

# SUPREME COURT OF INDIA

Ram Bahal & Anr.

Vs.

Deputy Director of Consolidation Azamgarh & Ors.

C.A.No.3594 of 2011

(Ranjan Gogoi and R.K.Agrawal, JJ.,)

08.10.2015

## JUDGMENT

**R.K.Agrawal.J.,**

1. The present appeal has been filed against the order dated 28.07.2003, passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 247 of 1997 whereby the High Court dismissed the petition preferred by the appellants herein while confirming the order of the Deputy Director of Consolidation, Azamgarh and the Consolidation Officer dated 11.11.1976 and 29.03.1974 respectively.

Brief Facts:

2. The dispute relates to Plot Nos. 795, 796 and 903 situated in village Bahauddinpur, District Azamgarh. The said plots were admittedly recorded in the name of the respondent Nos. 3 and 4 in the basic year record. The names of the appellants were shown to be recorded in the possession column. In the consolidation proceedings, both the appellants and the respondents filed their objections. The appellants claimed their right over the land in question by virtue of their possession and entry in their favour in the revenue records. However, respondent Nos. 3 and 4 prayed for expunction of the names of the appellants who have been wrongly recorded. Oral and documentary evidence were filed before the Consolidation Officer in respect of respective cases. The Consolidation Officer, vide order dated 29.03.1974, allowed the petition filed by the respondent Nos. 3 and 4 herein and directed for expunction of the names of the present appellants which were shown to be in possession. Being aggrieved, the appellants preferred an appeal before the Settlement Officer, Consolidation. The Settlement Officer, Consolidation, vide order dated 15.12.1975, allowed the appeal and the appellants were permitted to be recorded as Seerdar over the land in dispute. Aggrieved by the order dated 15.12.1975, the respondents filed a revision before the Deputy Director, Consolidation. The Deputy Director of Consolidation, vide order dated 11.11.1976, allowed the revision and restored the judgment and order of the Consolidation Officer dated 29.03.1974. The order dated 11.11.1976, passed by the Deputy Director,

Consolidation, as also the order of the Consolidation Officer dated 29.03.1974 were challenged by the present appellants before the High Court.

3. In the High Court, the appellants claimed the acquisition of their rights on the basis of adverse possession which according to them have been properly examined by the Settlement Officer, Consolidation and after assessing the material on record a clear finding of fact had been recorded regarding continuous possession of the appellants and therefore, it is not a case for interference by the Deputy Director, Consolidation, in the revisional jurisdiction under Section 48 of the U.P. Consolidation of Holdings Act. Further, it was the case set up by the appellants that there was no perversity in the order of the Settlement Officer, Consolidation or that it was based on no evidence and therefore the finding of fact recorded by the Settlement Officer, Consolidation could not have been set aside by the Deputy Director of Consolidation.

4. It was further claimed that the Deputy Director of Consolidation was not justified in reassessing the evidence and to give his own findings and at the most, he could have remanded the matter to the Consolidation Officer for giving fresh findings.

5. On the other hand, the claim of the contesting respondents was that as the Settlement Officer, Consolidation has allowed the claim of the appellants therein by taking erroneous approach of the facts and by not properly interpreting the entry which has been brought on record, the Deputy Director of Consolidation, had every authority to go into the matter and, on proper analysis and after appreciation of the entry, to disagree with the order of the Settlement Officer, Consolidation. It is not a case of reassessment of evidence rather it is a case of correct interpretation of the revenue entry. It was further submitted before the High Court that in the Khatauni extract 1359 Fasli, the contesting respondents have been shown in possession and therefore they became Adhiwasi and Seerdar of the land in dispute and so far possession of the appellants, even if it is recorded, having not been proved to be in accordance with law, they cannot get any right on the basis of adverse possession. Even the entry in favour of the appellants has not been found by the Settlement Officer, Consolidation to be continuous and in accordance with law, and therefore, the plea of adverse possession cannot be accepted.

6. The High Court, after going through the evidence on record came to the finding that the Settlement Officer, Consolidation has referred to the arguments of the parties at quite length but so far as finding part is concerned, has given a clear finding, on the basis of the entries, in favour of Ram Adhar and thereafter his sons became Seerdar of the land in dispute but not the appellants as Seerdar. The High Court further held that there is no finding by the Settlement Officer, Consolidation that the entry in favor of the predecessors of the respondents is valid and correct and there is also finding about the rights of the respondents. The Consolidation Officer and the Deputy Director, Consolidation had given a finding that the predecessors of respondents were recorded as sub tenants and by virtue of the entry in their favour, they became Adhiwasi and Seerdar which has not been disturbed by the Settlement Officer, Consolidation. The High Court came to the conclusion that the finding in

favour of the appellants appears to have been given by the Settlement Officer, Consolidation on the premise that inspite of decree in favour of the respondents under Section 229-B of the U.P. Zamindari Abolition & Land Reforms Act (in short 'the Act') possession was not taken from the appellants. By referring the order passed by the Deputy Director of Consolidation, the High Court came to the conclusion that the Deputy Director, Consolidation has not reappraised the evidence but it looked into the correctness and validity of the entries recorded in the Khatauni filed by the respective parties. He has referred to each and every entry and because there was over writing in some of the entries, the Khatauni containing over writings was discarded. The High Court, consequently, declined to interfere in the order passed by the Deputy Director, Consolidation and dismissed the writ petition.

7. Heard Mr. Ajay Kumar Misra, learned senior counsel for the appellants and Mr. R.K. Gupta and Mr. Shekhar, learned counsel for the respondents.

8. Learned senior counsel appearing for the appellants submitted that the original owner of the Plot No. 903 in dispute had migrated to Pakistan and as per the Order of the Custodian dated 17.10.1957, the year of migration was presumed to be 1355 Fasli and in that year, the father of the appellants was also found in possession by the Custodian up till 1364 Fasli. The appellants had to pay 20 times of the circle rate to acquire Bhumidari rights under Section 20B of the Act which was paid by the appellants and thus they acquired lawful rights. So far as Plot Nos. 795 and 796 are concerned, these plots were in the possession of the appellants prior to the enforcement of the Act and therefore they were recorded as occupants of the land in 1355 Fasli to 1359 Fasli. They became Adhiwasi in possession and subsequently Seerdar. Therefore, it conferred right to the appellants over the property in dispute.

9. The contesting respondents are claiming their right on the basis of entry of sub tenancy starting from 1358 Fasli which has been found to be wrong entry by the Settlement Officer, Consolidation and therefore not given due weightage. Learned senior counsel for the appellants submitted that in view of the above, the respondents had no right nor were in possession as they themselves filed a suit being No. 920 under Section 229-B of the Act whereby they claimed relief of possession from the appellants. The decree passed in the said suit stood abated in second appeal vide order dated 27.05.1974 as consolidation proceedings had started. This shows that the respondents were never in possession of the land and the entry coming for the first time in the 1358 Fasli was wrong entry and it was never established from any record as to how sub tenancy was created in favour of the respondents. The Settlement Officer, Consolidation, had therefore, rightly held that the appellants became Adhiwasi and thereafter became Seerdar.

10. According to the appellants, the order of the Consolidation Officer and the Deputy Director of Consolidation as also the High Court are based on some proceedings under Section 33/39 of the Land Reforms Act which is a mutation proceeding and any admission made in a mutation proceeding is not binding on the maker in a title matter. Moreover, in the mutation proceedings, the appellants were not party and hence, cannot be relied upon against them. Learned counsel for the appellants placed reliance on Smt. *Sonawati and Ors. vs. Sri*

*Ram and Anr*<sup>1</sup>. *Jhutan Singh vs. Badri & Ors*<sup>2</sup>. *Bhurey vs. Pir Bux* 1973 ALJ 313, *Laxmi Narain vs. D.D.C.*<sup>3</sup>, and *Pir Khan vs. Deputy Director of Consolidation, District Kanpur*<sup>4</sup>. It was, therefore, submitted that the orders passed by the Consolidation Officer, Deputy Director, Consolidation and the High Court be set aside and that of the Settlement Officer, Consolidation be restored.

11. Learned counsel for the respondents, however, submitted that the Consolidation Officer and the Deputy Director, Consolidation, had given a categorical finding that the predecessors of respondents were recorded as sub-tenants and by virtue of entry in their favour, they became Adhiwasi and Seerdar which has not been negated by the Settlement Officer, Consolidation. The appellants are not laying any claim against the respondents on the basis of the possession and the authorities have found that there is only mention of few Khasra/Khatauni entries without any reference to even any oral evidence. Merely because the possession on the basis of the decree in favour of the respondents was not taken from the appellants, it cannot be said that the appellants were in lawful possession of the plots in question. Some of the khatauni/khasra contained over writings, and therefore, they were rightly left aside by the Deputy Director of Consolidation. Even the appellants could not give the exact date or the year in which premium had been paid for taking the rights in their favour. Even no claim of adverse possession was established. He further prayed that the judgment and order passed by the High Court should be maintained.

12. We have given our anxious consideration to the various pleas raised by learned counsel for the parties. We find that the Deputy Director, Consolidation had examined the various copies of Khasra/Khatauni filed by the parties and had come to the conclusion that copy of Khasra 1357 crop year has been filed in which Sumer, father of the present appellants, has been mentioned having possession of Land Nos. 795 including 796. Against Land No. 779, there is a cross mark. Against remaining two numbers, no cross mark has been put and Sikmi column of khasra is blank. Khasra of 1358 crop year has been filed. In this, possession of Sumer has been entered in remarks column against Land Nos. 795, 796 and in the column of Sikmi, the name of Adhar, s/o Munesar (father of the contesting respondents) is entered. In the remarks column of Land No. 903, the names and possession of Rohim Palton, Sumer, Phenku are entered. This Khasra is not reliable because when the name of Sumer was entered in 1357 crop year, then recording possession of Sumer again for Land Nos. 795, 796 in 1358 Crop year and the name of Adhar coming in the Sikmi column make these Khasras doubtful. The names of Rahim and Palton, having possession on Land No. 903, are found whereas the Sikmi column is blank which is also doubtful. Khasra 1359 crop year has been filed. In this, the name of Adhar is mentioned in Sikmi column and possession of Sumer, son of Munesar, is mentioned against L.Nos.795, 796. Possession is mentioned against L.No.903 and then it has been struck off or has been written above Bhopare. In the Sikmi column also, there is cutting over the entries against this number. Khasra for 1362 crop year has been filed. In this, the name of Adhar against L.No.795 is available as before in the Sikmi column. In the L.No. 796 also, the name of Adhar is available as before in Sikmi column and in the remarks column the name of Sumer s/o Munesar is written. The name of Adhar is also available against L.No. 903 and after making entry of possession of Adhar and others, this has been

struck off and Rahim and others have been written in their place. Khasra for 1363 crop year has been filed and it is also like 1362 crop year khasra. In L.No.903, the possession of Rahim, Pudan and Sumer and Phenku have been written and there is no entry in remaining two numbers. These same entries are found in khasra of 1354 crop year. Notice of office of Assistant Custodian (Judicial) has been filed and it has too much overwriting and the same cannot be relied upon. Copy of Khatoni of 1366 crop year has been filed in which the name of Asfaq has been entered in the main column and the name of Ram Adhar son of Munesar has been entered in category 9. In 1368 crop year, the name of Asfaq and others were deleted and the name of Adhar entered as Seerdar on the basis of order passed in Case No. 341 under Section 33/39. In 1370 crop year, the name of Bahal, Kirpal are entered as category 9. Khasra 1368 crop year has been filed in which an entry has been recorded that possession of Ram Kirpal, Bahal on L.Nos. 795, 796 has been found. Same entry is also available in L.No.903. There is no reference of any P.K.No.10 enquiry and diary number. Hence, this khasra is not at all reliable. Khasra of 1369 crop year has been filed in which as per order of Girdawar, Kanungo P.No. 10 dated 09.11.1961 entries of pendency of case are recorded against L.Nos. 795, 796. The defendant should not get any benefit of these entries. Khasra of 1371 crop year has been filed in which the name of Bhubhal and others are entered in the main column. From the entire aforesaid evidence, it is clear that the name of revisionists came in existence against land from 1358, 1359 crop year. It is the case of defendant that they are Seerdar from occupier on the basis of this possession prior to abolition of zamindari and entries available prior to abolition of zamindari does not prove the case of defendant because these are doubtful and not reliable. The Assistant Settlement Officer (Consolidation), in his order, has held the possession of defendant continuously since 1354 crop year which is totally wrong and incorrect because the name of the defendant for the first time has come against L.Nos. 795, 796 in 1357 crop year and that too is in remarks column whereas the Sikmi Column is blank. Hence, had these entries correct, the name of defendant would have come in the column of Sikmi and not in the possession column. There is no such evidence that the defendant paid compensation to original cultivator after abolition of zamindari. Against this, the name of revisionists was entered on the basis of Form No. 101 which proves that compensation was paid to original cultivator. After abolition of zamindari, the name of defendant is found against L.No. in 1368 crop year whereas it is also doubtful and case of defendant is not on the basis of adverse possession as well. Hence, these entries also have no importance.

13. From the findings recorded by the Deputy Director, Consolidation, it is clear that those Khasra/Khatauni have been excluded in which there were over writings or some unwarranted entries. If that be the position, then the order passed by the Deputy Director, Consolidation holding that the contesting respondents acquired the right of Adhiwasi/Seerdars cannot be said to be based on re-appreciation of evidence afresh. It is only a case of examining the correctness and validity of the entries in the Khasra/Khatauni filed by the parties.

14. The case laws relied upon by the counsel for the appellants have no bearing upon the issues involved in the present appeal. We may mention here that this Court in *Leela Rajagopal & Ors. vs. Kamala Menon Cocharan & Ors.* 2014 (10) Scale 307 in para 14 has

held that appreciation or re-appreciation of evidence must come to a halt at some stage of the judicial proceedings and cannot percolate to the constitutional court exercising, jurisdiction under Article 136. For ready reference, para 14 is reproduced below:-

“Before parting we would like to observe that the very fact that an appeal to this Court can be lodged only upon grant of special leave to appeal would indicate the highly circumscribed nature of the jurisdiction of this Court. In contrast to a statutory appeal, an appeal lodged upon grant of special leave pursuant to a provision of the Constitution would call for highly economic exercise of the power which though wide to strike at injustice wherever it occurs must display highly judicious application thereof. Determination of facts made by the High Court sitting as a first appellate court or even while concurring as a second appellate court would not be reopened unless the same give rise to questions of law that require a serious debate or discloses wholly unacceptable conclusions of fact which plainly demonstrate a travesty of justice. Appreciation or re-appreciation of evidence must come to a halt at some stage of the judicial proceedings and cannot percolate to the constitutional court exercising jurisdiction under Article 136.”

15. In view of the foregoing discussion, we are of the considered opinion that the impugned order passed by the High Court does not call for any interference hence the appeal fails and is accordingly dismissed. However, the parties shall bear their own costs.

Judgment Referred.

<sup>1</sup>*AIR 1968 SC 0466*

<sup>2</sup>*(1962) Revenue Decisions 0239*

<sup>3</sup>*Varanasi 1986 Revenue Decisions 0410*

<sup>4</sup>*(1965) ALJ 0591*