

(2012) 04 AHC CK 0189**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 83 of 1977

Sri Krishana and Others

APPELLANT

Vs

Deputy Director of
Consolidation, Basti and Others

RESPONDENT

Date of Decision: April 9, 2012**Acts Referred:**

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 9A(2)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 161

Citation: (2012) 5 ADJ 690 : (2012) 5 AWC 4641**Hon'ble Judges:** Sanjay Misra, J**Bench:** Single Bench**Advocate:** B.L. Yadav and S.L. Yadav, for the Appellant; K.N. Tripathi, S.P. Singh and C.S.C, for the Respondent**Final Decision:** Dismissed**Judgement**

Sanjay Misra, J.

Heard Sri S.L.Yadav, learned counsel for the petitioners, Sri S.Pratap Singh, learned counsel who appears on behalf of the respondent Nos. 3 and 4 and learned Standing Counsel for the respondent Nos. 1 and 2. The petitioners are aggrieved by the order dated 23.6.1973 passed by the Assistant Settlement Officer, Consolidation, Basti and the order dated 30.10.1976 passed by the Deputy Director, Consolidation, Basti, wherein the appeal of the respondents No. 3 and 4 has been allowed by the Settlement Officer, Consolidation and the revision filed there against by the petitioner has been dismissed.

2. Sri S.L.Yadav, learned counsel for the petitioners has submitted that the plots in question are situate in Khata No. 45 in village Saraiya, Pargana Nagar West, District Basti and were recorded in the basic year in the name of the petitioners as also the respondent Nos. 3 and 4. The plots were purchased by the petitioners where Girja

Prasad the brother of respondent Nos. 3 and 4 executed a registered sale-deed dated 23.6.1964. By another registered sale-deed executed by the petitioners on the same day in favour of the respondents the land of the village Barhni Pargana Nagar West District Basti was sold by the petitioners to the respondent Nos. 3 and 4 through their brother Girja Prasad. He submits that in effect, it was not an exchange of holdings between the petitioners on the one side and the respondent Nos. 3 and 4 and their brother Girja Prasad on the other side since sale-deeds were executed and as such the Settlement Officer, Consolidation and the Deputy Director, Consolidation could not hold that the respondent Nos. 3 and 4 would continue to have shares in the Khata No. 45 and the Consolidation Officer had rightly expunged the name of the respondent Nos. 3 and 4 from the land and had recorded the name of the petitioners, who are purchaser of the land in question.

3. The other submission is that in case the respondent Nos. 3 and 4 were minors at the time when the sale-deed dated 23.6.1964 was executed by their brother they ought to have challenged the sale-deed within three years of attaining majority, which they have not done and hence the impugned orders expunging the name of the petitioners and holding that the respondent Nos. 3 and 4 are owners of the land in question is illegal.

4. Sri S.P. Singh, learned counsel for the respondent Nos. 3 and 4 has contested the submission made on behalf of the petitioners and states that the respondent Nos. 3 and 4 were minors when their brother Girja Prasad executed the sale-deeds in 1964. He submits that no cancellation of sale-deed was required at the instance of respondent Nos. 3 and 4 because no permission from the District Judge had been taken before transferring the property of the minors and further it was an exchange of land of one village from land of another village hence, the permission from Sub-Divisional Officer u/s 161 of the U.P.Z.A. & L.R. Act was a must. In the absence of permission u/s 161 of the U.P.Z.A. 8B L.R. Act, the sale-deeds could not be upheld by the Consolidation Authority.

5. Having considered the submission of learned counsel for the parties and perused the record, the Consolidation Officer in Case No. 186/4575 u/s 9-A (2) of the U.P. Consolidation of Holdings Act by his order dated 15.1.1973 has directed the expunction of the name of the respondent Nos. 3 and 4 from the plots in dispute comprised in Khata No. 45 and has directed the name of the petitioners who are purchasers to be recorded therein. The Consolidation Officer had framed two issues; the first being whether, the respondent Nos. 3 and 4 i.e. Bhagauti and Badri Prasad sons of Mukt Nath are fraudulently recorded in the revenue record over the land in question since they have transferred the same to the petitioners by registered sale-deed in 1964 and the second issue was whether, Mst. Kevti Devi has re-married and hence would not be entitled to claim any share in the land alienated to the petitioners.

6. While considering the issue No. 1, the Consolidation Officer has found that the respondent Nos. 3 and 4 were minor and their brother Girja Prasad was Karta of the family. The sale-deed executed on 26.3.1964 by Girja Prasad was for the benefit of minors and the petitioners had also executed a sale-deed dated 23.6.1964 in favour of Girja Prasad with respect to land of another village. The Consolidation Officer found that in view of the sale-deed dated 23.6.1964, the name of the respondent Nos. 3 and 4 in the revenue record of the basic year was a fraudulent entry and hence it was required to be expunged.

7. The respondent Nos. 3 and 4 when they came to know about the expunction of their names from the revenue record, they preferred an Appeal No. 2713 before the Settlement Officer, Consolidation. The Settlement Officer, Consolidation considered both the sale-deeds executed by the petitioners in favour of Girja Prasad and that execution by Girja Prasad in favour of the petitioners and found that the respondent Nos. 3 and 4, Bhagauti and Badri Prasad were minor when the sale-deeds were executed relating to Plots in Khata No. 45 and no permission from the District Judge had been taken by Girja prasad to be appointed as a natural guardian of the minors and no permission was taken to transfer the share of the minors in the land in question. The Settlement Officer, Consolidation also found that the sale-deeds reflected an exchange of land between the petitioners and Girja Prasad and if it was an exchange then permission u/s 161 of the U.P.Z.A. & L.R. Act was must and that having not been taken before such exchange, therefore, the same cannot be accepted as binding on respondent Nos. 3 and 4.

8. Feeling aggrieved, the petitioners preferred a Revision No. 1199 before the Deputy Director, Consolidation, Basti which revision has also been dismissed on 30.10.1976, whereby he has affirmed the finding of the Settlement Officer, Consolidation hence this writ petition.

9. From the pedigree shown in paragraph 4 of the writ petition, it appears that Gaya Deen had two sons the first was Achyute and other was Manna. The respondent Nos. 3 and 4 namely Bhagwat Prasad and Badri Prasad as also their elder brother Girja Prasad are from the branch of Achyute and the petitioners are from the branch of Manna. From the record, it appears that the descendant Girja Prasad of the branch of Achyute and the petitioners from the branch of Manna sought to exchange land in two villages by the sale-deeds, therefore, they executed the sale-deeds in favour of each other. Insofar as that is concerned, there is no reason why this Court should record any finding as to whether it was an exchange between the two branches and when it was a direct sale having no relation with Section 161 of the U.P.Z.A. & L.R. Act for the purpose of seeking permission of the Sub-Divisional Officer, more particularly when the transfer has been made by registered sale-deeds. There was no document of exchange executed between the two branches.

10. Insofar as the finding recorded by the Settlement Officer, Consolidation and the Deputy Director, Consolidation to the effect that the respondent Nos. 3 and 4 namely Bhagwat Prasad and Badri were minors and their elder brother Girja Prasad on the basis of the sale-deeds got the name of the petitioners recorded in the revenue record and the name of the respondent Nos. 3 and 4 was got expunged by him from the land in question is itself a clear evidence that Girja Prasad sold the share of the minors illegally and even if a plea of exchange is considered the petitioners have got their names entered in the land of the minors who were recorded in the basic year. Therefore, when the minors" name were recorded in the basic year then on the basis of a sale-deed executed by their brother in the other village is a transfer of the minors" share and that share has been taken away by their brother Girja Prasad without permission of the District Judge.

11. The finding recorded by the Settlement Officer, Consolidation and the Deputy Director, Consolidation that no permission was taken by Girja Prasad from the District Judge to act as natural guardian of the minors and no permission was taken by Girija Prasad from the District Judge to sell the land of the minors is in accordance with law and facts. The aforesaid finding is in accordance with law and there is no evidence in this writ petition to indicate that the permission for getting appointed as natural guardian and for alienating the share of the minors was ever taken by Girija Prasad when he executed the sale-deed dated 23.6.1964 in favour of the petitioners.

12. The Consolidation Officer has found that the entry of the name of the minors in the Khatauni of the basic year over some plots in khata No. 45 were forged. This finding is clearly based on the basis of the sale-deeds and mutation of the name of the petitioners by order of the Sub-Divisional Officer. The Consolidation Officer has failed to consider that minors" share had been alienated under the said sale-deed illegally. The Settlement Officer, Consolidation and the Deputy Director, Consolidation have therefore, found that Girija Prasad had executed the sale-deed in favour of the petitioners and in effect alienated the share of the minors from the land in dispute because he got another sale-deed executed from the petitioners in his favour in another village where the minors were not given their share equivalent to the plots sold, therefore, exchange, if any, would not effect the rights of the minors over their shares in the property in question.

13. Insofar as the question that the minors ought to have proceeded for cancellation of sale-deed when they attained majority and since they did not file any proceeding for cancellation of sale-deed is concerned, the said issue is squarely covered by the Full Bench decision in the case of Ram Padarath and others v. Second Additional District Judge, Sultanpur and others, 1989 RD 21, which has been affirmed by the Apex Court. In Ram Padarath's case the Full Bench clearly held that the suit in respect of a void document will normally lie before the Civil Court and the parties cannot be deprived of their right in getting this relief which is permissible in law. But

the Full Bench carved out an exception where it held that except when a declaration of right or status of a tenure holder is necessarily needed in which event relief for cancellation of sale-deed will be surplusage and redundant.

14. In the present case admittedly the respondent Nos. 3 and 4 were recorded over the land in question in Khata No. 45 in the basic year. The Consolidation Officer on the application of the petitioners, who are subsequent purchasers, expunged the names of respondent Nos. 3 and 4 from the revenue record on 15.1.1973. It was then that respondent Nos. 3 and 4 who were recorded in the basic year required a declaration of their rights and status over the land in question and the cause of action arose for them on 15.1.1973, therefore, they preferred an appeal which has been ultimately decided in favour of the respondent Nos. 3 and 4 and hence the respondent Nos. 3 and 4 were not required to file a suit for cancellation of the sale-deed since they were not recorded in the revenue record after 15.1.1973. When the names of the respondent Nos. 3 and 4 were expunged illegally by the Consolidation Officer on 15.1.1973 their rights were therefore, required to be declared which has been done by the impugned judgments.

15. Therefore, the submission of learned counsel for the petitioners that the respondent Nos. 3 and 4 ought to have filed an action for cancellation of sale-deed within three years after attaining majority cannot now succeed in the consolidation proceeding. The submission is totally misconceived and the law laid down by the Full Bench in Ram Padarath's case is fully applicable. When the name of respondent Nos. 3 and 4 was expunged they were no more recorded in revenue record hence they were not required to file any action for cancellation of the sale-deed relating to plots in Khata No. 45 but had to get a declaration of their title over them. The writ petition has no merit and it is accordingly dismissed. The order dated 23.6.1973 passed by the Assistant Settlement Officer Consolidation, Basti and the order dated 30.10.1976 passed by the Deputy Director Consolidation, Basti impugned in the writ petition are affirmed and should be given effect forthwith without any further delay. No order is passed as to costs.