

Preetam Singh (dead) by L.Rs. and Others

Vs

Assistant Director of Consolidation and Others

Civil Appeal No. 2252 of 1978

(M.M. Punchhi, Sujata V. Manohar JJ)

09.01.1996

JUDGMENT

1. This appeal is by certificate granted by the Allahabad High Court. A Division Bench of the High Court vide order dated 2-1-1978 (reported in 1978 All LJ 186) dismissed the writ petition of the appellants. The question of law arising therein related to the finality of an order of remand containing findings, recorded by an intermediate Court during consolidation proceedings. The principles of Section 11 of the Code of Civil Procedure and those contained in Section 105 thereof were found attracted in the case.

2. Regretfully we do not have the assistance of the respondents, who even though served have not put in appearance. They are therefore proceeded against ex parte.

3. On May 17, 1969, a Notification under Section 4 of the U.P. Consolidation of Holdings Act was published in the U.P. Gazette for bringing about consolidation of holdings in the village where the land in dispute is situate. In the year in which the village came under consolidation (known as the basic year), the appellants were recorded as Bhoomidars over a holding measuring 38.25 acres and also being in its possession. The Gaon Sabha of the village filed an objection under the provision of the Act before the Consolidation Officer alleging that the appellants were wrongly recorded in Bhoomidars over the disputed land and prayed that entries be corrected in favour of the Gaon Sabha. The appellants contested the objection before the Consolidation Officer. Their case was that the land in dispute was under the tenancy of some people when the U.P. Zamindari Abolition Act was in force. The same did not vest in the Gaon Sabha as unoccupied land. The Ashudhi Tehsildar during the correction of the records operation found Gurbux Singh and Harbhajan Singh in possession of the land in dispute and ordered them to be recorded as Seerdars by order dated 25-7-1957. On the basis of such corrected records Gurbux Singh and Harbhajan Singh obtained Bhoomidari rights under the provisions of the U.P. Zamindari Abolition Act, 1952. On 1-6-1959, those Bhoomidars sold the land to the appellants and thereafter the names of the appellants as Bhoomidars were recorded in the revenue records, continuously till consolidation operations commenced.

4. The Consolidation Officer sustained the objection of the Gaon Sabha by his order dated 21-2-1970 ordering expunction of the names of the appellants from the revenue records. The appellants appeal before the Settlement Officer (Consolidation) was allowed on 22-8-1970. A remand was effected to the Consolidation Officer for a fresh decision, after giving an opportunity to the appellants to prove that they had even acquired ownership rights by adverse possession. On the

ground of the appellants being owners by purchase the Settlement Officer (Consolidation) observed that the disputed land had vested in the Gaon Sabha, as apparently the tenants had abandoned the land without creating any rights in favour of the predecessors-in-title of the appellants and sequally none in favour of the appellants. On remand the Consolidation Officer again allowed the objection of the Gaon Sabha on 31-1-1971. The Settlement Officer (Consolidation) dismissed their appeal on 20-3-1976. The appellants filed a revision petition under Section 48 of the Act before the Assistant Director (Consolidation). The appellants raised the plea before the Assistant Director (Consolidation) that there was no evidence on record to hold that the previous recorded tenants had abandoned the land in dispute and such findings recorded by the Settlement Officer was passed on no evidence. The Assistant Director (Consolidation) did not entertain the plea and dismissed the revision petition, whereupon the appellants were constrained to move the High Court in writ jurisdiction. A learned single Judge, before whom the writ petition was placed referred the writ petition to a division bench as in his opinion the law needed to be straightened as to whether the findings recorded by the Settlement Officer (Consolidation) in its remand order was open to correction in revisional jurisdiction of the Assistant Director (Consolidation) as instantly attempted, since that remand order of the Settlement Officer (Consolidation) had not been directly challenged in revision. The High Court took the view that the remand order of the Settlement Officer became final, since it was not independently challenged and what was challenged was the subsequent order of the Settlement Officer (Consolidation), which came about after remand and which stood challenged in revision before the Assistant Director (Consolidation).

5. We have heard learned counsel for the appellants. We can safely say on the strength of the two precedents of this Court in *Jasraj Inder Singh v. Hemraj Multanchand*, (1977) 2 SCC 155 and *Smt. Sukhrani (Dead) by L.Rs. v. Hari Shanker*, (1979) 2 SCC 463 : (AIR 1979 SC 1436), that the appellants should succeed. In the former case this Court expressed its view that "the remand order by the High Court is a finding at an intermediate stage of the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject matter is available for adjudication before it.....Otherwise the whole lis for the first time came to the Supreme Court and the High Court's finding at an intermediate stage does not prevent examination of the position of law by the Supreme Court. Intermediate stages of the litigation and orders passed at those stages have a provisional finality....The contention barred before the High Court is still available to be canvassed before this Court when it seeks to pronounce finally on the entirety of the suit...." In the later case this Court expressed the view "that though a decision given at an earlier sstage of the suit will bind the parties at a later stage of the same suit, it is equally well settled that because a matter has been decided at an earlier stage by an interlocutory order and no appeal has been taken therefrom or no appeal did lie, a higher Court is not precluded from considering the matter again at a later stage of the same litigation".

6. When the matter was in revision before the Assistant Director (Consolidation), he had the entire matter before him and his jurisdiction was unfettered. While in seisin of the matter in his revisional jurisdiction, he was in complete control and in position to test the correctness of the order made by the Settlement Officer (Consolidation) effecting remand. In other words, in exercise of revisional jurisdiction the Assistant Director (Consolidation) could examine the finding recorded by the Settlement Officer as to the abandonment of the land in dispute by those tenants who had been recorded at the crucial time in the Khasra of 1359 Fasli. That power as a superior Court the Assistant Director (Consolidation) had, even if the remand order of the Settlement Officer had not been specifically put to challenge in separate and independent proceedings. It is noteworthy that the Court of the Assistant Director (Consolidation) is a Court of revisional jurisdiction otherwise having suo motu power to correct any order of the subordinate officer. In this situation the Assistant

Director (Consolidation) should not have felt fettered in doing complete justice between the parties when the entire matter was before him. The war of legalistics fought in the High Court was of no material benefit to the appellants. A decision on merits covering the entire controversy was due from the Assistant Director (Consolidation).

7. Thus for the above reasons we allow this appeal, set aside the impugned orders of the High Court without dilating upon the abstract question of law, except in pointing out the aforesaid two decisions of this Court and remitting the matter back to the Assistant Director (Consolidation) for fresh decision of the entire matter in accordance with the law. No costs. Appeal allowed.