

Suba Singh

Vs

Mahendra Singh and Others

Civil Appeal No. 1318 of 1967

(V. R. Krishna Iyer, R. S. Sarkaria JJ)

12.10.1973

JUDGMENT

KRISHNA IYER, J. –

1. The appellant was the plaintiff in the Munsif's Court, where he brought a suit for partition on the basis that he was the son of Rambhajan, the predeceased son of one Jagram, the owner of the property sought to be divided. The learned Munsif granted a decree but in appeal it was reversed. This dismissal of the suit was affirmed in the High Court, and the plaintiff-appellant has come to this Court, urging before us the only point that the civil Court had no jurisdiction to decide the question of title, turning on his sonship, which had already been held in his favour by the consolidation authorities under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act No. 5 of 1954) hereinafter called, for short, the Act.

2. This being the sole short point involved in this case, the facts may be briefly set out and the law bearing on this question stated. One Jagram had four sons, including Rambhajan. The latter predeceased the father, having died in 1942. The plaintiff-appellant claims to be the son of Rambhajan. Jagram died on March 13, 1956, and if the plaintiff's claim were correct, as son of a predeceased son, he could be entitled to a 4th share in Jagram's estate together with the 3 surviving sons. The question of fact on which the parties joined issue was as to whether the appellant was the son of Rambhajan at all. In proceedings before the consolidation authorities his claim for mutation was upheld, but as earlier pointed, his ultimate fate was different in the civil Courts. (It is true that the trial Court had upheld his claim but we are concerned with the final verdict rendered by the High Court which is against the appellant.)

3. Having obtained a decision in his favour in the mutation proceedings under the U.P. Land Revenue Act, the plaintiff-appellant naturally contended that it was not open to the civil Court to go into this question or set aside the finding. This contention is based on Sections 27(2) and 49 of the U.P. consolidation of Holdings Act, 1953. The scheme of that Act, the policy being that legislation and the language of the relevant provisions clearly show that the Legislature did not want questions of title to be decided by the civil Court when the consolidation proceedings were under way. It is perfectly plain that the fragmented holdings being converted into consolidated parcels of land is a complicated operation to be conducted by administrative authorities, and if long and frequent proceedings in civil Courts hold up consolidation operations, the very transformation of land holding in villages the Legislature desired to produce would have been indefinitely postponed and messed up. It is thus obvious that at this stage civil Courts should not intervene even if the question were of heirship or title to property. At the same time, the Legislature did not want to hand over these complicated questions of title and the like to mere consolidation agencies, and so under

Sections 12 (4) and 22 (1), it was provided that objections relating to title to land, if they cropped up at intermediate stages of these operations, were to be referred to arbitration. By Section 37, the Legislature provided that the arbitrators should be appointed by the State Governments from amongst civil judicial officers or Assistant Collectors of the first class of not less than five years' standing. For the purposes of procedure and speedy disposal, the Arbitration Act of 1940 was also made applicable.

4. The smooth progress, unhampered by civil litigation, of consolidation operations, was thus ensured by the provisions of the Act. Section 4 thereof marks the commencement of these operations by the publication of a declaration with a view to the proposed scheme of consolidation being made application. On such publication, the district or the local area covered by it shall be deemed to be under consolidation operations. The revision and correction of maps and records, essential to end fragmentation and produce consolidation, is provided for in Chapter 2, the preparation of the consolidation scheme is itself provided for under Chapter 3, and the culmination of these consolidation efforts is in the confirmation of the statement of proposal by the Settlement Officer (Consolidation). When such proposals are put forward by the concerned officers, objections are heard and they are disposed of. If any question of title in or over land arises at this stage, that is referred for determination to the statutory arbitrator under Section 22. Similarly, at the preliminary stage of the preparation of the statement of plots and tenure-holders, if any question of title arises, that also is relegated for decision by the arbitrator [vide Section 12(4)]. After all stages are completed, under Section 23 of the Act the settlement officer confirms the statement which thereupon becomes final and is published in the village. Section 23 declare this statement of consolidation scheme to be final and that means nobody can challenge the provisions in the statement once it is confirmed. The publication of such declaration marks the completion of the substantive phase of the consolidation operations. The jurisdiction of the consolidation authorities to decide, or to get adjudicated questions of title or rights, also comes to an end. Thereafter what is left for Chapter 4 to work out is the enforcement of the scheme which has been confirmed under Section 23. The consolidation scheme comes into operation on the date specified by the consolidation officer. Thereafter, the holding are allotted and the tenure-holders or the allottees are entitled to enter into possession of the fields so allotted to them (vide Section 26). Consequently, under Section 27 (1), it is provided that the State Government shall issue a notification under Section 48 of the U.P. Land Revenue Act 1901 for preparation of the new village map, khasra and record of rights, in accordance with the scheme confirmed for that village. It is provided - and this is very important - that all entries in the record of rights prepared under sub-section 1 of Section 27 and notified under Section 48 of the U.P. Land Revenue Act 1901, shall be final and conclusive. Of course, if the allottee is not able to take possession, the assistant consolidation officer is empowered to deliver such possession. Then there is a comprehensive provision Section 49, which bars the civil Courts' jurisdiction and runs as follows :

"49. No person shall institute any suit or other proceedings in any civil Court with respect to any matter arising out of consolidation proceedings or with respect to any other matter in regard to which a suit or application could be filed under the provisions of this Act".

The anxiety of the legislature that the civil Courts shall not unsettle what has been painstakingly settled by the consolidation authorities is understandable.

5. The whole question in the present appeal turns on the ambit and limit of the civil Courts' jurisdiction in the light of Section 49. It is well settled that the exclusion of the jurisdiction of the

civil Court cannot be easily inferred and any provision which takes it away must be construed strictly. We must have this principle in mind when interpreting Section 49. Analytically examined, it is clear that the two inhibitory clauses of Section 49, are not identical in their scope and effect. The first clause is confined to matters "arising out of consolidation proceedings" under the Act, while the second clause is limited to matters "in regard to which a suit or application could be filed under the provisions of this Act".

6. In the present case, the question that had arisen was as to who were the heirs of Jagram. This question was not covered by the first clause, for two reasons : Firstly, it was not a matter arising out of consolidation proceedings but one arising from a vis major i.e., the death of Jagram. The words "out of" in Clause (1), must be given their full restrictive effect. They cannot be loosely interpreted and equated with "during". The Legislature appears to have advisedly used these words to restrict the operation of this clause to those matters which are directly connected with the consolidation proceedings and which, but for such proceedings, would have arisen. Secondly, the question of inheritance to the estate of jagram arose after the consolidation operations had been substantively completed.

7. It is admitted that Jagram was alive when the proposal under Section 23 was finalised. Jagram was held to be a bhoomidar as per the scheme which was confirmed on February 29, 1956. In fact, he died only in March that year. It is seen from the records that the possession of the various holding was to be given to the bhoomidars and Jagram was to have taken possession on February 26, 1956 (vide Annexure C, Form 23, which discloses that the date had been fixed by the District Magistrate for transferring possession as February 9, 1956 and that all the cultivators were told "that from today the cultivators are declared as agriculturists of the fields mentioned in form No. 25". This is contained in Annexure C dated February 29, 1956 itself.) It is thus plain that possession also had been given to Jagram and nothing substantial remained to be done in the shape of consolidation operations so far as his parcel of land was concerned. Title, conglomeration, allotment and occupation - particularly the whole gamut of consolidation stages was thus covered.

8. There is no provision in the Act for any dispute of title which arises subsequent to confirmation of the statement under Section 23 to be decided by way of arbitration or otherwise.

9. Now let us examine whether the matter falls within the exclusionary ambit of Clause (2) of Section 49. The question further resolves itself into, whether the consolidation authorities had the jurisdiction to determine finally this complicated question of title when the cause of action had arisen subsequently to the finalisation, publication and even implementation of the consolidation scheme so far as jagram was concerned. In our opinion, the answer to this question must be in the negative. Section 27(1) requires the Director of Consolidation to cause, soon after the consolidation scheme has come into force, the preparation of the record of rights and other revenue records, but this, in terms of that sub-section is to be done in accordance with the provisions of the U.P. Land Revenue Act, 1901. According to sub-section 27(3), after the records have been so prepared, their further maintenance will be the responsibility of the Collector, and this, too, is to be done under Section 33 of the U.P. Land Revenue Act, 1901. It was thus abundantly clear that an application for mutation on the basis of inheritance when the cause of action arose, after the finalisation and publication of the scheme under Section 23, is not a matter in regard to which an application could be filed "under the provisions of this Act" within the meaning of clause (2) of Section 49. Thus, the plea of bar of the civil Courts' jurisdiction to investigate and adjudicate upon the title to the land or the sonship of the plaintiff has no substance. Nothing done in consolidation proceedings is undone by that suit. To urge that the formal notification under Section 52 not having been published the Court had no

jurisdiction is to misread Section 49 and to exalt a ritual into a legal reality.

10. We may mention here that the Allahabad High court has consistently taken this view. See *Shrimati Natho and Another v. Board of Revenue, U.P., Allahabad and Others* where this position has been explained. But more clinchingly has this matter been dealt with in a recent judgment of that Court in *Smt. Bhuri v. Sunder and Others*. We approve of the reasoning therein, in so far as it is in accord with the above observation and hold that there is no merit in this appeal and dismiss it but with no order as to costs in this Court having regard to the totality of circumstances in the case.

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