

# **SUPREME COURT OF INDIA**

Shiv Murat (D) by Lrs.

Vs.

Satyawati

C.A.No.5766 of 2007

(Gyan Sudha Misra and V.Gopala Gowda JJ.)

04.04.2014

## **JUDGMENT**

### **V.GOPALA GOWDA, J.**

1. This appeal is filed by the appellant questioning the correctness of the judgment and final Order dated 3.8.2004 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 9989 of 1985 urging various facts and legal contentions in justification of his claim.

2. Necessary relevant facts are stated hereunder to appreciate the case of the appellant and also to find out whether the appellant is entitled for the relief as prayed in this appeal.

The land in question relates to plot no. 182/1, 184/1, 184/2 and 184/3 situated in village Madhupur, Pargana Musali, Tehsil Chunar, District Mirzapur (now Sonbhadra). The name of the appellant was recorded as the Sirdhar of these plots before the consolidation of the plots began. However, during the process of consolidation, the respondent, allegedly by fraud, got her name entered in the revenue records.

3. The appellant filed an objection under Section 12 of the U.P. Consolidation of Holdings Act against the entry of the name of the respondent in the revenue records.

The objection was allowed by the Consolidation Officer vide Order dated 11.1.1982.

4. Aggrieved by the Order, the respondent filed an appeal in the Court of Settlement Officer, Consolidation. The respondent filed a fictitious compromise before the learned Settlement Officer, Consolidation which, according to the appellant, was procured by fraud. According to the compromise filed by the respondent, the entire property in dispute becomes the bhumidari of the respondent and the respondent becomes the sole beneficiary of the property.

5. The appellant challenged the compromise as fraudulent on two grounds, firstly, the appellant could not have entered into such compromise which goes entirely against his favour and secondly, the compromise deed filed before the Settlement Officer, Consolidation purports to bear the signature of the appellant which was attested by one Shri Prabhakar Nath Advocate. However, Shri Prabhakar Nath Advocate was the lawyer of the respondent in appeal before the Settlement Officer, Consolidation. The appellant never instructed on the compromise deed. The appellant claimed that he had no knowledge of the compromise deed. The Settlement Officer, Consolidation passed the ex-parte order dated 31.1.1983 and disposed of the appeal filed by the respondent. As a result of this Order, the entire property was recognized in the name of the respondent.

6. The appellant thereafter filed an application for setting aside the Order of the Settlement Officer, Consolidation claiming that the Settlement Officer had committed error by not taking into consideration that Shri Prabhakar Nath Pathak Advocate was in fact the lawyer of the respondent and he, in collusion with the respondent, had obtained this ex-parte Order. It is further claimed by the appellant that he was not allowed to lead evidence regarding the deed compromise.

7. The learned Settlement Officer, vide Order dated 23.6.1984, rejected the application of the appellant on the basis of the compromise deed which was attested by the advocate.

8. Against the said Order, the appellant filed a Revision Petition being Revision Petition No. 10 before the learned Deputy Director of Consolidation. The same was dismissed vide Order dated 11.12.1984.

9. The appellant filed Civil Misc. Writ Petition No. 9899 of 1985 in the High Court of Judicature at Allahabad which was also dismissed vide order dated 3.8.2004.

10. The High Court opined that the learned Settlement Officer had already dismissed the application on the basis of the settlement entered into between the parties and verified by Advocate Shri Prabhakar Nath who had been the lawyer of the appellant. The High Court perused the impugned Orders and opined that a finding of fact has been recorded by the courts below that the compromise deed had been signed by the appellant and his signature had been duly verified by his counsel Shri Prabhakar Nath Pathak. These finding of facts are not open to interference by the High Court under Article 226 of the Constitution. Hence, this appeal.

11. We have heard both the sides and carefully perused the material evidence on record produced before us by the parties. The settlement deed produced by the respondent before the Court of Assistant Settlement Officer has been relied upon by the courts below to come to the above mentioned conclusion and the same has been concurred with by the High Court. As per the material evidence produced on record, the land in dispute was purchased by one Mstt. Tapesara, since deceased, who was the mother in law of the respondent. Further, the settlement deed goes on to show that the respondent is the widow of the only son of Shri Mahadeo and his wife Mstt Tapesara who purchased the land. The appellant, on the other hand, is the son of Mstt. Tapesara's sister, Mstt. Jageshara who does not become the legal heir on the death of the owner. Therefore, on the death of the only son of the owner of the land, her daughter in law becomes the legal heir of the property in absence of any will to prove the contrary. Moreover, the settlement deed states that the two parties share amicable relations and wish to live peacefully. Therefore, they have, on their free will, entered into a compromise on the issue since the litigation was not in the best interest of either of the parties. Therefore, in the absence of any material evidence on record, we are of the opinion that the appellant has failed to prove his right on the land in dispute. We are not inclined to interfere with the concurrent findings of the original and appellate authority which establish that a compromise had been entered into between the parties which was duly verified by Advocate Shri Pathak. Hence, we hold that the High Court was correct in not interfering with the findings of the original and appellate authorities, particularly, when both the authorities have concurrently relied upon the compromise deed. The appeal is accordingly dismissed. Interim orders dated 27.9.2004 and 7.12.2007 shall stand vacated.