

Raj Narain (D) through L.Rs. and Another Vs Deputy Director of Consolidation and Others

Court: Allahabad High Court

Date of Decision: Sept. 23, 2004

Acts Referred: Constitution of India, 1950 " Article 226

Registration Act, 1908 " Section 17(2)

Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 9

Citation: (2005) 2 AWC 1641

Hon'ble Judges: Krishna Murari, J

Bench: Single Bench

Advocate: Sankatha Rai, for the Appellant; Dhan Prakash and A.N. Misra, C.S.C., for the Respondent

Final Decision: Allowed

Judgement

Krishna Murari, J.

By means of the present writ petition, filed under Article 226 of the Constitution of India, the petitioner has challenged

the order dated 15.2.1973, 1.10.1973 and 16.2.19.74, passed by Consolidation Officer. Settlement Officer and Deputy Director of

Consolidation, respectively,

2. The dispute pertains to Khata No. 35. In the basic year it was recorded in the name of petitioners. and contesting respondent Nos. 4 and 5. An

objection u/s 9 of the U.P. Consolidation of Holdings /Act (hereinafter referred to as the Act), was filed by the contesting respondents claiming

2/3rd share in the khata in dispute.

3. To appreciate the facts and the controversy involved in the case, it would be helpful to notice the following pedigree.

Hulas Rai

|

|||

Zalim Singh Guru Sahai Sanehi Lal Shiv Sahai Lal

||| X

Sarjoo Prasad Krishna Charan Anandi Prasad

| alias Bachi Lal

X |-----| |

Raj Bahadur (R.4) Jang Bahadur (R.5) Rahas Bihari

|-----|-----|

Raj Narain (P.1) Prem Narain (P.2)

4. The contesting respondents claim 2/3rd share on the ground that Rahas Bihari pre-deceased Sarju Prasad, hence, his 1/3rd share was inherited

by them being nearest reversloner. This claim of the contesting respondents was contested by the petitioners on the ground that after the, death of

Sarju Prasad an oral family settlement took place between the parties under which the share of Sarju Prasad was allotted to them, exclusively. The

said family settlement was duly acknowledged by the parties in mutation proceedings by way of a compromise dated 13.4.1940. On the basis of

the said compromise an order dated 31.12.1940, was passed by the mutation court which was given effect in the revenue record and the parties

were put in possession over the respective shares, accordingly,

5. The Consolidation Officer vide order dated 15.2.1973, allowed the objection and held that contesting respondents were entitled to 2/3rd share

in the khata in dispute. Appeal as well as revision filed by the petitioners was dismissed by the Settlement Officer of Consolidation and Deputy

Director of Consolidation.

6. All the three consolidation courts have held the family settlement and order dated 22.12.1940, passed by mutation court is not binding on the

parties on the ground that the family settlement was in variance with the lawful share of the parties and was inadmissible in evidence for want of

registration. The Deputy Director of Consolidation, apart from above, also did not accept the compromise filed before the mutation court on the

ground that any consent or admission made during mutation proceedings have no relevance in regular title proceedings.

7. I have heard Sri Sankatha Rai appearing for the petitioners and Sri A. N. Mishra holding brief of Sri Dhan Prakash appearing for the

respondents.

8. It has been urged by the learned counsel for the petitioners that the family arrangement between the parties and order dated 31.12.1940, passed

by mutation court on the basis of the said family arrangement is binding and the consolidation authorities have wrongly ignored the same on the

ground that it was in variance with the legal shares and was inadmissible for want of registration. It has further, been contended that the Deputy

Director of Consolidation has wrongly and illegally held that consent or admission made during mutation proceedings have no binding effect. In

support of the contentions reliance has been placed on the judgment of the Apex Court in the case of Kale and Others Vs. Deputy Director of

Consolidation and Others, .

9, Rebutting the arguments of learned counsel for the petitioners, it has been contended on behalf of the respondents that mutation court have no

jurisdiction to decide the rights of the parties as the said proceedings are only for the purpose of making entries in the revenue records. It has been

further urged that any consent or admission made in mutation proceedings does not create or extinguish the rights of the parties.

10. I have considered the rival contentions advanced on behalf of the parties and gone through the record of the writ petition.

11. The purpose and object of a family settlement is to settle existing or future dispute between the members of the family. By virtue of a family

settlement or arrangement, members of a family descending from common ancestors or a near relation sink the differences and disputes and settle

their claims or disputed title in order to buy peace of mind and bring complete harmony and good will in the family. The consideration for such

settlement is the hope and expectation that it will result in establishing and ensuring amity and good will amongst the members of the family. In the

case of Ram Charan Das Vs. Girjanandini Devi and Others, , while, considering the concept of family settlement the Hon"ble Supreme Court has

observed :

Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future dispute regarding the

property amongst the members of a family. The consideration for such a settlement, if one may put it that way, is the expectation that such a

settlement will result in establishing or ensuring the amity and good will amongst the persons bearing relationship with one another. That

consideration having been passed by each of the disputants the settlement if one may put it that way, is the expectation that such a settlement will

result in establishing amity and good will amongst the persons bearing relationship with one another. That consideration having been passed by

each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter."".

12. In the case of Maturi Pullaiah and Another Vs. Maturi Narasimham and Others, , the Hon"ble Supreme Court has held that even the disputes

based upon ignorance of the parties as to the rights are sufficient to sustain the family arrangement. The Court made observation in the following

words :

It will be seen from the said passage that the family arrangement resolves family disputes and that even disputes based upon ignorance of the

parties as to their rights may afford the sufficient ground to sustain it.

13. In yet another decision, in the case of S. Shanmugam Pillai and Others Vs. K. Shanmugam Pillai and Others, , the Hon"ble Supreme Court has

observed as follows :

If in the interest of family property or family peace, the close relation has settled a dispute amicably, this Court will be reluctant to disturb the

same. The Courts generally lean in favour of family arrangement.

14. Thus, it is clear from the aforesaid decisions that Courts have always tried to uphold and maintain the validity of family settlement unless, it is

unfair, tainted by fraud and not bona fide. The idea underlying is that if by consent of the parties a dispute has been settled it should not be allowed

to be re-opened by, the parties to the said agreement on frivolous or untenable ground.

15. Since, the basic object underlying the transaction of a family settlement or compromise is to put an end to existing or future dispute between the

family members, it is always open for one member of the family to relinquish his/her share in part or in full in favour of the other member, i.e., one

may settle for a lesser share than what he/she may otherwise, be legally entitled to. The Hon"ble Supreme Court in the case of Sahu Madho Das

and Others Vs. Mukand Ram and Another, , observed as follows :

It is well-settled that a compromise or family arrangement is based on the assertion that there is an antecedent title of some sort in the parties and

the agreement acknowledges and defines what that title is, each party relinquish all claims to the property other than that falling to his/her share and

recognizing the right of the others, as they had previously asserted it, to the portion allotted to them respectively.

16. There is another aspect of the matter. The parties to a compromise are bound by estoppel as well. The principle of Estoppel prevents the

parties to resile from the compromise or to revoke it after having taken advantage of the same. The Hon"ble Apex Court in a number of decisions

has approved this principle. In the case of Dhiyan Singh and Another Vs. Jugal Kishore and Another, , while, discussing the doctrine of Estoppel,

the Hon"ble Apex Court has held that even if any award made is invalid, the persons who are parties to it are estopped from challenging the same

or from going behind the said award in a subsequent litigation.

17. In the case of T.V.R. Subbu Chetty's Family Charities v. M. Raghava Mudaliar and others AIR 1961 SC 797, the Hon"ble Supreme Court

has ruled that if a person having full knowledge of his right as reversioner enters into a transaction which settles his claim at the relevant time, he

cannot be permitted to go back on that arrangement. He cannot be permitted to resile from the compromise and claim any right inconsistent with

the one embodied in the compromise.

18. In the case of Kale and Others Vs. Deputy Director of Consolidation and Others, , the Hon"ble Supreme Court reiterated the applicability of

doctrine of Estoppel in matters relating to family settlement made following observations :

The Courts have generally held that a family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties

after having taken advantage under the arrangement to resile from the same or try to revoke it.

19. In the present case, the litigating parties entered in an oral family arrangement after the death of Sarju Prasad and acknowledged the said oral

settlement by filing a compromise in mutation proceedings. Now it is not open to the contesting respondents to resile from the same on the ground

that it is in variance with their lawful share. The contesting respondents having abandoned their claim in pursuance of the settlement between the

parties, it is not open for them to assert the said right in any subsequent proceedings. It is well-settled that between the parties to a compromise,

the title of each party prior to compromise cannot be set up to defeat a title acquired under the said compromise or settlement. The finding of the

consolidation courts that family settlement and compromise being in variance with the lawful shares of the parties, is not binding, is illegal and

cannot be sustained.

20. The further view taken by consolidation authorities that family settlement and the compromise being unregistered were inadmissible in evidence

for want of registration is also untenable. The Hon"ble Apex Court in the case of Kale v. Deputy Director of Consolidation (supra) has

summarized the law on the subject in the following words :

(1) The family settlement must be bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of

properties between the various members of the family ;

(2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence ;

(3) The family arrangement may be even oral in which case no registration is necessary ;

(4) It is well-settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a

distinction should be made between document containing the terms and recitals of a family arrangement made under the document and a mere

memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the Court for

making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore

does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable ;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the

property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement

the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title

must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same ;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair

and equitable the family arrangement is final and binding on the parties to the settlement.

21. Another reason given by the Deputy Director of Consolidation for rejecting the family settlement or compromise on the ground that any

consent or admission made in mutation proceedings have no relevance in the regular title proceedings also cannot be sustained In view of the

decision of the Hon"ble Apex Court in the case of Kale v. Deputy Director of Consolidation (supra). In the said case, a compromise based on a

family settlement filed in mutation proceedings was held to be binding between the parties and it was further held that the consolidation authorities

cannot go behind the same and upset the family arrangement.

22. In view of the aforesaid settled legal position, there is no room for doubt that family settlement between the parties even though it is in variance

of the lawful share and is unregistered, is still binding on the parties and the consolidation courts cannot go behind the same.

23. On the careful consideration of the facts and circumstances of the case and settled law on the subject, the orders passed by the consolidation

authorities are legally erroneous and cannot be sustained. The writ petition stands allowed. The Impugned judgment "" of the Consolidation Officer

dated 15.2.1973, the Settlement Officer of Consolidation dated 1.10.1973 and the Deputy Director of Consolidation dated 16.2.1974, are

hereby quashed. The objections filed by the contesting respondents u/s 9 of the Act stands dismissed.

24. However, there shall be no order as to costs.