

## Bhooley Vs Anjeet and Others

**Court:** Allahabad High Court

**Date of Decision:** Oct. 3, 2013

**Citation:** (2013) 121 RD 532

**Hon'ble Judges:** Ram Surat Ram (Maurya), J

**Bench:** Single Bench

**Advocate:** Dinesh Kr. Rai and Rakesh Pande, for the Appellant; Ram Surat Saroj, for the Respondent

### Judgement

Ram Surat Ram (Maurya), J.

Heard Sri Rakesh Pande and Sri Dinesh Kumar Rai for the petitioner and Sri Ram Surat Saroj for the

respondents. The writ petition has been filed for quashing the orders of Deputy Director of Consolidation dated 1.8.2013 and Settlement Officer,

Consolidation dated 26.11.2010, passed in title proceedings, under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. Ram Vati widow of Rikkhan and Natthu son of Bhullu (father of the petitioner) were bhumidhar of plot No. 372 (area 2-9-0 bigha) of village

Gunpura, pargana Dankaur, district Buland Shahar. They executed a sale-deed dated 15.7.1978 of the land in dispute in favour of Ranjeet, Baljeet

and Sarjeet (the respondents). On the basis of sale-deed executed by Ram Vati Devi and Natthu dated 15.7.1978, the names of the respondents

were mutated over the land in dispute, by the order of Naib Tahsildar dated 10.9.1981. In basis consolidation records, the names of the

respondents were recorded over the land in dispute, in khata 91. During partial, the petitioner raised a dispute that he had 1/2 share in the land in

dispute. It is alleged that the conciliation proceeding was taken before Assistant Consolidation Officer on 17.4.1999, in which the respondents

agreed for recording the name of the petitioner over 1/2 share in the land in dispute. The Assistant Consolidation Officer recorded conciliation

proceeding which was signed/thumb marked by the parties and two members of the consolidation committee. The Assistant Consolidation Officer,

therefore, passed the order dated 17.4.1999 and directed for recording the name of the petitioner over 1/2 share in the land in dispute.

3. The respondents filed an objection (registered as Case No. 81) u/s 9A(2) of the Act, on 5.8.1999, for deleting in the dispute, as noted in CH

Form-5, regarding 1/2 share of the petitioner, in the land in dispute and declaring their 1/3 share each over it. The petitioner filed an objection that

the dispute in respect of the land in dispute was raised during partial and conciliation proceeding has taken place between the parties before

Assistant Consolidation Officer, on the basis of which, Assistant Consolidation Officer, by order dated 17.4.1999 directed for recording the name

of the petitioner over 1/2 share and remaining 1/2 share was directed to be recorded in the names of the respondents. As the order has already

been passed by Assistant Consolidation Officer as such the objection of the respondents before Consolidation Officer was not maintainable. The

matter was heard by Consolidation Officer, who by order dated 26.3.2003 found that as in respect of the property in dispute, the order has been

passed by Assistant Consolidation Officer on 17.4.1999, as such, fresh objection was not maintainable. On this findings objection of the

respondents has been dismissed.

4. The respondents then filed two appeals (registered as Appeal Nos. 91 and 134) from the orders of Assistant Consolidation Officer dated

17.4.1999 and Consolidation Officer dated 26.3.2003. In the memorandum of appeal, the respondents stated that the order of Assistant

Consolidation Officer dated 17.4.1999, allegedly based upon conciliation proceeding, was against the provisions of Rule 25-A of the Rules and

was void. They never appeared before the Assistant Consolidation Officer and in their absence, compromise was shown, which was not accepted.

They further stated that Ram Vati Devi and Natthu (previous owners of the land in dispute), had executed the sale-deed on 15.7.1978 in favour of

the respondents and were left with no right in the land in dispute, Assistant Consolidation Officer wrongly gave 1/2 share to the petitioner in the

land in dispute. On the basis of the sale-deed dated 15.7.1978, the names of the respondents were also mutated by the order dated 12.10.1981,

in the revenue record. Both the appeals were consolidated and decided by Settlement Officer Consolidation, Gautam Budh Nagar, who by order

dated 26.11.2010 held that Ram Vati Devi and Natthu were recorded as bhumidhar of plots 37 and 372 in khatauni 1389-1394 F. Ram Vati

Devi and Natthu (previous owners of the land in dispute) have already sold the land in dispute to the respondents, through sale-deed dated

15.7.1978 and the names of the respondents were also mutated, on the basis of sale-deed, by the order of Naib Tahsildar dated 10.9.1981. The

names of the respondents were recorded over the land in dispute in khata 91, in basic consolidation records. A perusal of the order of Assistant

Consolidation Officer shows that he gave 1/2 share in the land in dispute to the petitioner, although, the petitioner had no right over the land in

dispute. A perusal of the record shows that no notice was given to the parties, fixing any date for their appearance nor the conciliation proceedings

allegedly recorded by Assistant Consolidation Officer bears any date. On these findings, the orders of Assistant Consolidation Officer dated

17.4.1999 and Consolidation Officer dated 26.3.2003 were set aside by order dated 26.11.2010 and the land in dispute was directed to be

recorded in the names of the respondents, holding their 1/3 share each.

5. The petitioner filed a revision (registered as Revision No. 17) from the aforesaid order. In the memorandum of revision, the petitioner raised the

grounds that the order of Assistant Consolidation Officer dated 17.4.1999 was passed on the basis of compromise which has been signed by the

respondents as well as two members of the consolidation committee. Natthu had not transferred the land in dispute, rather his signature was

procured on the sale-deed executed by Ram Vati Devi, as a witness and not as the transferor. The case of the respondents was based on a

fabricated document as such they agreed before the Assistant Consolidation Officer for getting the names of the petitioner recorded over 1/2 share

of Natthu. The conciliation proceeding were duly recorded by the Assistant Consolidation Officer which was signed by the parties and two

members of the consolidation committee. Assistant Consolidation Officer passed order on its basis on 17.4.1999, against which, a time barred

appeal was filed on 4.8.2003. There was no ground for condoning the inordinate delay. The compromise before Assistant Consolidation Officer

was in accordance with law. The respondents did not deny their signatures over the compromise, in the memorandum of appeal. The order dated

17.4.1999 was not liable to be set aside. The revision was heard by Deputy Director of Consolidation, who by order dated 1.8.2013 found that

Ram Vati Devi and Natthu had executed the sale-deed dated 15.7.1978, in respect of the land in dispute and the names of the respondents were

mutated by the order of Naib Tahsildar in the year 1981. Assistant Consolidation Officer has illegally, without looking to the aforesaid evidence,

has passed the order dated 17.4.1999. The name of Bhooley was wrongly recorded over the land in dispute by the order dated 17.4.1999,

although his father has sold the land in dispute. The respondents could not adduce any evidence to show that his father has not executed sale-deed

dated 15.7.1978, as such, no interference is required in the order of Settlement Officer Consolidation. On these findings the revision has been

dismissed. Hence, this writ petition has been filed.

6. The Counsel for the petitioner submits that the respondents never denied their signatures on the compromise which was counter-signed by two

members of the consolidation committee. Neither Deputy Director of Consolidation nor Settlement Officer Consolidation recorded any findings

regarding the compromise being invalid. The order of Assistant Consolidation Officer dated 17.4.1999, which was based upon compromise, could

not be set aside without setting aside the compromise, which was duly recorded by Assistant Consolidation Officer and was signed by the parties

as well as two members of consolidation committee, according to the provisions of Rule-25-A. The respondents merely made a vague allegations

that the compromise was not recorded according to Rule 25-A of the Rules, although the compromise was fully in accordance with the provisions

of Rule 25-A of the Rules. He submits that the petitioner has clearly denied that the sale-deed was not executed by his father Natthu, due

execution of the sale-deed was not proved. Deputy Director of Consolidation and Settlement Officer Consolidation have illegally based their

judgments on the sale-deed dated 15.7.1978.

7. I have considered the arguments of Counsel for the parties and perused the record. In the memorandum of appeal, (filed on page 60 of the writ

petition), the respondents have stated that the order of Assistant Consolidation Officer dated 17.4.1999, allegedly based upon conciliation

proceeding, was against the provisions of Rule 25-A of the Rules and was void. They never appeared before Assistant Consolidation Officer and

in their absence, compromise was shown, which was not accepted. Thus, the respondents have denied their signatures on the compromise. This is

merely a bad drafting of the Counsel, The respondents have clearly stated that they never appeared before Assistant Consolidation Officer and in

their absence, compromise had been procured. The arguments that the compromise has been challenged by the respondents is not liable to be

accepted.

8. The other arguments of the Counsel for the petitioner that the order of Assistant Consolidation Officer which was based upon compromise

could not be set aside without setting aside the compromise is also not liable to be accepted. Settlement Officer Consolidation in its judgment (on

page 67 of the writ petition) found that a perusal of the record had shown that no notice was given to the parties, fixing any date for their

appearance nor the conciliation proceedings allegedly recorded by Assistant Consolidation Officer bears any date. Rule 25(c) of the Rules caste a

duty upon the Assistant Consolidation Officer to issue a notice in CH Form-5-B along with CH Form-5. Proforma of the notice of CH Form-5-B,

grants 21 days time for filing objection against the dispute recorded in CH Form-5 or any other dispute. The tenure holders are required to be

given at least 21 days time after service of the notice upon them for filing objection and their appearance before Assistant Consolidation Officer. It

is only then the stage of Rule 25-A of the Rules comes. While recording a findings that no notice was given to the parties, fixing any date for their

appearance nor the conciliation proceedings allegedly recorded by Assistant Consolidation Officer bears any date, the Settlement Officer

Consolidation was in fact, recorded a finding that conciliation proceeding allegedly signed by the parties is a fabricated document and order dated

17.4.1999 passed on its basis was not a genuine order and accordingly the order dated 17.4.1999 was set aside.

9. A perusal of the objection filed by the respondents u/s 9A of the Act, it is clear that they had no knowledge of the alleged compromise and

order dated 17.4.1999 and they filed the objection u/s 9A of the Act on 5.8.1999. Had they know about the order dated 17.4.1999, there would

had no reason for not filing the appeal against it and filing the objection against the dispute as noted in CH Form-5. Thus the version of the

respondents and their bona fide cannot be disbelieved.

10. Settlement Officer Consolidation and Deputy Director of Consolidation recorded a concurrent finding that the father of the petitioner had sold

the land in dispute to the respondents, as such, nothing was left for the petitioner to be inherited. In the memorandum of revision, the petitioner has

admitted signature of his father on the sale-deed dated 15.7.1978, but has stated that the signature of Natthu was procured on it as a witness of

the sale-deed executed by Ram Vati (his co-sharer) and not as an executant of the sale-deed. This statement is incorrect as Natthu was cited as

co-vendor in the sale-deed and not as the witness. As the signature on the registered sale-deed has been admitted by the petitioner, thus according

to the allegation of the petitioner, this document at the most can be said to be a voidable document and not a void document, for which, the

consolidation Courts have no jurisdiction to ignore it as held by Supreme Court in Gorakh Nath Dube Vs. Hari Narain Singh and Others, , and

Ram Sakal Singh Vs. Mosamat Monako Devi (Dead) and Others, . The registered sale-deed dated 15.7.1978 being a more than 20 years old

document was admissible in evidence u/s 90 of the Evidence Act. The sale-deed has already been given effect to in the revenue record by order

dated 10.9.1981. So long as the sale-deed is not cancelled by the Civil Court, the consolidation authorities have no jurisdiction to ignore it.

Accordingly, Settlement Officer Consolidation and Deputy Director of Consolidation have not committed any illegality in directing the name of the

petitioner to be deleted from the land in dispute. There is no illegality in the impugned orders of the consolidation authorities. In view of the

aforesaid discussions the writ petition has no merit and is dismissed.