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**(1994) 7 JT 440 : (1994) 4 SCALE 956 : (1995) 1 SCC 339**

**Supreme Court of India**

**Case No:** Civil Appeal No. 1048 of 1992

Rajeshwar and Another

APPELLANT

Vs

Board of Revenue and  
Others

RESPONDENT

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**Date of Decision:** Nov. 15, 1994

**Acts Referred:**

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 4, 49

**Citation:** (1994) 7 JT 440 : (1994) 4 SCALE 956 : (1995) 1 SCC 339

**Hon'ble Judges:** A. M. Ahmadii, C.J; B.P. Jeevan Reddy, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

B.P. Jeevan Reddy, J.

The appeal is preferred against the judgment of a learned Single Judge of the Allahabad High Court dismissing the writ petition filed by the petitioners.

2. One Todar Mal had three sons- Lekhi Ram, Attar Singh and Murari Lal. Lekhi Ram died in 1953. He had no sons. He left behind his wife Anandi Devi and a daughter Shanti Devi. In the year 1943, Lekhi Ram and Attar Singh (who too did not have any sons) executed a will in respect of their joint family properties in favour of Murari Lal. Disputes arose between Anandi Devi and Murari Lal soon after the death of Lekhi Ram in 1953. While the dispute was pending before the Panchayat Adalat Niwadi, Distt. Meerut (in case No. 31/1 and 31/2 of 1983) a settlement was arrived at between Anandi Devi and Murari Lal, which was reduced to writing on July 18, 1953 and filed before the Panchayat Adalat. The memo/application filed by the parties reads as follows:

In the above case, we both the parties have made mutual compromise. Both parties will abide by it and hence would have no objection. The decision is as under:-

The property assigned to Smt. Anandi:-

3258 309 Khewat 100 Khewat 97 \_\_\_\_\_ 2111/2 32/8 3361 3362 Khewat 26643

Khewat 48 is solely of Smt. Anandi which Lekhi Ram purchased by sale deed and Anandi has right upon them. Out of Ancestral Khewat NO. 107 which was willed by Lekhi Ram in favour of Murari Lal, 4 numbers were given to Anandi by Murari Lal. The one Khata whose boundaries as under

176 3022 306 1008. \_\_\_\_\_ 111/1 1/1 2/4 1/1

Khewat 107 boundaries Bazar 2/1 11 in the east, in West with Ch. Jaghir Singh and Bishambar in the North Court Yard and pathway South Ahata Chandraswar and Khewat 72 was obtained by Lekhi Ram by sale deed. Except for these 4 numbers, the property in favour of Murari Lal in the remaining part of the will consists of Khewat 97, 93 107, 143, 16, 228, 247, 125 and 126 and out of 2923/1/4 Fourth Viswa is that of Anandi.

TI of Anandi

18.7.53

Sd/-

Murari Lal

3. By an order dated 14.9.53 the Panchayat Adalat disposed of the aforesaid cases in terms of the said compromise. The order of the Panchayat Adalat reads thus:

After death a dispute arose about the property of Lekhi Ram son of Todar Mal. One application was tiled for transfer entry 31/1 by Smt. Anandi widow of Lekhi Ram. The other application 82/2 was filed in 1953 by Murari Lal brother of Lekhi Ram. Both the parties describe them as heirs of Lekhi Ram. File has been prepared but parties has done compromise which is decreed. Murarilal has filed a will dated 20 November 43 which is a registered will of Lekhiram and Atar Singh. A perusal of will shows the share of Late Lekhi Ram in Khewat 93 and 97, 107, 143 and 16, 128, 247, 125, 126 and the house. These are found by Murarilal after demise of Lekhi Ram. Besides this there is residential and agricultural land property of Lekhi Ram which is self acquired which is apart from the WILL and Anandi is the permanent owner of these properties. They are now relatives and they do not have any litigation in future. Therefore Murarilal who is owner of 176/111/4, 3022/19, 306/2/4 and 1008/9, Khewat 107 and the house bounded by Bazar in east, House of Raghubir Singh in the west, Court Yard and public way in the north and ahata Chandra Swarup in the South has given the same to Smt. Anandi. Smt Anandi has no connection with the remaining property willed by Lekhi Ram by deed dated 20 Nov. 1943 Murari Lal has no claim over the self acquired property of Lekhiram which is not part of will. The parties have taken possession of their share by compromise. Therefore both the applications are decided with the consent of the parties.

Sd/-

Seal Adalat Panchayat

Chiranjilal Surpanch

4. On 5th April, 1954 Anandi Devi executed a deed of gift in respect of her properties in favour of the appellants who are the sons of her daughter Shanti Devi. The execution of this gift deed gave rise to a fresh round of litigation between Murari Lal on one side and Anandi Devi and her grand sons (appellants herein) on the other. This dispute came to be disposed of by an order dated 18.1.1957 passed by the Additional Collector, Meerut. It was an appeal preferred by the appellants against the order of Tehsildar and Assistant Collector, Ghaziabad directing that the Anandi Devi should be recorded as an "asmi" till her life time. The contention of Murari Lal was that Anandi Devi had only a life interest whereas the case of the appellants and Anandi Devi was that she had an absolute title to the properties mentioned in the aforesaid memo of compromise. The Additional Collector decided that the said question shall be left open for being agitated after the death of Anandi Devi to which course Counsel for both the parties agreed. The concluding paragraph of the Additional Collector's order reads as follows:

The result is that in view of my finding above appeal is allowed and Tehsildar's order is set aside. The Tehsildar is directed to enter the names of Rajeshwar and Bijeshwar appellants. On the disputed plots including the three plots as corrected as bhumidar in place of Smt. Anandi Devi for her life time. The question of mutation after her life time will remain open for reconsideration.

5. In the year 1968, a notification was issued under the provisions of the U.P. Consolidation of Holdings Act, 1953 in respect of the said village. Certain proceedings too, place between Anandi Devi and Murari Lal under the said act but these disputes, it appears, related to only some of the lands. Murari's case was that the name of the Anandi Devi was wrongly recorded in respect of certain of his lands, which he wanted to be rectified. In these proceedings copies of compromise memo, Judgment of the Panchayat Adalat and the will executed by Lekhi Ram and Attar Singh in favour of Murari Lal (1943) were filed. The Consolidation Officer directed that the entries should be made in accordance with the terms of the compromise memo and that any entries to the contrary should be rectified.

6. Anandi Devi died in the year 1980. Murari Lal applied to the Tehsildar to mutate the lands in the name of Anandi Devi in his name on the basis that Anandi Devi had only a life interest in those lands. The Tehsildar directed Murari Lal to obtain a declaration in a regular suit. Accordingly Murari Lal filed the suit (out of which the present proceedings arise) u/s 229 B of U.P. Zamindari Abolition and Lands Reforms Act. The appellants contested the same and raised a preliminary objection to the maintainability of the suit. The Revenue Court framed two preliminary issues on the basis of the said objections. The two issues are:

Issue No. 1 - Whether the suit is maintainable in view of the change of identity of the land in suit due to consolidation proceedings.

Issue No. 2: whether the suit is barred by Section 49 of the U.P.C.H. Act.

7. The trial Court decided the issues against the plaintiff-Murarilal. Accordingly, he dismissed the suit on 23.8.1982. An appeal preferred by Murari Lal was dismissed by the Commissioner, Meerut on 14th November 1982. Murari Lal carried the matter in second appeal to the Board of Revenue which allowed it. The Board of Revenue held the suit to be maintainable and accordingly remitted the matter to the Trial Court to try the suit on merits. The order of the Board of Revenue was questioned by the appellants in the Allahabad High Court in Writ Petition No. 12678 of 1985 which has been dismissed by the learned Single Judge under the impugned order.

8. Shri Sanyal, learned Counsel for the appellants submitted that the memo of compromise dated 13.7.1953 makes it clear that so far as the separate properties of Lekhi Ram were concerned, they were admitted to be the exclusive property of the Anandi Devi and so far as the joint family properties of Lekhi Ram, which were willed away by him to Murari Lal are concerned, Murari Lal gave four plots out of them to Anandi Devi absolutely. Thus, says the learned Counsel, all the properties in possession of Anandi Devi were her absolute properties which passed to the appellants under the deed of gift executed by her. He, therefore, submitted that the High Court as well as the Board of Revenue were in error in holding that according to the aforesaid memo of compromise or the orders of the authorities passed thereafter, Anandi Devi had only a life interest in the said properties. The learned Counsel for the respondent Murari Lal, however, supported the reasoning and conclusion of the Board of Revenue and the High Court.

9. The memo of compromise is really in two paragraphs. The first paragraph deals with the separate properties of Lekhi Ram. It recites that the properties mentioned in the said para, which were purchased by Lekhi Ram under sale deed, are the properties of Smt. Anandi Devi. "solely" and that she has right upon them. The second para deals with what it calls the ancestral properties of Lekhi Ram which were willed in favour of Murari Lal. Out of these lands, four numbers, specified in the said para were given by Murari Lal to Anandi Devi. (They are

1765 3022 306 1008 and a \_\_\_\_\_ 111/ 1/1 2/4 11

house). The learned Counsel for the appellants is probably right in pointing out that there are no words in this compromise memo to the effect that the interest of Anandi Devi shall only be a life interest. In fact any ambiguity in the language of this compromise memo, says the Counsel, is cleared by the judgment of the Panchayat Adalat dated 14.9.1953. The order states that Lekhi Ram had certain self-acquired properties of his own, of which Anandi Devi shall be the permanent owner. The judgment further records that out of the lands willed by Lekhi Ram in favour of Murari Lal, four items of land and a house (boundaries of which were given in the order) have been given to Smt. Anandi Devi and that the latter shall have no connection with the remaining properties willed by Lekhi Ram and similarly Murari Lal shall have no claim over the self-acquired properties of Lekhi Ram, which were not the subject matter of the will. The Judgment undoubtedly records that parties have taken possession of their respective shares in accordance with the

compromise between them. But these are the merits of the dispute which are yet to be gone into.

10. So far as the order of Additional Collector, Meerut dated 18.1.1951 is concerned, it keeps the question concerning the nature of Anandi Devi's interest open. The order expressly says that the said question can be agitated after the death of Anandi Devi. Insofar as the order of the Consolidation Officer is concerned it is evident that it does not deal with the nature and character of Anandi's interest in the said properties. Anandi Devi was alive at that time and the dispute as to the nature of her interest was to be raised only after her life time as per the order of the Additional Collector referred to above and to which course both the parties had agreed. Be that as it may, the order of the Consolidation Authority does not show that the said question was gone into or pronounced upon by it in the said order. It is on these facts and the questions at issue have to be decided. Of the two preliminary issues, the first one raises the question whether the suit is maintainable in view of the change of identity of the suit lands due to consolidation proceedings has any effect upon the rights of the parties. It would only be a case of substitution of one property for the other. The title in the previous property gets attached to the substituted property. The second issue raises the question whether the present suit is barred by Section 49 of the U.P. Consolidation of Holdings Act. Section 49 reads as follows:

Bar to Civil Court jurisdiction - Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land lying in an area, for which a [notification] has been issued under Sub-section (2) of section 4], or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceedings could or ought to have been taken under this Act, shall be done in accordance with the provisions of this act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act.

10. We are of the opinion that there is no occasion for the bar in Section 49 coming into play in this case, as rightly pointed out by the High Court in the impugned judgment. As pointed out hereinabove, the nature of Anandi Devi's interest in the suit properties was not the consolidation Act. Only certain errors were rectified to accord with the compromise. Further since Anandi Devi was alive at that time it cannot also be said that the said question ought to have gone into in those proceedings. For the above reasons it must be held that the suit could not have been dismissed as not maintainable on the basis of the aforesaid two preliminary issues. The appeal accordingly fails and is dismissed. There shall be no order as to costs.

11. It is unfortunate that this litigation is going on over the last forty years and the end is still not in sight. We expect the authorities, which are seized of the dispute to give it an expeditious disposal.