

(2004) 07 AHC CK 0189**Allahabad High Court****Case No:** C.M.W.P. No. 2948 of 2001

Radha Krishna and Others

APPELLANT

Vs

Brij Kishore and Others

RESPONDENT

Date of Decision: July 27, 2004**Acts Referred:**

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 4(2), 5(2)

Citation: (2005) 1 AWC 660 : (2004) 97 RD 282**Hon'ble Judges:** Krishna Murari, J**Bench:** Single Bench**Advocate:** Ajit Kumar and Mohit Kumar, for the Appellant; Tripathi B.G. Bhai, C.S.C., for the Respondent**Final Decision:** Dismissed**Judgement**

Krishna Murari, J.

The short question which arises for consideration, in this case, is whether, a suit where only a relief for permanent injunction has been claimed is liable to be abated by reason of Section 5 (2) of U. P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The facts relevant for the purpose of the case are that the plaintiff/respondent filed Original Suit No. 342 of 1990 in the Court of Civil Judge, Mathura, seeking a relief for permanent injunction to restrain the defendant/petitioner from interfering in his possession or from taking possession forcibly and raising any construction over the land in dispute. During the pendency of the proceedings an application No. 24-Ka was moved by defendant/petitioner No. 1 with a prayer that suit is liable to be abated u/s 5 (2) of the Act as the village where the land in dispute is situate has been notified for consolidation operations.

3. The trial court, vide order dated 21.4.1993, allowed the application and abated the suit. The plaintiff/respondents filed a revision challenging the said order. The

revisional court allowed the revision and set aside the order passed by the trial court which is under challenge in the present petition.

4. I have heard Sri Mohit Kumar holding brief of Sri Ajit Kumar, learned counsel for the petitioner and Sri Tripathi B. G. Bhai, appearing for the contesting respondent.

5. Sri Mohit Kumar, learned counsel for the petitioner has submitted that since a relief for injunction is based on title and for the purpose of granting such a relief the Court has necessarily to go into the question of title and interest of the plaintiff in the land in dispute, as such the suit is liable to be abated under the provision of Section 5 (2) of the Act. In support of the contention, he placed reliance on the following single Judge decisions of this Court. Smt. Barsatia v. District Judge, Ghazipur and Ors. 1984 ALJ 490 ; Narendra Pratap Saini v. Indra Mishra and Ors. 1989 RD 406 and [Rama Nand Vs. Lalita Sharma and Others,](#)

6. Learned counsel for the contesting respondent, on the other hand, contended that in any suit for injunction, simplicitor, where no relief, with regard to declaration of title has been sought, any finding, with regard to right, title or interest in the land is only incidental for the purpose of granting injunction. On the basis of allegations in the plaint and relief claimed therein, it has been vehemently urged by the learned counsel for the respondent that no relief with regard to declaration of title or interest in the suit property has been claimed, as such the provision of Section 5 (2) of the Act are not attracted in any manner. In support of his arguments, learned counsel for the respondent has placed reliance on the following decisions. [Banwari Lal and Others Vs. Tulsi Ram and Others,](#) ; Smt. Krishan Kumari v. Shiv Kumar 1987 RD 399 and [Kanchan Kumar Chaudhary Vs. District Judge, Mau and others,](#) .

7. Relying on the aforesaid decisions, it has further been urged by the learned counsel for the respondents that even if, the question of title in the suit property comes up for consideration before the civil court, it is only incidental for the purpose of granting injunction to the plaintiff and does not involve any adjudication of the title of the plaintiff. The moment, it becomes essential to adjudicate the right or title of the plaintiff on the basis of defence set up by the defendant, the suit would fail for want of relief of declaration. It has further, been argued that since, in the present case, the plaintiff has not claimed any adjudication or relief regarding his title over the land in dispute and as such the order passed by the revisional court, dismissing the application for abatement of the suit u/s 5 (2) of the Act is perfectly justified.

8. Section 5 (2) of the Act relevant for the purpose reads as under :

"(2) Upon the said publication the notification under Sub-section (2) of Section 4, the following further consequences shall ensue in the area to which the notification relates, namely :

(a) every proceedings for the correction of record and every suit and proceeding in respect of declaration or rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or , authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending stand abated."

Provided.....

Provided.....

9. This provision of the Act provides that upon publication of notification u/s 4 (2) of the Act certain type of suits or proceedings pending before any Court or authority shall abate.

10. Thus, it excludes the jurisdiction of the Court or authority which are otherwise, empowered to decide the said suit or proceedings. It is well-settled that a statute ousting the jurisdiction of a Court must be strictly construed as observed by the Apex Court, in the case of [Abdul Waheed Khan Vs. Bhawani and Others](#) .

11. A bare reading of Section 5 (2) of the Act indicates that kinds of cases liable to be abated upon publication of notification u/s 4 (2) of the Act are clearly specified, viz. ;

(I) Proceedings for correction of records,

(II) Suits or proceedings in respect of declaration of rights or interest in any land.

(III) Suits or proceedings for declaration or adjudication of any other right in regard to which proceeding can or ought to be taken under this Act.

12. The section being exhaustive will only apply to suits or proceedings specified therein, and no other. It cannot be stretched to bring within its ambit the suit or proceedings which the Legislature did not intend to abate on the on set of consolidation operations. Thus, unless the suit or proceedings fall within three above-mentioned categories, the jurisdiction of the Court or authority, otherwise, empowered to decide the same cannot be excluded or ousted.

13. In the background of the above, a careful examination of the allegations and relief claimed in the plaint (filed as Annexure-3 to the petition) makes it clear that only relief claimed is that of a permanent injunction to restrain the defendants from interfering in the peaceful possession of the plaintiff over the suit property and or to take forcible possession and raise any construction thereon.

14. Thus, suit as it stands, neither seeks any correction of record nor any declaration of rights or interest in the land, has been claimed. Suit for declaration of rights and interest in any land necessarily implies relief by way of declaration of the said rights in the land and unless a relief is claimed, the suit cannot be said to be one for

declaration of rights or interest in the land. No such relief having been claimed in the suit, it cannot be termed to be a suit in respect of declaration of rights or interest in the land. Further, under the scheme of the Act, since the authorities are not vested with any power to grant injunction, the suit cannot be termed as one for declaration or adjudication of any such rights in regard to which proceedings can or ought to be taken under this Act.

15. In the present case, the plaint as it stands does not fit in any of the three classes of suits or proceedings specified u/s 5 (2) of the Act which the Legislature intended to abate on the onset of consolidation operation. Any finding with regard to title or interest of the plaintiff in the property in such a suit for injunction will only be incidental for the purpose of granting injunction without any declaration of such rights of plaintiff in the land, and hence not liable to be abated.

16. The Apex Court in the case of Heera Lal and Anr. v. Carjan Singh and Ors. 1990 (1) CRC 466, while considering the question of jurisdiction of civil court and revenue court has held that in a suit for permanent injunction the question of title arises only incidentally, and it is the civil court which has exclusive jurisdiction to try such suits.

17. Now coming to the various decisions cited at the bar by counsel for the both the parties in support of their contentions, reference may be made to the Division Bench Judgment of this Court in the case of Banwari Lal (supra), wherein it was held that in a suit where plaintiff does not desire adjudication of his rights and the only relief claimed is that of injunction, and the suit is not of a kind which necessitates adjudication of rights before relief could be granted. Such a suit is not liable to abate. In the present case, also, no adjudication of right or title in the land has been claimed. The only relief claimed is that of a permanent injunction. Further, the case of Narendra Pratap Saini (supra) relied upon by the learned counsel for the petitioners is clearly distinguishable on facts as in the said case along with injunction a declaration was also sought with regard to mortgage deed of certain bhumidhari plots as void and not binding. The suit being one for declaration was covered under the provision of Section 5 (2) of the Act.

18. The case of Smt. Barsatia (supra), Narendra Pratap Saini (supra) and Bachchu Lal (supra) relied upon by the learned counsel for the petitioner has failed to consider the earlier Division Bench judgment in the case of Banwari Lal which was rendered in 1979. In any view of the matter, the ratio of the Division Bench Judgment is binding on single Judge. In an identical controversy same view has been taken by another single Judge, in the case of Kanchan Kumar Chaudhary Vs. District Judge, Mau and others, .

19. From the foregoing discussions, it is clear that a suit for permanent injunction filed by plaintiff/respondents is not covered under any of the three classes specified by Section 5 (2) and hence, is not liable to be abated.

20. The findings recorded by revisional court that suit filed by the plaintiff as only for relief of injunction and did not involve any declaration of the rights and title and hence not liable to be abated, does not suffer from any infirmity and are hereby affirmed.

21. In the result, the writ petition fails and is dismissed.

22. However, in the facts and circumstances of the case, there shall be no order as to costs.