

Sita Ram

Vs

Chhota Bhondey and others

Civil Appeal No. 1811 of 1975

(P. B. Sawant, S. C. Agarwal JJ)

09.10.1990

JUDGMENT

S. C. AGRAWAL, J. :-

1. This appeal by special leave arises from the judgment of the High Court of Judicature at Allahabad dated April 18, 1975, dismissing the Second Appeal filed by the appellant.

2. Teja, the common ancestor, had five sons : Nanha, Mulle, Manna, Chhota and Ram Sahai. All of them have died. Appellant Sita Ram is the son of Nanha. Mulle had a son Nokhey who died in 1953 without any issue. Respondent No. 2 Soney Lal is the son of Manna. Smt. Kailasho Devi, respondent No. 3 is the widow of Ram Sahai. Chhota Bhondey respondent No. 1, claims to be the son of Chhota which is disputed by the appellant. The dispute in the appeal relates to sirdari holdings in Khata Nos. 72 and 73 in village Sambhalpur Sheoli in the State of Uttar Pradesh. Lands in Khata No. 72 were originally entered in the names of Nanha, Manna and Ram Sahai in the revenue records and on their deaths the names of the appellant and respondents Nos. 2 and 3 were entered. Respondent No. 3 sold her shares in these lands. The lands in Khata No. 73 were entered in the name of Nanha alone and on his death the same were entered in the name of the appellant. Consolidation proceedings under the provisions of U.P. Consolidation of Holdings Act, 1953 (U.P. Act No. 5 of 1954) hereinafter referred to as 'the Act' commenced in Village Sambhalpur Sheoli in the year 1969. Respondent No. 1 filed objections to the entries and claimed one fourth share in the holdings in both the Khatas on the basis that Director allowed the revision of respondent he is the son of Chhota and that the said lands belonged to the joint Hindu family consisting of the sons of Tej Ram. Respondents Nos 2 and 3 filed objections claiming shares in the lands in Khata No. 73 on the ground that the said holding was jointly acquired by Nanha and his brothers, Manna and Ram Sahai, and the name of Nanha was recorded in a representative character. The appellant contested the said claims and claimed that lands in Khata No. 73 were acquired by Nanha in his individual capacity and not on behalf of his family. The appellant further claimed that respondent No. 1 could claim no interest in the holdings as he is not a member of the family. The case- of the appellant was that respondent No. 1 is not the son of Chhota but is the son of one Heera who was a resident of a different village. The objections were considered by the Consolidation Officer, who, by order dated August 31, 1970, held that respondent No. 1 is the son of Heera alias Chhota. He gave half share to the appellant and one fourth share each to respondents Nos. 1 and 2 in all the plots of the Khata -No. 73 except plots Nos. 140, 141, 142/ 2, 142/3 and 143/3 which were given to the appellant exclusively. The appellant as well as respondents Nos. 2 and 3 filed appeals against the said order of the Consolidation Officer. The Assistant Settlement Officer (Consolidation), by Order dated

February 8, 1971, allowed the appeal of the appellant and directed that Khata No. 73 will be continued in the name of the appellant alone in as much as the lands of the said Khata were acquired by Nanha between 1927 and 1931 before the birth of respondent No. 1 and the said land was not the ancestral acquisition nor Nanha had acquired it in a representative capacity. The Assistant Settlement Officer, however agreed with the findings of the Consolidation Officer that respondent No. 1 is the son of Heera alias Chhota and belongs to the family to which the appellant and respondent No. 2 belong. The respondents went in revision against the said order of the Assistant Settlement Officer. The said revisions were decided by the Deputy Director of Consolidation by his Order dated May 13, 1971. The Deputy Director allowed the revision of respondent No. 1 in full and held that he has got a share in Khata No. 72 along with the appellant and respondent No. 2 and since respondent No. 3 has already sold her share of Khata No. 72 the remaining three branches namely the appellant and respondents Nos. 1 and 2 are entitled to one third share each in the lands included in this Khata. As regards lands in Khata No. 7J the Deputy Director disallowed the claim of the respondents in respect of plots Nos. 140, 141, 142 and 143. But with regard to other plots of Khata No. 73 the Deputy Director held that the name of Nanha was entered only in a representative capacity and that the branches of Manna, Chhota and Ram Sahai also had a share in these plots and that the respondents had acquired equal shares along with the appellant in these plots and their names may also be recorded over the same. The appellant filed a writ petition in the High Court to challenge the said decision of the Deputy Director of Consolidation, but the said writ petition was dismissed in limine by the High Court by order dated July 23, 1971. The application filed by the appellant for grant of certificate of fitness to appeal to this Court under Article 133 of the Constitution was also rejected by the High Court by its order dated November 9, 1972.

3. The appellant, thereafter, filed the civil suit giving rise to this appeal on January 25, 1973 for a declaration that the order of the Deputy Director of Consolidation dated May 13, 1971, is without jurisdiction. The said suit was contested by respondent No. 1. He raised a preliminary objection that the suit was barred by Section 49 of the Act. The Munsiff Hawali, Kanpur, by judgment dated August 16, 1974 decided the said preliminary objection in favour of respondent No. 1 and dismissed the suit on the ground that it was barred by Section 49 of the Act. The said judgment and decree of the Munsiff Hawali was affirmed in appeal by the Additional District and Sessions Judge, Kanpur-Etawah by judgment dated January 17, 1975. The Second Appeal filed by the appellant against the said judgment was dismissed in limine by the High Court by the judgment under appeal.

4. The only question which arises for consideration in this appeal is whether the suit filed by the appellant was barred by S., 49 of the Act. In the instant case the consolidation proceedings under the Act were taken during the period 1969 to 1971 and the suit was filed in 1973. At that time S. 49 read as under:

"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 laying in an area, for which a notification has been issued under sub-sec. (2) of S. 4 or adjudication of any other right 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."

5. Shri R. K.. Mehta, the learned counsel for the appellant, has urged that the bar of S. 49 of the Act

is not applicable to the suit of the appellant because the orders passed by the consolidation authorities were without jurisdiction in as much as the consolidation authorities could not decide questions as to title to the lands as well as the question relating to the parentage of respondent No. 1 which the Civil Courts alone could decide. The submission of Shri Mehta is that the bar of S. 49 of the Act is applicable in respect of only those matters which could be adjudicated upon by the consolidation authorities. Shri Mehta has placed reliance on the decision of this Court in *Suba Singh v. Mahendra Singh*, (1974) 1 SCC 418 (AIR 1974 SC 1657).

6. From a perusal of S. 49 it is evident that declaration and adjudication of rights of tenure-holders in respect of land lying in an area for which a notification has been issued under S. 4(2) and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under the Act had to be done in accordance with the provisions of the Act only and the jurisdiction of the civil or revenue courts to entertain any suit or proceeding with respect to rights in such land or with respect to any other matter for which a proceeding could or ought to have been taken under the Act has been taken away. The language used in S. 49 is wide and comprehensive. Declaration and adjudication of rights of tenure-holders in respect of land lying in the area covered by the notification under S. 4(2) of the Act and adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding, could or ought to have been taken under the Act would cover adjudication of questions as to title in respect of the said lands. This view also finds support from the other provisions of the Act and the amendments that have been introduced therein.

7. In the Act, as originally enacted, S. 12 made provision for filing of objections against the statement of plots and tenure-holders prepared by the consolidation authorities and in sub-sec. (4) of S. 12 it was prescribed that where the objection filed under sub sec. (1) involves a question of title and such question has not already been determined by a competent court, the Consolidation Officer shall refer the question for determination to the arbitrator. Sub-sec. (5) of S. 12 laid down that all suits or proceedings in the Court of first instance or appeal in which a question of title in relation to some land has been raised shall be stayed. Under sub-sec.(6) of Section 12 finality was given to the decision of the Arbitrator under sub-sec. (4). Similarly S. 20 made provision for filing of objections against statement of proposals prepared by the consolidation authorities under S. 19 of the Act. S.22 prescribed that where any objection filed under Section 20 involves a question of title in or over land and such question has not already been finally determined by a competent court, the Consolidation Officer shall refer it to the Arbitrator for determination and all suits or proceedings of the first instance or appeal in which a question of title in relation to the same had been raised shall be stayed and the decision of the Arbitrator shall be final. There was a similar provision for reference to arbitrator in S. 36. These provisions indicate that initially the Act envisaged that questions of title, if not finally determined by a competent court, shall, instead of being decided by the Courts, be decided by an Arbitrator and the decision of the Arbitrator would be final. As a result the determination of questions of title was withdrawn from the jurisdiction of the Courts. On a consideration of the scheme of the Act and the policy behind the legislation, in the light of the provisions referred to above, this Court has observed:

"The scheme of that Act, the policy behind 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 holdings 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 questions 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 Ss. 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. " (p. 420-21) (of SCC): (at p. 1658 of AIR 1974 SC 1657).

8. Extensive amendments were made in the Act by the U.P. Consolidation of Holdings (Amendment) Act, 1958 (U.P. Act No. 38 of 1958) whereby a number of sections including S. 36, were deleted and various provisions, including Ss. 5, 7 to 12 and 22, were substituted. As a result of these amendments the provisions with regard to arbitration contained in Ss. 12, 22 and 36 of the original Act were removed. In sub-clause (i) of Clause (b) of S. 5, as substituted, it was provided that all proceedings for correction of the records and all suits for declaration of rights and interests over land, or for possession of land or for partition, pending before any authority or court, whether of first instance, appeal, or reference, or revision, shall stand stayed, but without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said proceeding or suits before the consolidation authorities under and in accordance with the provisions of the Act and the Rules made thereunder. In sub-cl. (ii) of Cl. (b) it was further provided that the findings of consolidation authorities in proceedings under the Act in respect of such right or interest in the land shall be acceptable to the authority or court before whom the proceeding or suit was pending which may, on communication thereof by the parties concerned, proceed with the proceeding or suit, as the case may be. In S. 9 as substituted, provision was made for issuing notice of the statement prepared under S. 8 of the Act to tenure-holders concerned and to persons interested calling upon them to file before him objections, if any, disputing the correctness or nature of the entries in the extracts and pointing out of any omission therefrom. In S. 10 of the Act provision was made for adjudication by the Consolidation Officer of the said objections in disputed cases. In Section 11 provision was made for appeal against the orders passed by the Assistant Consolidation Officer and the Consolidation Officer under Ss. 9 and 10. S. 12, as substituted, prescribed that all matters relating to changes and transfers affecting any of the rights or interests recorded in the revised records published under S. 11 B for which a cause of action was non-existent when proceedings under Ss. 7 to 10 were started or were in progress may be raised before the Assistant Consolidation Officer as and when they arise but not later than the date of notification under S. 52 or under sub-s. (1) of S. 6 and that the provisions of Ss. 7 to 11 shall mutatis mutandis apply to the hearing and decision of any matter raised under S. (1) as if it were a matter raised under the aforesaid Sections. The scheme of the above mentioned amendments introduced in the Act by the Amendment Act of 1958 was to empower the consolidation authorities to adjudicate on matters involving declaration of right and interests over land or for possession of land or for partition and suits or proceedings in that regard pending before any Court were to be stayed till such determination and after such determination the Court was to proceed with the said proceedings in the light of the findings of the consolidation authorities. In other words the questions as to title which were earlier required to be determined by arbitration were to be adjudicated upon by the consolidation authorities under the Act. From the Statement of Objects and Reasons for the Amendment Act of 1958 it appears that it becomes necessary to do away with the provisions for arbitration because it used to cause great delay and in order to inspire greater confidence in the people in the adjudication of rights of tenure-holders by consolidation authorities provision was made for a Second Appeal against orders passed by the

Consolidation Officer.

9. Further amendment was made in S. 5 of the Act by U. P. Act No. 21 of 1966 whereby cl. (b) of sub-sec. (1) of S. 5, as renumbered, was omitted and sub-sec. (2) was added in S. 5. By cl. (a) of the said sub-sec. (2) it has been provided that upon the publication of the notification under sub-sec. (2) of S. 4 every proceeding for the correction of the records and all suits and other proceedings in respect of declaration of rights and interests in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stand abated. In clause (b) of sub-sec. (2) of S. 5 it is further provided that such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suit or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of the Act and -the Rules made thereunder. As a result of the said amendment which has been introduced in S. 5 the right of the Courts to adjudicate in respect of declaration of rights or interest in any land lying in the area for which the notification has been issued under S. 4(2) or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Act has been completely taken away and the adjudication of these rights is to be done by the consolidation authorities under and in accordance with the provisions of the Act and the Rules made thereunder. S. 49 of the Act which bars the jurisdiction of the civil and revenue Courts gives effect to the aforesaid provisions contained in S. 5(2) of the Act. As a result of these amendments civil and revenue Courts have no role in the matter of determination of rights or interests in any land lying in the area for which notice has been issued under S. 4(2) of the Act or for the declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Act.

10. In *Ram Adhar Singh v. Ramroop Singh*, (1968) 2 SCR 95: (AIR 1968 SC 714) this Court has dealt with the question whether a suit for recovery of possession filed by the plaintiff claiming to be 'Bhoomidar' of the land and asserting that the defendant was a trespasser and not entitled to remain in possession of the property was covered by S. 5(2) of the Act as amended by U.P. Act No. 21 of 1966. After considering the various provisions of the Act this Court held that "disputes of the nature which exist between the parties in the present litigation are all now within the jurisdiction of the authorities constituted under the Act to adjudicate upon" and on that basis it was held that the suit had abated under S. 5(2).

11. In *Gorakh Nath Dube v. Hari Narain Singh*, (1974) 1 SCR 339 : (AIR 1973 SC 2451) this Court was concerned with a suit for cancellation of a Sale Deed to the extent of half share claimed by the plaintiff in fixed rates tenancy plots and for award of possession of the plaintiffs share. This Court held that the said suit had abated under S. 5(2) of the Act in as much, as the claim made in the said suit could be adjudicated upon by consolidation courts. Referring to S. 5 of the Act this Court has observed:

"The whole object of this provision of the Act was to remove from the jurisdiction Of ordinary civil and revenue courts, for the duration of consolidation operations, all disputes which could be decided in the course of consolidation proceedings before special Courts governed by special procedure. Such adjudications by consolidation authorities were considered more suitable, just and efficacious for speedy decisions which had to be taken in order to enable consolidation operations to be finalised within a reasonable time. (p.341) (of SCR): (at p.2453 of AIR)

12. This Court has held that question relating to the validity of sale deeds, gift deeds and wills could be gone in proceedings before the consolidation authorities because such questions naturally and necessarily arose and had to be decided in the course of adjudication on rights or interests in land which are the subject matter of consolidation proceedings. A distinction has, however, been made between cases where the document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. With regard to cases falling in the first category it was held that such a claim can be adjudicated by consolidation courts on the view that an alienation made in excess of power to transfer would be to the extent of the excess of power, invalid and an adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights, or interests in land which are the subject matter, of consolidation proceedings. But as regards cases falling in the second category where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it was held that the consolidation authorities would have no power to cancel the same and it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it.

13. In the instant case respondent No. 1 was claiming an interest in the land lying in the area covered by notification issued under S. 4(2) on the basis that he is the son Chhota, brother of Nanha and that the lands were recorded in the name of Nanha in representative capacity on behalf of him and his other brothers. This claim which fell within the ambit of S. 5(2) had to be adjudicated by the consolidation authorities. Since it was a matter falling within the scope of adjudicator functions assigned to the consolidation authorities under the Act the jurisdiction of the Civil Court to entertain the suit in respect of the said matter was expressly barred by S. 49 of the Act and the suit of the appellant was rightly dismissed on that ground.

14. *Suba Singh v. Mahendra Singh* (AIR 1974 SC 1657) (Supra), on which reliance has been placed by the learned counsel for the appellant, has no application to the present case. That case related to the year 1956 i.e. before the Amendment Act of 1958. At that time provisions relating to arbitration were contained in Ss. 12(4) and 21 (1) of the Act. The provisions of S. 49 of the Act which were in force at that time had a narrower scope and the jurisdiction of the Civil Court was barred, with respect to any matter arising out of consolidation proceedings or with respect to any other matter in regard to which a suit for application could be filed under the provisions of the Act. " In that case after the scheme for consolidation under S. 23 of the Act had been confirmed, one Jag Ram, who was held to be a Bhomidar under the Scheme, had died. Jag Ram had four sons including Ram Bhajan who had pre-deceased Jag Ram. The plaintiff-appellant claimed himself to be the son of Ram Bhajan and had applied for mutation in the consolidation proceedings on that basis which was allowed. Thereafter he approached the Civil Court for partition of the property of Jag Ram.. The question was whether the said suit was barred by S. 49 of the Act. This Court held that it was not so barred on the view that the question as to who were the heirs of Jag Ram was not a matter arising out of consolidation Proceedings and further that the said question of inheritance to the state of Jag Ram arose after the consolidation operations had been substantively completed. In this context this Court has observed that there is no provision in the Act for any dispute of title which arises subsequent to confirmation of the statement under S. 23 to be decided by way of arbitration or otherwise and that the consolidation authorities had no jurisdiction to determine finally the complicated question of title when the cause of action had arisen subsequent to the finalisation, publication and even implementation of the consolidation (operations?) have so far as Jag Ram was concerned. This would show that in this case this Court was considering the question whether a dispute as to title which arises subsequent to confirmation of the statement under S. 23 could be adjudicated upon by the consolidation authorities. As pointed out earlier the position has been

introduced in the Act by the Amendment Acts of 1958 and 1966.

15. For the reasons aforesaid we find no substance in this appeal and it is accordingly dismissed with costs.

Appeal dismissed.

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