

(2012) 07 AHC CK 0265**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 44389 of 2007

Zamindar Prasad and Others

APPELLANT

Vs

Hawaldar and Others

RESPONDENT

Date of Decision: July 6, 2012**Acts Referred:**

- Limitation Act, 1963 - Section 5
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 49, 9
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 229B

Citation: (2013) 1 ADJ 193**Hon'ble Judges:** A.P. Sahi, J**Bench:** Single Bench**Advocate:** Satendra Kumar Singh, A.K. Srivastava, A.N. Singh and C.P. Mishra, for the Appellant; Abhishek Kumar, Anuj Kumar, P.K. Dwivedi, Hari Om Gupta and C.S.C., for the Respondent**Final Decision:** Disposed Of**Judgement**

A.P. Sahi, J.

Heard learned counsel for the petitioners Sri. Satendra Kumar Singh and Sri. Abhishek Kumar for the respondent Nos. 1 to 4 and the learned Standing Counsel for the respondents 6 and 7. Two rejoinder-affidavits have been filed today are taken on record. This writ petition arises out of a disputed compromise alleged to have been entered into between the father of the petitioners namely late Ram Dutt and the father of the contesting respondents late Ram Deo in Original Suit No. 53 of 1977.

2. The background in which the dispute arose and as is evident from the pleading of the parties, as well as the documents brought on record, is that a suit is said to have been filed by Ram Dutt father of the petitioners for a declaration u/s 229-B of the U.P. Z.A. & L.R. Act, 1950 in relation to the holdings in question that they are joint

holdings of Ram Dutt and his brother Ram Deo. The petitioners further allege that another suit was filed by Ram Deo himself being Original Suit No. 52 of 1977 seeking the same declaration in relation to the disputed holdings.

3. It is undisputed between the parties that the agricultural holdings in question were subject-matter of consolidation proceedings prior to the filing of the said suits, which had already been concluded and the Khatas and separate Chaks had already been allotted to Ram Deo and Ram Dutt respectively and the records of settlement had been finalised accordingly.

4. According to the petitioners since the said bifurcation of the Khatas and the Chaks were concluded unknowingly and the holdings still remained joint, therefore, the necessity arose for filing of the aforesaid two suits by Ram Deo and Ram Dutt to restore the joint status of the holdings.

5. According to the petitioners, two separate applications for compromise were filed in both the suits indicating that a compromise had already been entered into which was sought to be recorded through the said applications and it was prayed that the decree be passed accordingly. The said applications were disposed of separately in terms of the compromise and the petitioners allege that the verification of the compromise was done through the respective counsel of the parties and on the basis of the Vakalatnama filed which is on record. The petitioners allege that the compromise was valid and genuine and was consciously entered into and the decree of compromise was further given effect to in the revenue records through mutation.

6. It is further the case of the petitioners that acting upon the revenue extract so prepared subsequently late Ram Deo had further utilized the same for other purposes which clearly indicates that he was well informed and had complete knowledge about the said compromise having been entered into and the decree passed on the basis thereof.

7. Sri. Satendra Kumar Singh submits that once the compromise was entered into and even acted upon then there was no occasion for filing an application for setting aside the compromise after 25 years that to even without moving an application for condoning the delay u/s 5 of the Indian Limitation Act. The application for recall and setting aside of the compromise was moved in Original Suit No. 53 of 1977 only by late Ram Deo himself who was a defendant in the suit. It is the said application for recall of the compromise that has been allowed by the trial Court on the ground that the evidence which has been led by the parties does indicate that the said compromise was an outcome of fraud and misrepresentation and accordingly the compromise decree has been set aside and the suit has been restored to its original number and is pending trial.

8. It is to be noticed that the compromise which was allegedly entered into in Suit No. 52 of 1977 that still remains intact and in the said suit no application has been

filed by either of the parties for either setting aside the same or for any orders thereon.

9. Sri. Singh submits that the suits had been filed on account of the error which had occurred during consolidation operations and therefore it was in order to restore the joint status of the holdings that the suit was filed and was maintainable. He further contends that the compromise was genuine and having been acted upon, the surrounding circumstances as well as the documents filed by the petitioners, left no room for doubt that the application for setting aside the compromise was motivatedly filed at a very belated stage and after a lapse of 25 years at the instance of the sons of late Ram Deo who are the present respondents with a view to avoid the compromise entered into by their father. He therefore submits that the trial Court committed a manifest error by not appreciating the evidence in correct perspective and the burden lay on the contesting respondents to prove that the thumb impressions and the verifications as contained in the compromise application and Vakalatnama in respect thereof were fraudulent, which burden was not discharged by the respondents, and hence the impugned order has been passed by wrongly shifting the burden on the petitioners. He therefore submits that the entire circumstances as narrated and the evidence brought on record did not warrant any exercise of discretion by the trial Court to set aside the compromise decree in view of the law laid down in Kale and Others Vs. Deputy Director of Consolidation and Others . He submits that the compromise decree ought not to be ordinarily upturned as it brings about an end to the dispute of the parties and therefore in view of the law laid down as indicated hereinabove, the trial Court ought not to have altered the position under the judgment and decree that was passed in the year 1977.

10. Refuting the aforesaid submissions Sri. Abhishek Kumar for the contesting respondents submits that the entire compromise was a clear outcome of fraud, and the allegation that the application for setting aside was moved by the answering respondent is absolutely incorrect and without any basis and the same was moved by the father of the answering respondent during his lifetime himself. He contends that the allegations contained in the applications for setting aside the compromise were specific and categorical and once Ram Deo had denied his thumb impressions and having engaged any counsel for filing of the compromise application in Suit No. 53 of 1977, then the onus clearly shifted on the petitioners to have led evidence to prove the contrary. He contends that direct evidence in relation to the thumb impression of Ram Deo was very much available according to the case of the petitioners themselves, but they did not make any attempt to lead any such evidence or make a prayer before the trial Court for obtaining expert opinion thereon. In the circumstances, the trial Court has not committed any error in disbelieving the circumstances which were explained by the petitioners to demonstrate that the compromise had been given effect to.

11. He contends that so far as the other suit No. 52 of 1977 is concerned the answering respondents were nowhere affected by the decree relied upon by the contesting respondents, inasmuch as, it is the case of the answering respondents clearly to the effect that whatever was sought to be stated in the said suit by the petitioners or their predecessor in interest had no concern with the share of the answering respondents which stood finalised and settled with the conclusion of the consolidation operations. He contends that the petitioners deliberately did not indicate the conclusion of the consolidation operations in the plaint of their suit as the same would have attracted the clear bar of Section 49 of the U.P. Consolidation of Holdings Act, 1953.

12. He further submits that the counsel for Sri. Ram Dutt, namely, Suraj Nath Lal could not have identified the signatures of Ram Deo and he could not have been engaged as counsel for both the parties which is a circumstance clearly indicating that late Ram Dutt had manipulated the Vakalatnama of Jagdish Prasad Lal and Suraj Nath Lal Advocates in a manner so as to receive all the benefits under the judgment and decree for himself. The father of the answering respondents, according to Sri. Abhishek Kumar had never consented to engage either Sri. Suraj Nath Lal or Sri. Jagdish Prasad Lal as counsel. He further submits that any such verification by both these counsel was therefore absolutely immaterial and irrelevant as they had no authority on behalf of late Ram Deo to enter into any such compromise or verifying the same. He further contends that once the matter had been finalised during consolidation operations there was no occasion for filing of another suit to upset what has been settled during consolidation.

13. He further contends that the allegation of the implementation of the decree in the revenue records is of no avail, inasmuch as, if the revenue records were being maintained as alleged by the petitioners then any entry made on the basis of a fraudulent compromise would not confer any benefit to the petitioners once it is established that the compromise was an outcome of fraud. The entry is only an evidence of the alleged possession of the parties and there was no dispute with regard to the possession of the answering respondents over the disputed holding. In such circumstances reliance being placed on the entry which was made subsequent to the alleged compromise cannot in any way affect the title of the answering respondents or their predecessor in interest which had already been concluded during consolidation operations and which could not have been upturned on the basis of a fraud as alleged in the application moved for setting aside the compromise.

14. Learned counsel has further submitted that the manner in which the Vakalatnama has been prepared and filed alongwith the said application for setting aside the compromise also indicates that the same was manipulated with the tampering of the title of the parties and upon scoring out the same. This according to the learned counsel is another manipulation which indicates the fraud having

been perpetrated to usurp the property which has already been divided and the respective shares had been allotted during consolidation operations. He therefore contends that in the aforesaid background the conclusion drawn by the trial Court for disbelieving the evidence as led by the petitioners is fully justified and the revisional Court also did not commit any error in rejecting the revision filed by the petitioners as fraud vitiates all solemn proceedings.

15. Sri. Abhishek Kumar further contends that the plea of limitation was taken in the application and the contention of the petitioners that no separate affidavit explaining the delay of 25 years was filed is a hyper technical argument and reliance is placed on the decision of the Apex Court in the case of Bhagmal and Others Vs. Kunwar Lal and Others, . He also relies on the judgment of a learned Single Judge in the case of Abdul Karim Vs. Deputy Director of Consolidation and Others, , to substantiate his submission that no separate application for condoning the delay is required.

16. Sri. Satendra Kumar Singh contends that in the absence of any appropriate explanation about the delay or there being any separate application for the same, the aforesaid judgments do not come to the aid of the learned counsel for the respondents.

17. Sri. Abhishek Kumar has further urged that the bar of Section 49 was clearly attracted and the suit itself was not maintainable for the relief claimed, for which reliance is placed on the case of Ram Pal Singh Vs. Khandey and Others .

18. Having heard learned counsel for the parties, the first issue is relating to the bar of Section 49 under the U.P. Consolidation of Holdings Act, 1953. The bar would certainly be attracted where the cause of action disclosed in a subsequent proceeding after close of consolidation operations is in relation to a dispute that might or ought to have been raised during the consolidation operations or the cause of action which arose during consolidation operations.

19. In the instant case this issue has to be assessed keeping in view the fact that the holdings had already been bifurcated under the orders passed by the Consolidation Officer u/s 9 of the U.P. Consolidation of Holdings Act, 1953 and was recorded in the final consolidation operations of the village. Thus, if the issue relates to a wrong bifurcation or an incorrect order having been passed by the Consolidation Authorities then the remedy of an aggrieved party is to either file a restoration application before the same Court where the order was passed or by filing an appeal against the order of the Consolidation Officer. If the cause of action is disclosed to have occurred later on that is after the close of consolidation operations and some new desire is expressed or a new relief is claimed on a subsequent cause of action that did not exist before, then in that view of the matter the previous conclusion of the consolidation operations would not be a bar and therefore the provision of Section 49 would not be attracted.

20. This Court will not comment upon the aforesaid aspect of the matter at this stage any further as the suit has already been restored and is pending trial before the trial Court which issue can be raised by either of the parties during the trial.

21. The question of limitation will not arise where the allegation is of having no knowledge of the fraud perpetrated. The non-disclosure of the exact date of knowledge and not filing of a separate application for condonation would not impede the passage of the Court in setting aside a fraudulent order. If the fraud is discovered and established then it is the duty of the Court to rectify the same.

22. The question therefore which has to be seen by this Court is only in relation to the alleged compromise and the application moved for setting aside the same moved by late Ram Deo. The trial Court has found that Ram Deo had categorically denied either filing of the compromise application or having entered into any such compromise. A perusal of the application also indicates that Ram Deo had categorically stated that some impostor had been set up for filing of the said application and that neither the Vakalatnama bears his thumb impression nor had he engaged any counsel for entering into a compromise. In view of this categorical stand taken in the application the first and foremost burden on the petitioners was to establish that the thumb impression of late Ram Deo as contained in the Vakalatnama or the compromise application was genuine for which as argued by learned counsel Sri. Satendra Kumar Singh evidence was already available in the shape of a compromise application in the connected Suit No. 52 of 1977 and a subsequent sale-deed said to have been transacted in the year 2003 by Ram Deo and Ram Dutt jointly.

23. Sri. Singh contends that if this evidence was available then it was the burden of the Court to have proceeded to allow the parties to have led evidence in this regard.

24. In the opinion of the Court, the burden of denying the compromise and denying the thumb impression has been discharged by Ram Deo through his clear averment in the application and affidavit filed in support thereof. The onus therefore shifted on the petitioners to have led evidence to establish that the thumb impression of Ram Deo as contained in the compromise application was genuine. The petitioners did not move any application for expert evidence. The thumb impression of late Ram Deo therefore practically went uncontested by the petitioners. The petitioners could have prayed for leading of an expert evidence or establish the same on the strength of the plaint of Suit No. 52 of 1977 that is alleged to have been verified by late Ram Deo himself. In the opinion of the Court, once this burden was not discharged by the petitioners then neither the trial Court nor the revisional Court can be said to have committed any error by concluding that the allegations made by Ram Deo were correct.

25. However, in the aforesaid background where the evidence according to the petitioners is still available, the petitioners will still have an opportunity during the

trial of the suit to establish as to whether the plaint of Suit No. 52 of 1977 which was allegedly filed by Ram Deo had been verified by putting his thumb impression or not.

26. In the circumstances, the findings arrived at by the trial Court and the revisional Court on the issue relating to the compromise would not be an impediment or passage for the petitioners to proceed to lead any further evidence on this aspect during the trial of the suit and therefore it shall be open to the petitioners to do so for which they shall have (sic) opportunity during the trial of the suit itself. This in the opinion of the Court would allow the petitioners to establish the veracity or otherwise of the contention that the suit had been filed by Ram Deo or not.

27. Accordingly, in view of the aforesaid reasons and the observations made hereinabove, this Court is not inclined to interfere with the impugned order at this stage and it shall be open to the parties to raise their contentions accordingly and contest the dispute as observed hereinabove. The writ petition is disposed of accordingly.