

Malkhan Singh

Vs

Sohan Singh and Others

Civil Appeal No. 650 of 1972

(E. S. Venkataramiah, R.B. Misra JJ)

02.09.1985

JUDGMENT

R. B. MISRA, J. -

1. The present appeal by special leave is directed against the judgment of the High Court of Allahabad dated October 28, 1971.

2. One Ganga Singh has three sons, Kishan Singh, Natha Singh and Guman Singh. Kishan Singh had no issue while Natha Singh had three sons, Chajju, Rambir and Malkhan Singh. Guman Singh had two sons. Sohan Singh and Rohan Singh. Kishan Singh was possessed of some agricultural land and also a house. It appears that the village where the agricultural plots of Kishan Singh were situated was brought under consolidation operations and the rights and title of Kishan Singh were determined in those proceedings and eventually chak No. 14 was allotted to him. The consolidation proceedings start with a notification under Section 4 of the U.P. Consolidation of Holdings Act and comes to an end with a denotification under Section 52 of the Act. Although the notification under Section 52 had not been issued but the statement of proposals (allotment of chak) had been confirmed under Section 23 of the Act.

3. Kishan Singh at this stage died without leaving any issue and a dispute arose about his heirship. Malkhan Singh son of Natha Singh claimed to be an adopted son of Kishan Singh and on that basis claimed to inherit the interest of Kishan Singh while Sohan Singh and Rohan Singh claimed to inherit the interest of Kishan Singh along with Chajju, Rambir and Malkhan Singh. The consolidation authorities after taking evidence, both oral and documentary came to the conclusion that Malkhan Singh was not the adopted son.

4. When the village was denotified under Section 52 of the Act and the consolidation operations came to an end, Malkhan Singh filed a suit in respect of the agricultural plots as well as the house left by Kishan Singh alleging that he was given in adoption by his mother, wife of Natha Singh to Kishan Singh and Kishan Singh took him in adoption on June 9, 1946 with all the formalities of giving and taking and datta-home. He also executed a deed of adoption on November 29, 1948 in proof of adoption. The suit was contested only by defendants 1 and 2, Sohan Singh and Rohan Singh. The other defendants Rambir Singh and Chajju, sons of Natha Singh did not contest. Their defence in the main was that the plaintiff was not the adopted son of Kishan Singh, that the Court had no jurisdiction to try the suit and that the suit was barred by Section 49 of the Act and also by Section 42 of the Specific Relief Act. The plea of jurisdiction and bar of Section 49 of the Consolidation Act were not pressed by the defendants. The issue of adoption was decided against the plaintiff. The bar of Section 42 of the Specific Relief Act was also negated. On these findings

the plaintiff's suit was dismissed by the trial court. On an appeal the civil and Sessions Judge reversed the finding of the trial court and decreed the suit holding that Malkhan Singh was the adopted son of Kishan Singh and that he was given in adoption by his mother after the death of her husband. Feeling aggrieved the defendants took up the matter to the High Court in second appeal and the High Court in its turn allowed the appeal and dismissed the suit on a short ground that the suit giving rise to appeal was barred by the principles of res judicata as the question of adoption had already been determined by the consolidation authorities during consolidation proceedings and that decision could not be upset by any other court as provided by Section 49 of the said Act and the earlier decision of the consolidation authorities would operate as res judicata on general principles. In the view that the High Court took it did not decide the question of adoption. The plaintiff has now come to this Court by special leave as stated earlier.

5. Shri J. P. Goyal appearing for the appellant contended that the High Court had carved out a new case for the defendants which was not their case in the written statement. Elaborating the argument the counsel urged that the plea of jurisdiction and bar of Section 49 had been taken at one stage but at a later stage the two pleas were given up and were not pressed, and that the bar of res judicata had never been set up. This contention was raised even before the High Court but the same was repelled on the ground that the application of the general principles of res judicata as a bar to the suit did not require much evidence and all that was necessary to prove was that the earlier court or authority had the jurisdiction to decide the question of title.

6. Shri M. V. Goswami appearing for the respondents has tried to support the judgment on the ground that the suit may not be barred by Section 11 of the Code of Civil Procedure as the consolidation authorities has no jurisdiction to decide the rights and title in respect of the house property, but all the same the principles of res judicata would be applicable if the question of adoption had been decided by the consolidation which had the exclusive jurisdiction to decide the rights and title during the tendency of the consolidation proceedings. In support of his contention he relied upon *Raj Lakshmi Dasi v. Banamali Sen* (1953 SCR 154 : AIR 1953 SC 33).

7. There is no quarrel with the proposition of law laid down in *Raj Lakshmi Dasi Case* (1953 SCR 154 : AIR 1953 SC 33) that the decision of the consolidation authorities may operate as a bar on the principles of res judicata. But the question in the instant case is whether there has been an adjudication of the rights and title of Malkhan Singh. As stated earlier the rights and title of Kishan Singh had already been determined and that is no more in dispute. It was only when Kishan Singh died before denotification of the village under Section 52 of the Act and after the statement of proposals had become final that the question cropped up about the heirship of Kishan Singh deceased. Under the Consolidation Act as prevailing at that time there was no provision for the adjudication of rights and title after the statement of proposals had become final. The consolidation authorities thereafter were only required to maintain the record and in so doing they could also entertain an application for mutation. The application filed by Malkhan Singh to succeed Kishan Singh was virtually an application for mutation and the decision of the consolidation authorities that Malkhan Singh was not an adopted son of Kishan Singh would not amount to a decision of the title and interest of Malkhan Singh. It is well settled that the mutation proceedings do not decide the rights and title of the parties and it is always open to a party aggrieved to get its rights adjudicated upon by a competent court despite the order in mutation proceedings. If the consolidation authorities had decide the title of Malkhan Singh in consolidation proceedings then certainly a subsequent suit for the same would be barred by the principles of res judicata.

8. The contention of Shri J. P. Goyal is that the decision by the consolidation authorities that

Malkhan Singh was not the adopted son of Kishan Singh amounts to an order passed by the mutation court in mutation proceedings. In support of his contention he has relied upon two decisions : Natho v. Board of Revenue, U. P. (1966 ALJ 563) and Suba Singh v. Mahendra Singh (AIR 1974 SC 1657 : (1974) 1 SCC 418). In both these cases the bar of Section 49 of the U.P. Consolidation of Holdings Act had been pleaded. It will be pertinent to read Section 49 :

49. Bar to civil 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 rights arising out of consolidation proceedings and in regard to which a proceeding 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.

In the instant case as stated in the earlier part of the judgment, the defendants had given up the plea of jurisdiction and bar of Section 49 of the Act. They, however, banked upon the bar or principles of res judicata although no such specific plea had been taken by them in the written statement. As the High Court has allowed the defendants to take up this plea, we propose to decide the question of bar of principles of res judicata. Whether the bar is created by the principles of res judicata or by section 49 of the Act the result remains the same. While considering the applicability of Section 49 of the Act the Allahabad High Court in Smt. Natho case (1966 AIL 563) observed :

Consequently, Section 49 will only come into play if either there had been proceedings relating to declaration and adjudication of the rights of tenure-holders in respect of the disputed land or if a proceeding for such declaration or adjudication or rights of tenure-holders in respect of the land could ought to have been taken under the Consolidation of Holdings Act. In the present case, the proceedings that were taken before the consolidation authorities on the death of Bakhtawar were admittedly for mutation of names in the revenue records. We need not cite any ruling for the well settled principle that proceedings for mutation of names in revenue courts do not decide any rights or title of tenure-holders, so that those mutation proceedings were not proceedings in which there could be any declaration or adjudication of rights of these parties by the consolidation authorities. All that the consolidation authorities could do was to enter the name of the person found entitled in place of Bakhtawar without adjudicating upon or declaring the rights of any of the parties to the land to which the proceedings for mutation related. At the stage at which Bakhtawar died, no proceeding could have been taken before the consolidation authorities for the purposes of having the rights declared or adjudicated upon. The powers of consolidation authorities to adjudicate upon rights of tenure-holders are confined to proceedings taken under Section 9 or Section 20 of the Consolidation of Holdings Act or subsequent proceedings arising out of those proceedings itself, such as appeals or revisions. Once the proceedings up to the stage of Section 23 the Consolidation of Holdings Act have been completed and the statement of proposals under Section 23 have been confirmed, the statement of proposals becomes final and the effect of finality is that all adjudications already made upto that date became final. The further

effect is that, thereafter, there is no provision empowering the consolidation authorities to go into new questions of title or rights, which may arise as a result of new causes of action which may arise after the statement of proposals have been confirmed.

9. In Suba Singh case (AIR 1974 SC 1657 : (1974) 1 SCC 418) a chak had been allotted to the original tenure-holder and the same had become final under Section 23. The tenure-holder thereafter died but before his death the possession over the chak allotted to him had been given to him 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 - practically the whole gamut of consolidation stages was thus covered. This Court held that the present case was neither covered by the first clause or by the second clause of Section 49 of the Act inasmuch as after the death of the chak-holder the question of his heirship arose which could not be decided by the consolidation authorities after the statement of proposals had become final. It observed : (SCC p. 423, para 9)

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 am, 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.

10. If once it is accepted that the decision of the consolidation authorities after the final allotment of chak to Kishan Singh that the appellant was not the adopted son of Kishan Singh amounts to an order under mutation proceedings and there was no adjudication of rights and title of the appellant in the earlier proceedings, there is no question of the suit being barred by res judicata or by the principles of res judicata. The High Court in our opinion had committed a manifest error in holding that the suit giving rise to the present appeal was barred by the principles of res judicata or by Section 49 of the Consolidation of Holdings Act.

11. Before we close the judgment we would like to make it clear that after the amendment of the U.P. Consolidation of Holdings Act in 1963 the position has materially changed. Section 12 of the Act brought in by the amendment deals with the decision of matters relating to changes and transactions affecting rights or interests recorded in revised records. It reads :

12(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 Assistance Consolidation Officer as and when they arise, but not later than the date of notification under Section 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.

Sections 7 to 11 of the Act deal with the rights and title of the tenureholder and by the application of those provisions to the proceeding under Section 12 in matters for which cause of action had arisen subsequently will make the decision a decision of title. But the position prior to the amendment of 1963 was deferent and there was no provision for the adjudication of the rights and title of a tenure-holder once the title and interest of the original tenure-holder had been finally determined and chak had been allotted.

12. The inevitable result is that the judgment and order of the High Court cannot be sustained and it must be set aside. The appeal is accordingly allowed, the impugned judgment and order of the High Court are set aside and the case is sent back to it for deciding the question of adoption according to law. There is, however, no order as to cost.

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