

(2010) 07 AHC CK 0476**Allahabad High Court****Case No:** C.M.W.P. No. 6068 of 1992

Bhagwan Dei

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision: July 2, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 11
- Evidence Act, 1872 - Section 44
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 10, 11, 12, 12(2), 4(2)
- Uttar Pradesh Land Revenue Act, 1901 - Section 34
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 209, 229B

Citation: (2011) 1 AWC 657**Hon'ble Judges:** Prakash Krishna, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

Prakash Krishna, J.

This is a second round of litigation in the High Court. The only point mooted presently is whether the issue sought to be raised by the Plaintiff-Respondent herein is barred by Section 11 of Code of CPC or not. The background facts may be noticed in brief:

2. Bhairon Bux was the recorded tenant of the revenue land which is subject-matter of the present litigation. The Petitioner is the daughter of Bhairon Bux. Bhairon Bux died long ago before the date of vesting i.e., 1.7.1952 leaving behind him his widow Smt. Samudra Devi who after about two years of death of Bhairon Bux, remarried with one Ram Nath. Bharat Lal, Respondent No. 4 herein is son of Samudra Devi and Ram Nath. Smt. Samudra Devi succeeded to the property of Bhairon Bux and her name it is admitted, was recorded in the revenue record and continued to be so even after her remarriage with Ram Nath. The village wherein the agricultural land

lay was notified u/s 4(2) of U.P. Consolidation of Holdings Act hereinafter referred to as the Act. No objection disputing the right, title and interest of Smt. Samudra Devi over the land in dispute was filed and accordingly chak was carved out in her name. When the consolidation proceedings were going on in the village, Smt. Samudra Devi died in the year 1977. After her death a dispute arose in between the Petitioner and Bharat Lal (hereinafter referred as Plaintiff). Both these persons filed applications for recording their names in place of Smt. Samudra Devi. These applications were numbered separately before the Assistant Consolidation Officer. According to the Petitioner, a compromise was arrived at in between the Petitioner and the Plaintiff, wherein the Plaintiff agreed that the land in dispute may be recorded in the name of the Petitioner. The said compromise application is dated 7.12.1977 and signed by the Plaintiff. The signature of Plaintiff was verified by his counsel Shri Ram Bahadur Singh, advocate on 10.1.1978 and the order was passed consequently on 18.1.1978 by the Consolidation Officer.

3. The Plaintiff Bharat Lal instituted Suit No. 33/74 of 1986-87 before the Sub Divisional Magistrate u/s 229B/209 of U.P.Z.A and L.R Act for declaration of his rights over the disputed plots, eleven in numbers, on the pleas inter alia that the alleged compromise was not signed by him and therefore, the order was obtained from the Consolidation Officer by playing fraud and as such it is not binding on him ; he being the son of Smt. Samudra Devi and Ram Nath inherited the property in dispute and is in occupation thereof ; that against the order dated 18.1.1978 passed by the Consolidation Officer, he preferred an appeal before the Settlement Officer of Consolidation which was dismissed as barred by time.

In the written statement, the Petitioner, came out with the case that during the life time of Smt. Samudra, the village came under the Consolidation Operation and after death of Smt. Samudra, a compromise was arrived at in between the Petitioner and Plaintiff himself and an order was passed by the consolidation officer on the basis of the said compromise, which is binding on the Plaintiff. The compromise application was signed by the Plaintiff and was verified by his counsel Shri Ram Bahadur Singh. It was further pleaded that suit is barred by Section 49 of U.P.C.H. Act.

4. On the basis of the pleading of the parties, number of issues were struck and one of the issue was whether the suit is barred by res judicata or not. It was issue No. 9. The trial court by the order dated 21.12.1989, without giving any reason, opined that the suit is not barred by Section 11 of Code of CPC and fixed the next date in the suit for further progress. The said order was carried in revision being Revision No. 20 of 1990 by the present Petitioner before the Additional Commissioner, Allahabad Division, Allahabad who dismissed it on 16.7.1970 which has been confirmed further by the Board of Revenue in Revision No. 82 of 1989-90 by the impugned judgment dated 14.11.1991.

5. Shri V.D. Ojha, learned Counsel for the Petitioner submits that in view of the earlier decision by the Settlement Officer of Consolidation dated 11.4.1979 in Appeal

No. 588/37, Bharat Lal v. Bhagwan Deen and Ors. holding that the compromise application contains the signature of Plaintiff (Bharat Lal) and it was verified by his counsel namely Shri Ram Bahadur Singh, the suit is barred by Section 11 of the Code of CPC It was further submitted that against the order of Settlement Officer of Consolidation, a Writ Petition No. 2513 of 1981, Bharat Lal v. Deputy Direction of Consolidation, was preferred before this Court which too was dismissed on 16.7.1981. The submission is that in the earlier litigation between the parties, it was decided that the compromise application contains the signature of Bharat Lal, Plaintiff, it is no longer open to reagitate the same issue by way of filing the suit giving rise to the present writ petition. Elaborating the argument, it was submitted that in view of the judgment of the Apex Court in *Malkhan Singh v. Sohan Singh* 1985 RD 336, the decision given by the consolidation authority will operate as res judicata in view of Section 12 of the U.P. Consolidation of Holdings Act.

6. In contra, the learned Counsel for the Plaintiff submits that a judgment or decree based on compromise is not a decision of a Court and therefore, cannot operate as res judicata. In other words, there is no adjudication by a Court in the cases of consent or compromise decree. Reference was made to the Apex Court decision in Pulavarthi Venkata Subba Rao and Others Vs. Valluri Jagannadha Rao and Others, . It was further submitted that in view of Section 44 of the Evidence Act, a judgment obtained by fraud or collusion does not operate as res judicata. Asharfi Lal Vs. Smt. Koili (dead) by L.Rs., and A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, were relied upon.

7. Considered the respective submissions of the learned Counsel for the parties and perused the record.

8. In the present case, the fact that Smt. Samudra Devi was earlier married to Bhairon Bux and after death of Bhairon Bux re-married with Ram Nath, the Petitioner is daughter of Bhairon Bux and that Plaintiff is the son of Samudra Devi and Ram Nath, are not in dispute. It is not disputed that land in dispute was recorded in the name of Smt. Samudra Devi at the time of her death which took place when the village was under consolidation operation. It is also not in dispute that the Petitioner as well as the Plaintiff had applied for recording of their names before the Consolidation Authority after the death of Smt. Samudra Devi which took place in the year 1977. The Consolidation Officer passed the order in accordance with the compromise application, ordering the recording of the name of the Petitioner. It is also not in dispute that against the said order of the Consolidation Officer, a belated appeal was preferred by the Plaintiff before the Settlement Officer of Consolidation and delay in its filing was not condoned and the order of the Settlement Officer of Consolidation was challenged by the Plaintiff before this Court in the writ petition referred to above which has been dismissed.

9. On these facts which are not in dispute, the question of applicability of res judicata is in issue.

10. The only dispute raised by the Plaintiff-Respondent herein is that he did not sign the compromise application and any order obtained on the basis of the said compromise is result of fraud and as such is not binding, on him.

11. The contention of the Petitioner on the other hand is that the issue as to whether the compromise was signed by the Plaintiff was raised by him and was decided before the Settlement Officer of Consolidation who held that it was signed by the Plaintiff and it was also verified by his counsel.

12. Section 12 of the U.P.C.H. Act as substituted by U. P. Act VIII of 1963 reads as follows:

12. Decision of matters relating to changes and transactions affecting rights or interests recorded in revised records : (1) All matters relating to changes and transfers affecting any of the rights or interests recorded in the revised records published under Sub-section (1) of Section 10 for which a cause of action had not arisen when proceedings Under Sections 7 to 9 were started or were in progress, may be raised before the Assistant Consolidation Officer as and when they arise, but not later than the date of notification u/s 52, or under Sub-section (1) of Section 6.

(2) The provisions of Sections 7 to 11 shall mutatis mutandis, apply to the hearing and decision of any matter raised under Sub-section (1) as if it were a matter raised under the aforesaid sections.

13. The above section came up for consideration before the Apex Court in the case of Malkhan Singh (supra). After noticing the changes brought by the substituted section, the Apex Court held that Sections 7 to 11 of the Act deal with the rights and title of the tenure holder and by the application of these provisions to the proceedings u/s 12 in matters too for which cause of action had arisen subsequently will make the decision a decision of title. It has clarified that the position prior to the amendment of 1963 was different as there was no provision for the adjudication of rights title of a tenure holder.

14. On the facts of the present case, it may be noticed that after death of Smt. Samudra Devi, before the denotification of the village u/s 52 of the Consolidation of Holdings Act, a dispute had arisen in between the Petitioner (daughter of Bhairon Bux) and Bharat Lal (Plaintiff) with regard to the succession and inheritance of the disputed land left by Smt. Samudra Devi, deceased, u/s 12 of the Act. The matter was referred to the Consolidation Officer for adjudication, before whom a compromise application purported to be duly verified and signed by the parties was filed. The Consolidation Officer ordered the recording of the name of the Petitioner. Consequently, the name of the Petitioner was recorded. In other words, the application filed by the Plaintiff for recording his name met with no success in view of the fact that under the terms of compromise, he agreed that the name of the petitioner may be ordered to be recorded. The Plaintiff kept quiet over the matter. Subsequently, he preferred a belated appeal before the Settlement Officer of

Consolidation Officer disputing his signatures on the said compromise. The issue thus before the Settlement Officer of Consolidation was whether the compromise contains the signatures of the Plaintiff or not. The evidence was led by the parties and the Plaintiff examined himself. His counsel Ram Bahadur Singh, advocate was also examined. The Settlement Officer of Consolidation by his order dated 11.4.1979 considered the evidence on record and reached to a definite conclusion, after taking note of signatures of Ram Bahadur Singh, advocate on the order sheet dated 2.1.1978 and 10.1.1978 that the compromise was signed by the Plaintiff which was verified by his counsel Shri Ram Bahadur Singh, advocate. The writ petition was dismissed against the said order. The order on the writ petition reads as follows:

It is not a fit case for interference with the impugned judgment when the Petitioner allegedly has entered into a compromise and a counsel has identified his signature. I do not see any good ground to interfere.

The writ petition is dismissed.

15. It, therefore, follows that issue as to whether the compromise was signed by the Plaintiff or not was raised earlier before the consolidation authorities and was decided on merits by them. The said issue now cannot be permitted to be raised again in view of Section 11 of Code of CPC. The consolidation authorities were not only competent but were obliged to decide all the issues relating to right, title and interest of the parties which had arisen after the name of Smt. Samudra Devi on account of her death, but before the date of notification u/s 52 of the Act as provided for u/s 12 of the Act. The Apex Court in the case of Malkhan Singh (supra) has held that a decision given in such fact situation will be a decision u/s 12 of the Act and it will be decision on the rights, title and interest of the parties. On such decision no other Court can adjudicate upon subsequently, as provided u/s 49 of the Act.

16. Looked from another angle, it was open to the Plaintiff to have kept the track of his objections/application for recording his name in place of Smt. Samudra Devi. Even if the compromise in question is put aside, for the sake of the argument, the fact remains that during the consolidation operation, the name of the Plaintiff was not ordered to be recorded. In this regard, the Plaintiff could or ought to have taken proceedings under the Consolidation of Holdings Act before the consolidation authorities but he failed to do so. In view of Section 49 of U.P.C.H Act, the jurisdiction of civil or revenue court to entertain any such suit or proceeding with respect to rights in the disputed land is barred. Although issue relating to bar by Section 49 is a separate issue to be decided in the suit, but the fact remains that the Plaintiffs claim in the suit will be barred by constructive res judicata if for a moment, the compromise in question is put apart. u/s 11 of Code of CPC also, vide Explanation IV to Section 11, any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have a matter directly and substantially in issue, in such suit. Looked from any angle, this Court is

of the considered opinion that the present suit is barred by res judicata.

17. The trial court without recording any reason, proceeded with the case that Section 11 of Code of CPC is not applicable. The first appellate court proceeded to answer it on wrong footing that the proceeding before the consolidation authorities were in the nature of mutation proceedings. It overlooked amended Section 12 of the U.P.C.H. Act and failed to notice that there is a material difference in between mutation proceedings and proceeding u/s 12 of the Act. Mutation proceeding as envisaged by Section 34 of U.P. Land Revenue Act is subject to regular suit, which is not so far as decision given u/s 12 of the Act is concerned. The position of decision u/s 12 of the Act is just reverse. Decision given u/s 12 of the Act bars subsequent suit before a regular court, civil or revenue. A decision given u/s 12 is not a mere mutation order but is a final order deciding finally title of the parties to the proceedings. In other words, a decision u/s 12 of the Act is a decision on the basis of the title. The above view finds support from Section 12(2) of the Act which provides that such proceeding shall be decided in accordance with the provisions of Sections 7 to 11 of the Act. Therefore, the order of the first appellate court being contrary to the decision of the Apex Court in the case of Malkhan Singh (supra) cannot be approved.

18. The basis of the judgment of the Board of Revenue is that if a judgment is obtained by fraud, the said judgment will not operate as res judicata. It has not even cared to glance at the very basis which was available on the record i.e., the order of the Settlement Officer of Consolidation and the judgment of the High Court in the writ petition. It further appears that the attention of the Court was not brought to the provisions of Section 12 of the Act.

19. It may be noticed that the sole contention of the Plaintiff is that the compromise application was not signed by him, a fact which has not been accepted to be correct by the Settlement Officer of Consolidation. This being so, obviously the plea of fraud vanishes.

20. As noticed hereinabove, there is absolutely no explanation on the part of the Plaintiff to come out of grip of Section 12 of the U.P.C.H. Act. The fact remains that he was aware about the death of Samudra Devi as also the fact that the village was under consolidation operation at the relevant point of time and that the Petitioner's name was ordered to be recorded by the consolidation authorities. The order of the consolidation authorities cannot be challenged subsequently by the Plaintiff as he was well aware of the same. In other words he was aware about the true state of affairs and in this fact situation plea of fraud cannot be put forward. He should have taken appropriate steps to get his name recorded by invoking Section 12 of the Act which he failed to do so.

21. The decisions relied upon by the learned Counsel for the Plaintiff are besides the points and are not applicable to the facts as obtained herein. They were rendered

under a different factual matrix. A compromise decree may not operate as res Judicata but if the said compromise was sought to be assailed in appeal, on the ground that it was not signed by one party, and the Court comes to the conclusion as found herein, that it was signed by all the parties, the present suit will be barred by res judicata.

22. In view of above discussions, I find sufficient force in the petition and the impugned orders cannot be sustained. The writ petition, therefore, succeeds and is allowed. The impugned orders are hereby set aside and it is held that the suit is barred by res judicata and it is accordingly dismissed with costs of Rs. 5,000 (five thousand) payable by the Plaintiff to the Petitioner's heirs.