

(1982) 05 AHC CK 0110

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 4439 of 1981

Udai Bahadur Singh and Another

APPELLANT

Vs

Dy. Director of Consolidation and
Others

RESPONDENT

Date of Decision: May 26, 1982

Acts Referred:

- Limitation Act, 1963 - Section 5
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 45A(2), 5(1), 9A(1), 9A(2)
- Uttar Pradesh Consolidation of Holdings Rules, 1954 - Rule 25A

Hon'ble Judges: K.N. Goyal, J

Bench: Single Bench

Judgement

K.N. Goyal, J.

In consolidation proceedings two chaks were allotted in favour of Smt. Isratul, opposite party No. 2. She sold one of them to the Petitioners under a sale deed dated 7-1-72. Based thereon a mutation application was given by the Petitioner. On that application, after the opposite party No. 2 is said to have admitted the fact of transfer, an order of mutation was passed by the Assistant Consolidation Officer (for short ACO) on 26-4-72. Against that order a time barred appeal was preferred by the opposite party. This was dismissed by the Assistant Settlement Officer Consolidation on 3-6-78 and the application of the opposite party for condonation of delay u/s 5 of the Limitation Act was also rejected. She then took the matter to the Deputy Director in revision. The Deputy Director held that there were sufficient cause for condonation of delay inasmuch as the Assistant Consolidation Officer had acted in violation of Rule 25-A of the rules made under the U.P. Consolidation of Holdings Act. Aggrieved thereby the Petitioners have come to this Court. They have further contended that the opposite parties had filed a suit for cancellation of the same sale deed on the ground of fraud, and that suit was dismissed by the Civil Court and even a second appeal against the dismissal was dismissed by this Court on 17-9-79, vide

Second Appeal No. 573 of 1979 Smt. Isratul v. Udai Bahadur Singh and Ors. It has further been contended that the decision in the Civil Suit operates as constructive res-judicata.

2. On behalf of the opposite parties the learned Counsel has urged that the alleged transfer was void u/s 45-A(2) of the Act inasmuch as it was executed only in respect of one of the two chaks of opposite party No. 2. It was not disputed that her entire holding was held under one tenure. Both the chaks were held under Bhumidhari tenure, and as the sale deed was only in respect of one chak, the transfer thereof without the permission of the Settlement Officer Consolidation was barred by Section 5(l)(c)(ii) of the Act. This plea was not expressly taken in the civil suit. It was only at the stage of appeal before the District Judge that the opposite party has sought to raise this plea by an amendment in the plaint. That application for amendment was, however, rejected by the Additional District Judge with the observation that it was open to the opposite party to raise any such plea before any authority before whom the Petitioners may seek to rely on the sale deed. In the circumstances, it is contended that the principle of res-judicata is not available to the Petitioners. The learned Counsel has also defended the order of the Deputy Director in regard to the alleged violation of Rule 25-A which is mandatory.

3. According to learned Counsel for the Petitioner, Rule 25-A was not attracted because the case before the ACO was not a contested case. It appears from the judgment of the court of Munsif that in her statement in the Civil Court the opposite party had admitted that she had appeared before the Assistant Consolidation Officer in the mutation case and had given her consent for the mutation of the name of the Petitioners in respect of the chak in question.

4. The first question that arises for consideration is whether in an uncontested case Rule 25-A does or does not apply. Section 9-A(1)(ii) lays down that the Assistant Consolidation Officer shall-

(ii) where no objections are filed, after making such enquiry as he may deem necessary, settle the dispute, correct the mistakes "and effect partition as far as may be by conciliation between the parties appearing before him and pass orders on the basis of such conciliation.

Sub-section (2) lays down that:

(2) All cases which are not disposed of by the Assistant Consolidation Officer under Sub-section (1) shall be forwarded by him to the Consolidation Officer, who shall dispose of the same in the manner prescribed.

5. Rule 25-A lays down that the Assistant Consolidation Officer in deciding the disputes on the basis of conciliation in terms of Sub-section (1) of Section 9-A, 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 but shall not pass any ex-parte order or orders in default.

6. A reading of the Section and of the rule referred to above shows that the language used in these two provisions[^] not quite happy. Where no objections are filed, there is really no "dispute" at all, and yet the Section says that the "dispute" shall be settled as far as may be by conciliation. The same language is repeated in Rule 25-A. It seems, thus, that the word "dispute" has been used in the Section and in the rule in a loose manner to cover all "cases". Even an uncontested case has been loosely described as a "dispute" in Rule 25-A and also in Sub-section (1) of Section 9-A in so far as the cases mentioned in Clause (ii) of that Sub-section are concerned. It will, therefore, be proper to apply Rule 25-A even in cases of admission. It is significant in this connection that the Assistant Consolidation Officer has not been given the power even to pass ex-parte orders or to pass an order in default. If he seeks to pass an order on the basis of admission, then also, it thus seems, he is required to observe the procedural safeguards laid down in Rule 25-A. This procedure was admittedly not followed in the instant case and as such the Deputy Director was justified in remanding case to the Consolidation Officer for decision in accordance with law.

7. So far as the other question, namely, that of res-judicata is concerned, it is not necessary to express any opinion thereon at this stage inasmuch as the matter is still at large before the consolidation authorities. Of course the consolidation authorities are bound by any decision in the Civil suit to the extent it is binding on the parties by the principles of res-judicata. On alleged fraud it is undisputedly binding. The controversy is as to whether the decision operates as res-judicata even in regard to the application of Section 45-A(2) of the Act or not? That question will be decided by the Consolidation Authorities in accordance with law.

8. The writ petition is accordingly, dismissed but no order is made as to costs.