

SUPREME COURT OF INDIA

Seshamni

Vs.

The D. Director of Consolidation, District Basti U.P.

(D.P.Wadhwa and S.N.Hegde JJ.)

14.02.2000

JUDGMENT

D.P. WADHWA, J.

This appeal is directed against judgment dated September 24, 1980 of the Allahabad High Court dismissing the review petition of the appellant. Earlier writ petition of the appellants filed under Article 226 of the Constitution was dismissed by the High Court by its judgment dated April 30, 1980. Appellants had sought quashing of the order of the Deputy Director of Consolidation under the U.P. Consolidation of Holdings Act, 1953 (for short, the 'Act'). Deputy Director of Consolidation had allowed the revision filed by the contesting respondents under the Act holding the respondents to be the owner in possession of plot bearing No.301, village Khakhra Khurd Tappa Sahila, P.O. Khan Naugarh, Distt. Basti. By that judgment, the Deputy Director of Consolidation set aside the orders of the Consolidation Officer and the Assistant Settlement Consolidation Officer.

During consolidation proceedings in the village the respondents, successors of Ram Khelawan, filed objection under Section 9 of the Act before the Consolidation Officer claiming that they are owners of plot No.301 having acquired the same in auction in 1914 in a suit pending in the Court of Munsif. It was submitted that Ram Khelawan, father of the respondents, got a decree against Bhagwati, father of the appellants, in a suit filed by him for recovery of loan given by Ram Khelawan to Bhagwati, father of the appellants.

Respondents contended that they have been in possession of the plot since then. In support of their claim they produced copy of the judgment of the Munsif's court, the sales certificate and copy of Khatauni for the period of 1359/F and 1324/F. Appellants claimed that they were never dispossessed all through 1914 and that they have been in possession of the plot and have since perfected their title by adverse possession. In support of their claim, the appellants submitted before the Consolidation Officer copy of the "khewat" and entry in register of 1914. By his order dated January 20, 1972 the Consolidation Officer rejected the claim of the respondents. Matter was taken in appeal to the Assistant Settlement Consolidation Officer by the respondents who dismissed the same by order dated March 8, 1972 holding that the respondents had never filed any claim on the basis of auction sale with regard to the land. More than 12 years having elapsed since the sale, the appellants had perfected their title by adverse possession. The respondents did not rest there and filed a revision before the Deputy Director of Consolidation. There was dispute regarding the number of the plot. It was found that the sale certificate in favour of the respondents mentioned Plot No.82/2 (old) though new number of the plot was 301. It was made up of old plot Nos.88/1 and 88/2. Boundaries of the plot bearing No.301, however, tallied with the boundaries given in the "dakhnama" (auction certificate) of old plot No.82/2. That showed that the predecessor of the respondents had acquired

the title of whole of plot No.301 (new). Deputy Director of Consolidation rejected the claim of the appellants that after the auction of the plot in favour of Ram Khelawan, no steps were taken to obtain possession of the same. There was a suit in which decree was based in favour of Ram Khelawan. Auction of the plot was held for recovery of the decretal amount. It was purchased by Ram Khelawan and sales certificate granted in his favour. Deputy Director of Consolidation further observed that it was not possible to accept the contention of the appellants that having gone through all the processes, Ram Khelawan would not get possession of the plot. He, therefore, returned the finding that as per record plot No.301 (new) comprised of plot No.88/1 and 88/2 (old) and that the "Dakhalnama" showed Ram Khelawan, predecessor of the respondents was in possession. Deputy Director of Consolidation, therefore, set aside the order of the Consolidation Officer as well as that of the Assistant Settlement Consolidation Officer. Aggrieved the appellants filed writ petition in the High Court which was dismissed and the review also met the same fate. It was submitted by the appellant that under Section 48 of the Act, Deputy Director in exercise of his powers of revision could not upset concurrent findings of fact by the Consolidation Officer and on appeal by the Settlement Officer. Section 48 of the Act was amended by the Amendment Act 8 of 1963.

Before its amendment Section 48 read as under: -- "The Director of Consolidation may call for the record of any case if the Officer (other than the Arbitrator) by whom the case was decided appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit." This Court in *Sher Singh vs. Joint Director of Consolidation and others* (1978 (3) SCC 172) with reference to Section 48 prior to its amendment said that the Section was in pari materia with Section 115 of the Code of Civil Procedure ('Code' for short). This Court thereafter referred to various judgments of the Privy Council and of this Court regarding the powers of the High Court under Section 115 of the Code and held: -- "The position that emerges from these decisions is that Section 115 of the Code of Civil Procedure empowers the High Court to satisfy itself on three matters: (a) that the order of the subordinate court is within its jurisdiction;

(b) that the case is one in which the court ought to have exercised its jurisdiction and failed to do so and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied that there is no error in regard to any of these three matters, it has no power to interfere merely because it differs from the conclusions of the subordinate court on questions of fact or law. A distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said courts, and errors of law which have no such relation or connection. An erroneous decision on a question of fact or of law reached by the subordinate court which has no relation to question of jurisdiction of that court, cannot be corrected by the High Court under Section 115." Scope of Section 48 after its amendment in 1968 again came up for consideration by this Court in *Ram Dular vs.*

Dy. Director of Consolidation, Jaunpur and others (1994 Supp. (2) SCC 198). Now this Section reads as under:- "48. Revision and Reference.(1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than an interlocutory order passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such

order in the case or proceedings as he things fit." Again question arose as to whether the Deputy Director of Consolidation was legally justified in upsetting the findings recorded by the Consolidation Officer and the Settlement Officer. The Court said that while exercising the revisional powers under Section 48 what was required to be seen was whether the Deputy Director had considered the questions in its proper perspective or had ignored any material findings on record in coming to a particular finding. The Court said: -- "It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact- finding authority by appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the root of the matter, had been committed in recording the order or finding." It is difficult to accept the contention of the appellants. Consolidation Officer as well as the Assistant Settlement Consolidation Officer had ignored the sales certificate in favour of Ram Khelawan, predecessor of the respondents. To base a claim on adverse possession, it is not enough to allege that one is in possession of the land.

Ingredients of the adverse possession were missing as these were not alleged nor taken into consideration.

Consolidation Officer as well as the Assistant Settlement Consolidation Officer proceeded on wrong premise and against the settled principles of law. Deputy Director Consolidation, therefore, was well justified in exercising its power of revision and coming to a different conclusion.

Writ petition was rightly dismissed by the High Court and so also the review petition of the appellants. The appeal is, therefore, dismissed. There shall, however, be no order as to costs.