule 25A of the U.P. Consolidation of Holdings Rules is clear and a person cannot get any right under Rule 25A of the U.P. Consolidation of Holdings Rules which was never created and recognized by the statute under the U.P. Zamindari Abolition and Land Reforms Act on abolition of Zamindari or under any other subsequent amendment of U.P. Zamindari Abolition and Land Reforms Act. A tenure holder could get his legitimate right of cotenancy in case land was acquired by common ancestors or jointly by way of reconciliation. Similarly, if an entry in the joint name of a number of tenure holders is incorrectly recorded, parties may get the entry corrected by conciliation under Rule 25A of the U.P. Consolidation of Holdings Rules settling the matter/rights by mutual partition or by recognizing family settlement already taken place and already acted upon by the parties to get the entry corrected accordingly. But a tenure holder cannot get any exclusive right in a proceeding u/s 25A of the U.P. Consolidation of Holdings Rules unless such Rules are recognized by statute.

15. In *Kale and Ors. v. Deputy Director of Consolidation and Ors.* 1976 (2) RD 69 it has been held by the Apex Court that family arrangements acted upon by parties could be recognized by the consolidation authorities as family arrangement operates as estoppels against parties having taken benefit thereunder.

16. There is no provision under the U.P. Consolidation of Holdings Act for compromise at any of the stage of consolidation proceedings either under Sections 9A, 9B, 11, 20, 21 or Section 48 of the U.P. Consolidation of Holdings Act. Though under the U.P. Zamindari Abolition and Land Reforms Act, the provisions of C.P.C. are made applicable by virtue of Section 341 of the U.P. Zamindari Abolition and Land Reforms Act and in appropriate cases in the suits arising out of U.P. Zamindari Abolition and Land Reforms Act, a compromise could be entered into.

17. Under the U.P. Consolidation of Holdings Act, provisions of C.P.C. are not made applicable like Section 341 of the U.P. Zamindari Abolition and Land Reforms Act and as such there is no provision of compromise under the U.P. Consolidation of Holdings Act, but in order to secure interest of justice and cut short litigation, rights recognized by statute may be settled by mutual agreement before any Consolidation authority other than Assistant Consolidation Officer. Procedure prescribed under the C.P.C. are not applicable to consolidation proceedings, but if an agreement was entered into which was not contrary to the rights conferred by the U.P. Zamindari Abolition and Land Reforms Act such agreement in which all the parties including State Joined may be legitimately relied upon by the Consolidation authorities. Thus, a tenure holder who did not have any right under the statute

could not get any right by way of compromise or settlement.

18. Order XXIII, Rule 3 of the C.P.C. is being reproduced below:

3. Compromise of suit. ♦ Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties), or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit):

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reason to be recorded, thinks fit to grant such adjournment.

Explanation. ♦ An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

19. Since right of a tenure-holder in land is a creation of statute under the U.P. Zamindari Abolition and Land Reforms Act and these rights are declared or adjudicated by the Consolidation authorities for the area where the notification u/s 4 of the U.P. Consolidation of Holdings Act is made, only such statutory rights already in existence in favour of a person could be recognized through a lawful agreement or compromise in consolidation proceedings. A right which does not accrue to a person under the provisions of the U.P. Zamindari Abolition and Land Reforms Act or any other provision of law could not be recognized by any agreement or compromise in the Consolidation proceedings. Thus, it is held that if a person had no right under the statute any such right could not be recognized or admitted by a compromise or a new right could not be created through compromise or conciliation.

20. It is clear from the law laid down by the Apex Court in [Rana Sheo Ambar Singh Vs. Allahabad Bank Ltd., Allahabad](#), that Bhumidhari rights in all the estates vested in the State is a new statutory right under the U.P. Zamindari Abolition and Land Reforms Act. Relevant portion of the judgment is being reproduced below:

(7)... We are of opinion that the proprietary rights in sir and khudkasht land and in grove land have vested in the State and what is conferred on the intermediary by Section 18 is a new right altogether which he never had and which could not therefore have been mortgaged in 1914.

21. In view of the discussions made above, as in the present case there is no such family arrangement acted upon between the parties of which parties have taken

benefit as claimed by the petitioners, the Deputy Director of Consolidation rightly set aside the compromise and orders passed by the Consolidation Officer and the Assistant Settlement Officer, Consolidation. Finding recorded by the Deputy Director of Consolidation does not suffer from any error of law apparent on the face of record in holding that the compromise relied upon by petitioner was not lawful. Impugned order was rightly passed in accordance with law. The questions framed above are decided accordingly.

22. In the light of the discussions made above, writ petition has no force and is dismissed.

23. No order as to cost.