

## Sharda Prasad and Others Vs Dy. Director of Consolidation Varanasi and Others

**Court:** Allahabad High Court

**Date of Decision:** July 2, 2015

**Acts Referred:** Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3

Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 9

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 18 (1) (a), 20, 209, 229-B

**Citation:** (2015) 128 RD 684

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

**Bench:** Single Bench

**Advocate:** Jeevan Prakash Sharma, for the Appellant; Manoj Kumar Yadav and Ravish Chandra Srivastava, Advocates for the Respondent

**Final Decision:** Dismissed

### Judgement

Ram Surat Ram (Maurya), J.

Heard Sri Jeevan Prakash Sharma, for the petitioners and Sri Mohan Yadav, holding brief of Sri Ravish

Chandra Srivastava, for the contesting respondents.

2. This writ petition has been filed against the order of Deputy Director of Consolidation dated 03.03.2015, passed in title proceeding under U.P.

Consolidation of Holdings Act, 1953 (hereinafter referred to as the "Act").

3. The dispute relates to land recorded in khata 288 [consisting plots 433/1 (area 0.52 acre) and 433/2 (area 0.52 acre)] of village Pisaur,

pargana Shivpur, district Varanasi. In basic consolidation year, land in dispute was recorded in the names of Raghunath son of Ramu, Amar

Bahadur, Samar Bahadur and Pappu sons of Ram Kishun, Bijai Prasad son of Balla. Sharda Prasad, Shanta Prasad, Kamta Prasad and Shiv

Kumar sons of Jagarnath (petitioners-1 to 4) filed an objection under Section 9 of the Act, claiming co-tenancy of 1/4 share in the land in dispute.

Lalta, Shivnath, Joge sons of Ramu (now represented by petitioners-5 to 7) filed another objection under Section 9 of the Act, claiming co-

tenancy along with Raghunath. Ram Lakhan Singh, Krishna Singh, Indresh Singh sons of Bechan and Shamsher Singh son of Ram Jatan Singh

(now out of contest) filed an objection for deleting the names of recorded tenure holder and recording their names over the land in dispute.

Consolidation Officer, consolidated all the objections and heard together, who by order dated 21.07.2009 dismissed all the objection and

maintained basic year entry. Sharda Prasad and others filed an appeal (registered as Appeal No. 637/1542) from aforesaid order. Settlement

Officer Consolidation, by order dated 23.04.2012, allowed the appeal and remanded the case to Consolidation Officer for fresh decision on the

ground that Shivnath had died but his heirs were not substituted.

4. After remand, Consolidation Officer, by order dated 07.08.2012, held that Raghunath, Jagarnath, Shivnath and Lalta sons of Ramu jointly

purchased plot 433/1 (area 0.52 acre) from Bechan son of Bhagwati and Smt. Pavitra widow of Gauri Shankar through sale deed dated

06.08.1959 as such they were co-sharers in plot 433/1 (area 0.52 acre). Their title and possession has been again acknowledged in Panch Award

dated 27.10.1970. On these findings objections of Sharda Prasad and others (the petitioners) were allowed and Raghunath, Jagarnath, Shivnath

and Lalta were held as co-sharers in plot 433/1 (area 0.52 acre) having equal shares.

5. Lalji and others, heirs of Raghunath filed an appeal (registered as Appeal No. 908/1476). Settlement Officer Consolidation, by order dated

17.02.2014 affirmed the findings of Consolidation Officer and dismissed the appeal. Lalji and others (respondents-4 to 13) filed a revision

(registered as Revision No. 1114/1595) from the aforesaid order. Deputy Director of Consolidation, by impugned order dated 03.03.2015 held

that Bechan son of Bhagwati and Smt. Pavitra widow of Gauri Shankar had no right in the land in dispute as such on the basis of sale deed dated

06.08.1959, executed by them, no right accrued to Raghunath, Jagarnath, Shivnath and Lalta over the land in dispute. So far as Panch Award

dated 27.10.1970 is concerned, it was never made rule of Court nor it was acted upon as such no right can be given on its basis. On these

findings, the revision was allowed and orders of Consolidation Officer and Settlement Officer Consolidation were set aside and basic year entry

has been maintained. Hence this writ petition has been filed.

6. Admitted facts of the case are land in dispute was tenancy holdings of Bechan son of Bhagwati and Smt. Pavitra widow of Gauri Shankar

before date of vesting. After date of vesting they were recorded as its bhumidhar. Raghunath son of Ramu and Balla Ram son of Basantu filed a

suit (registered as Suit No. 7/26 of 1958) under Section 209/229-B of U.P. Act No. 1 of 1951, for declaring them as sirdar and ejecting recorded

tenure holders from the land in dispute. They have stated that they were subtenants of the land in dispute and were recorded as such in 1356 F and

1359 F as such after date of vesting they acquired sirdari right over it under Section 20 of U.P. Act No. 1 of 1951. The suit was tried by Judicial

Officer Varanasi, who by his order dated 16.06.1958 held that from khatauni, 1356 F, it was proved that Raghunath was recorded as sub-tenant

over the land in dispute, with period of cultivation of 5 years. In khatauni 1359 F, Raghunath and Balla Ram were recorded as sub-tenants.

Bechan in his statement had admitted sub-tenancy of Raghunath and Balla Ram as such they being recorded occupants of the land in dispute in

1356 F and 1359 F, had become sirdar under Section 20 of U.P. Act No. 1 of 1951 after date of vesting. Suit was within time from the date of

dispossession. On these findings, suit was decreed. Bechan and others filed an appeal (registered as Appeal No. 37/265 of 1958) from the

aforesaid decree. In the appeal, an application on behalf of Raghunath was filed on 05.05.1959 admitting right of Bechan and others. Thereafter,

the appeal was allowed by Additional Commissioner by order dated 23.06.1959 and order of Judicial Officer dated 16.06.1958 was set aside.

Bechan and others executed a sale deed dated 06.08.1959 in respect of plot 433/1 (area 0.52 acres) in favour of Raghunath, Jagarenath, Shivrath

and Lalta sons of Ramu. Balla Ram filed a second appeal, which was allowed by Board of Revenue U.P. by order dated 16.03.1962 and the

matter was remanded to Additional Commissioner for fresh decision in the appeal. After remand, Additional Commissioner by order dated

17.11.1962, held that Raghunath and Balla Ram had become sirdar of the land in dispute under Section 20 of U.P. Act No. 1 of 1951. Alleged

application dated 05.05.1959 was contrary to provisions of Order 23 Rule 3 C.P.C. and no order could be passed on its basis. On these findings

order of Judicial Officer dated 16.06.1958 was affirmed and appeal was dismissed.

7. Thereafter, it is alleged by the petitioners that dispute arose between Raghunath, Jagarnath, Shivrath and Lalta sons of Ramu, in respect of their

title and possession over the land in dispute. Then the parties through their agreement dated 13.07.1970 referred the dispute to Panches for

decision. Panches gave award dated 27.10.1970, in which right of all the four sons of Ramu over plot 433/1 (area 0.52 acre) has been upheld. On

the basis of sale deed dated 06.08.1959 and Panch Award dated 27.10.1970, the petitioners are claiming that land in dispute was jointly acquired

by all the members of family. All the four sons of Ramu were co-sharers in it. On the basis of another sale deed dated 27.05.1959, by which plot

485 was jointly purchased by four sons of Ramu, it has been stated that all the four sons of Ramu were joint in 1959, while sub-tenancy in started

in 1943.

8. The counsel for the petitioners submitted that all the four sons of Ramu were members of joint Hindu family and Raghunath was eldest amongst

them. Raghunath, Jagarnath, Shivnath and Lalta sons of Ramu jointly obtained sale deed dated 27.05.1959 of plot 485 and this fact has not been

denied. Thus it was proved that family was joint even in 1959. Sub-tenancy over plot 433 was started from 1351 F, corresponding to 1943.

Name of Raghunath was recorded in representative capacity for joint family. Raghunath did not file any appeal from the order of Additional

Commissioner dated 23.06.1959. Raghunath, Jagarnath, Shivnath and Lalta sons of Ramu jointly obtained sale deed dated 06.08.1959, of plot

433/1 (area 0.52 acre) from Bechan and others, who were recorded as bhumidhar of it. From conduct of Raghunath, it was proved that sub-

tenancy was joint. Joint acquisition of the land in dispute was further admitted in the agreement dated 13.07.1970 and upheld in Panch Award

dated 27.10.1970. In the matter of joint family property, possession is irrelevant as possession of one co-sharer can be treated as possession of

all. Consolidation Officer and Settlement Officer Consolidation have concurrently held that the petitioners were co-tenants in the land in dispute

along with heirs of Raghunath. Concurrent finding of fact has been illegally set aside by Deputy Director of Consolidation. He relied upon of

Supreme Court in Kailash Rai Vs. Jai Jai Ram and Others, AIR 1973 SC 893 : (1973) 1 SCC 527 : (1973) 3 SCR 411 , in which it has been

held that term ""possession"" in Section 18 (1) (a) of U.P. Act No. 1 of 1951, in view of deeming provision, must be said to include not only actual

possession but also constructive possession and a co-sharer can claim bhumidhari right even if he was not in actual cultivatory possession.

Judgments of this Court in Acharji Ahir Vs. Harai Ahir, 1930 Lawsuit (All) 187, in which it has been held that ordinary rule of Hindu law is that

property acquired while the family was joint with the help of ancestral or joint family property, property should be regarded as joint family

property. He also relied upon judgments in Kewal Kumar Vs. Bhimbali Kumar, 1963 RD 215, Indradeo Vs. Ram Govind, 1964 RD 70, Ram

Bhajan Vs. ADC and others, 1983 RD 202, Ram Prakash Singh Vs. DDC and others, 1984 RD 133 and Dujai Vs. DDC and others, 2004 RD

662. He submits that order of Deputy Director of Consolidation is illegal and liable to be set aside.

9. In reply to the aforesaid arguments, the counsel for the respondents submitted that a member of joint Hindu family is not deprived from acquiring

self property. Land in dispute was acquired by way of sub-tenancy by Raghunath alone. After date of vesting Raghunath alone had become sirdar

under Section 20 of U.P. Act No. 1 of 1951, being recorded occupants. He alone filed suit for ejectment of Bechan and Smt. Pavitra, which was

decreed by order of Judicial Officer dated 16.06.1958 and this decree was ultimately upheld by Additional Commissioner by order dated

17.11.1962. Sale deed dated 06.08.1959, executed by Bechan and others in favour of Raghunath, Jagarnath, Shivnath and Lalta is void document

as on that day Bechan and others had no title over the land in dispute. Under the provisions of U.P. Act No. 1 of 1951, a sirdar had no right to

co-opt a co-tenant as held by Division Bench of this Court in Budhlal Vs. Director of Consolidation and others, 1982 AWC 447 (DB) and

followed Ram Ugrah Singh Vs. DDC and others, 1996 RD 125. As such, the petitioner will not get any right on the basis of agreement dated

13.07.1970 and Panch Award dated 27.10.1970. Neither sale deed dated 06.08.1959 nor Panch Award dated 27.10.1970 were ever acted

upon. The land in dispute was through out recorded in the name of Raghunath and his heirs exclusively. Joint acquisition of sub-tenancy was not

proved. In such circumstances, orders of Consolidation Officer and Settlement Officer Consolidation were illegal and has been rightly set aside by

Deputy Director of Consolidation.

10. I have considered the arguments of the counsel for the parties and examined the record. Supreme Court in Appasaheb Peerappa Chandgade

Vs. Devendra Peerappa Chandgade and Others, AIR 2007 SC 218 : (2006) 11 SCALE 184 : (2007) 1 SCC 521 , after considering previous

judgments in Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and Others, AIR 1954 SC 379 : (1955) 1 SCR 1 , Mst. Rukhmabai Vs.

Lala Laxminarayan and Others, AIR 1960 SC 335 : (1960) 2 SCR 253 , Achuthan Nair Vs. Chinnamu Amma and Others, AIR 1966 SC 411 :

(1966) 1 SCR 454 , and G. Narayana Raju Vs. G. Chamaraju and Others, AIR 1968 SC 1276 : (1968) 3 SCR 464 , held that on survey of the

aforesaid decisions what emerges is that there is no presumption of a joint Hindu family property but on the evidence if it is established that the

property was joint Hindu family property or the properties were acquired out of that nucleus, if the initial burden is discharged by the person who

claims joint Hindu family property, then the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was

acquired without the aid of the joint family property by cogent and necessary evidence.

11. In the light of the aforesaid proposition of law, controversy in the present case has to be examined. Raghunath was recorded as sub-tenant

over plot 433 in khatauni 1356 F with period of cultivation of 5 years i.e. from 1351 F, corresponding to 1943. Raghunath along with Balla Ram

alone filed suit for declaration of themselves as sirdar under Section 20 of U.P. Act No. 1 of 1951 and ejectment of recorded tenure holder, which

was decreed by Judicial Officer on 16.06.1958. Although Raghunath did not file any second appeal from the order of Additional Commissioner

dated 23.06.1959, but after remand by Board of Revenue, U.P., Additional Commissioner again by his order dated 17.11.1962 upheld the title of

Raghunath and decreed the suit for ejectment of recorded tenure holders, Bechan and others. Thus nucleus of acquisition of the land in dispute by

joint family or joint family fund was not proved.

12. The petitioners only proved that family was joint at the time when land in dispute was acquired. Land in dispute was acquired by way of

occupancy right by Raghunath and Balla Ram (an outsider). The petitioners could not adduce any evidence to prove that joint family of Raghunath

was in possession of the land in dispute. On the other hand decree dated 17.06.1962 was passed after the sale deed dated 06.08.1959 as such

decree is binding upon the petitioners as they were pendente lite transferees and bound by the decree against their transferers.

13. So far as claim of title on the basis of sale deed dated 06.08.1959 is concerned, this sale deed was void as Bechan and others, transferers

have lost their title in the suit, the sale deed being a pendente lite transfer would depend upon the decree in the suit. So far as claim of the title on

the basis of Panch Award dated 27.10.1970 is concerned, admittedly, Panch Award was not made rule of Court as such no enforceable right can

be claimed on its basis.

14. Arguments that the respondents admitted title and possession of the petitioners, in the sale deed dated 06.08.1959 and agreement dated

13.07.1970, is concerned, Division Bench of this Court in Budhlal Vs. Director of Consolidation and others, 1982 AWC 447 (DB) as followed

Ram Ugrah Singh Vs. DDC and others, 1996 RD 125, held that a sirdar had no right to co-opt a co-tenant under the provisions of U.P. Act No.

1 of 1951. Raghunath was sirdar at the relevant dates as such his admission will not confer any right upon the petitioners. In such circumstances,

order of Deputy Director of Consolidation does not suffer from any illegality.

15. The writ petition has no merit and is dismissed.