

RESERVED**Court No. - 1****Case :-** SECOND APPEAL No. - 1042 of 1979**Appellant :-** Shiv Charan And Another**Respondent :-** Keshri Singh And Another**Counsel for Appellant :-** R.K. Yadav,A.K.

Yadav,K.B.L.Gaur,K.Yadav,Ratnesh Kumar Pandey

Counsel for Respondent :- S.K. Singh,Vineet Kumar Sahu**Hon'ble Jayant Banerji, J.**

1. The aforesaid second appeal has been filed by the defendant-appellants against the judgment and decree dated 16.2.1979 passed by the IInd Additional District Judge, Bulandshahar in Civil Appeal No.212 of 1978 arising out of Original Suit No.127 of 1974.

2. The appeal was admitted on 13.08.1979 on the substantial questions of law based on ground nos.1 and 2, which would read as follows:-

(i) whether the proceedings under the Consolidation of Holdings Act were final under Section 49 of the Act and the view to the contrary is substantially erroneous in law?

(ii) whether the learned Judge has substantially erred in misconstruing the definition of land and restricted it only to cultivatory land, parti land and even building and improvement appurtenant thereto were covered under the Act and the view of the learned Judge is substantially erroneous in law.

3. It appears that Original Suit No.127 of 1974 was filed by the plaintiff-respondents in the court of the Munsif, Ist Bulandshahar against the defendant-appellants seeking a decree of permanent injunction for restraining the defendants from interfering in any manner in the peaceful

possession of the plaintiff-respondents over the land shown in the plaint map with letters A, B, C, D, E.

4. The plaint case is that the land shown in the plaint map as A, B, C, D, E are part of old agricultural plot no.172 at Mauza Hirapur, Pargana Baran. New agricultural plot no.147 was made from old agricultural plot no.169. It was stated that the zamindar of the aforesaid land and other lands was one Shri Bindeshwari Prasad, who had given the suit property and other properties to the plaintiffs for three years by a lease dated 27.6.1942. It was stated that even after expiry of the three years lease period, the plaintiffs alone were in possession of the aforesaid suit property and other properties and continued to be in possession. It is stated that the zamindar had issued a notice for eviction against the plaintiffs which was dismissed on 14.09.1951 and all rights of the zamindar in respect of the aforesaid plots ended.

5. It was further stated that the suit property is being used by the plaintiffs over which the defendants have no concern. The plaintiffs had planted various trees over the suit property thirty years ago and agricultural machines and other equipments were present over the suit property over which the defendants have no right. It was stated that the old plot no.172 was not being used for cultivation even prior to chakbandi because of which that plot and other parts as well as other plots were kept outside chakbandi proceedings. No land revenue was assessed. Chakbandi authorities had no right or jurisdiction to prepare a map or records contrary to that which was existing at the site. It was stated that during chakbandi,

any map or record prepared contrary to the actual position at the site would not affect the plaintiffs or their possession and title, and the defendants have no right to take forcible possession over the suit property. It was stated that the defendants are forcibly trying to take possession of the suit property from the plaintiffs which has given rise to a cause of action. Accordingly, the suit was filed.

6. In the written statement, the defendants denied that the suit property is part of old plot no.172. It was stated that the defendants are owners in possession of the suit property and the plaintiffs are not the owner thereof. It was stated that the defendants' khasra number was 147 and the plaintiffs' khasra number was 148. Plot no.149 is situated to the north of khasra nos.147 and 148. Between the plot nos.147 and 148, a '*medh*' is existing. It was stated that to the north of plot no.147 of the defendants, there is a well and a hut made by new bricks, which is yet to be thatched and for making of a '*bhatti*' (kiln). It has been given to two persons and in the rest of the part, they tie their cattle and, therefore, that part is a part of plot no.147, which is in the possession of the defendants. In the same manner, to the north of plot no.148 of the plaintiffs, part of some uncultivated land exists and on that part, old grass on old '*medh*' exists which is in the portion belonging to the defendants. In this manner, the parts of both the parties are supported which got no relation or concern with each other. It was stated that the plaintiffs had never any possession over the suit property nor any zamindar executed any lease in their favour, and that the plaintiffs have not received any rights under the Zamindari Abolition Act.

7. It was stated that the map prepared during consolidation proceedings is correct, which is in accordance with the position at the site. It was mentioned that the suit is barred by the provisions of Section 49 of the U.P. Consolidation of Holdings Act, 1953¹. It was stated that for a period of more than 12 years, the defendants are in ownership and possession of the suit property, and the plaintiffs were never in possession of the same. The plaintiffs were never the recorded tenants of the suit property and, therefore, the suit for permanent injunction is not maintainable. The trial court framed the following issues:-

1. Whether the land in dispute lies in Plot No. 172 ?
2. Whether the plaintiffs are the owners of the land in suit ?
3. Whether the plaintiffs are in possession of the land in suit ?
4. Plaintiffs' relief, if any ?

8. While considering issue no. 1, the trial court observed that the admitted fact between the parties is that the suit property is situated to the north of the defendants' plot No. 147 and is the vacant land lying to the west of Plot No. 149 of Chiranji, and only of the western side, which is on a straight line corresponding to the '*medh*' of the plot of the defendants. The trial court referred to the documentary evidence filed by the plaintiffs, which was the original lease dated 10.07.1942 (Exhibit-1), a copy of a decree in Original Suit No. 32 of 1951, passed by the Munsif Bulandshahar (Bindeshwari Prasad zamindar vs. Raman @ Raghubar (Exhibit-2), and a copy of plaint in Original Suit No. 521 of 1950 (Pran Prakash and another {sons of Bindeshwari} vs. Raghubar) (Exhibit-4), other

¹ Act, 1953

documents/pleadings in Original Suit No. 521 of 1950 and the oral testimony of Ram Chandra, son of the deceased plaintiffs.

9. On behalf of the defendants, the defendant No. 1, Shiv Charan, himself testified and by way of documentary evidence, CH Form 45 (Exhibit A-1) and CH Form 41 (Exhibit A-2) were filed. In its analysis of the case, the trial court noted that the parties admitted that with regard to Plot Nos. 147, 148 as well as the suit property, the zamindar was Bindeswari Prasad. The case of the plaintiffs was noted that they had obtained Plot No. 172 from Bindeshwari Prasad on lease, which is part of their Plot No. 148. On the other hand, the defendants claimed that the suit property is part of their Plot No. 147. The trial court noted that to the east of the leased land, as per the lease dated 10.07.1942 (Exhibit-1), a proper road has been shown, and when the zamindar had instituted the Eviction Suit No. 32 of 1951 for eviction of the plaintiffs, in that too, to the east of plot No. 172, a proper road was shown, which is clear from Exhibit-2. The contention of the learned counsel for the defendants before the trial court was that it is correct that a lease was executed in favour of the deceased plaintiff regarding 1 bigha 7 biswa, out of plot No. 172, but plot No. 172 is a large plot, therefore, how could it be determined that the suit property is part of plot No. 172. While referring to the lease deed and the decree (Exhibit-2), the trial court observed that on the east of the leased plot, a proper road is shown. It went on to observe that CH Form 41 (Exhibit A-2), reflects that plot No. 148 had admittedly been carved out from plot No. 172. The trial court referred that it itself had conducted a spot inspection

and the counsel for the parties had shown Bulandshahar Road on the east of the suit property and, as per the decree, (Exhibit-2), to the east of plot No. 172 is a road. Therefore, the trial court concluded that the plot in dispute is situated in plot no.172. Accordingly, the issue no.1 was decided.

10. With regard to issue nos. 2 and 3, the trial court noted that admittedly the plot in dispute is vacant and no constructive possession of any party exists over the said plot. While noticing the documents on record, the trial court observed that there is no doubt that the plot in dispute is part of old plot no. 172 and the new plot number of Plot No.172 is Plot No.148. The trial court also noted that the defendants are basing their claim of title on the basis of the chakbandi map, because in that map, to the north of plot no.147 till plot no.149 has been shown, to the east of which a proper road exists. The trial court observed that, as a matter of fact, the plot in dispute was not an agricultural land during the chakbandi proceedings. The trial court also noted that the witnesses of the parties have admitted that during chakbandi proceedings, no value of the suit property was fixed. The DW-2 Ghasi had also admitted that, as far as he could remember, the plot in dispute was never cultivated, and that the DW-2 was a 70 years old person residing in the same village Hirapur, whereas chakbandi had taken place only 15 - 20 years ago. It was, therefore, deduced that the chakbandi authorities had no right over the non-cultivated plot during chakbandi proceedings and neither is the map made by the chakbandi authorities (Exhibit A-3) binding on the parties because it is clear from the documentary evidence that the suit property was not being

cultivated prior to chakbandi proceedings. It was observed that given the provisions of Section 27 of the Act, 1953, the records of chakbandi are considered final unless they are rebutted. It was noted that during a spot inspection made by the trial court, the suit property was found to be undulated. It was, therefore, held that the chakbandi map is rebuttable.

11. The trial court observed that the defendants claim that the suit property was obtained on lease by them from Bindeshwari, whereas they have filed no documentary evidence to support their claim. Though the defendants claim that the suit property is part of plot No. 147, which appears to be false from perusal of the CH Form-41 (Exhibit A-2), that plot no.147 is made from old plot no.172, whereas the correct fact is that plot No. 147, which is of the defendants, was made from old plot No. 169. Therefore, no evidence was produced on behalf of the defendants to demonstrate that the suit property could be held to be part of plot No. 147. Thereafter, while deciding that which of the two parties would have the right to the suit property, the trial court noted the Amin report as well as the spot inspection report made by the trial court itself and found that between the suit property and the plot of the plaintiffs, no '*medh*' was found at the spot and both the plots are together. The claim of the defendants was noted in which they had stated that a '*medh*' existed. It was also noted that on the suit property, there were tree remnants and a well, on the east of which is the Siyana-Bulandshahar Road. It was noted that the defendant no.1 denied the existence of the road and claimed the suit property as his vacant land, which is contrary to the facts. It was noted that

the defendants claim that a part of the suit property was given by them on rent to Radharaman and Hardeo, who are still alive but neither of them were produced as witnesses. Therefore, the claim of the defendants that a part of the land of the suit property was given on rent could not be believed. The testimony of DW2 Ghasi was also found to be false and contrary to the factual situation existing at the spot. The trial court held that at the site, it could not be said that any party had a specific possession over the suit property but with regard to possession of the plaintiffs, there was no occasion to disbelieve their evidence. On the other hand, the defendants' witnesses made false testimonies that cannot be believed. Therefore, it was held that the ownership with possession is of the plaintiffs with regard to the suit property. Accordingly, the suit was decreed with costs.

12. Thereafter, Civil Appeal No.212 of 1978 was filed by the defendants in the court of the District Judge Bulandshahar under Section 96 of the Code of Civil Procedure but by the impugned judgment and order dated 16.02.1979, the appeal was dismissed. After reflecting on the documents of the case, the appellate court found that the main question for determination was whether the suit property was an agricultural land before the commencement of the consolidation proceedings in the village because if the land in question was an abadi land, then the consolidation authorities had no jurisdiction, and in that case any map prepared or carved out by those authorities would be without jurisdiction, and the bar of Section 49 of the Consolidation of Holdings Act would not apply. After considering

the documentary evidence on record, including CH Forms 45 and 41, and the consolidation map (Exhibit A-3), which showed the respective areas of plot nos.147, 148 and 149, and after perusing the record pertaining to previous litigation in Suit No. 521 of 1950, it was held that the land in suit was used as abadi land and was not an agricultural land and could not be included in the map prepared by the consolidation authorities and the suit was not barred by Section 49 of the Act 1953.

13. The appellate court observed that although the plaintiffs did not raise objections during the consolidation proceedings, but since the consolidation authorities had no jurisdiction, as such the objection of the defendants regarding the bar of Section 49 of the Act, 1953 was not available to them. After discussing the statements made by the witnesses of the parties, as well as the features and construction over the plot in dispute, it was held that the trial court had rightly decided the suit and, accordingly, the appeal was dismissed.

14. Learned counsel for the appellants has referred to the discussions made by the trial court while deciding the issue nos.2 and 3, and has stated that given the provisions of Section 27(2) of the Act, 1953, all entries in the Record of Rights prepared in accordance with the provisions of sub-section (1) of Section 27 shall be presumed to be true until the contrary is proved. It is stated that CH Forms 41 and 45 alongwith a consolidation map were filed before the trial court and a presumption is required to be drawn regarding their correctness and the onus is on the claimants, who

claim otherwise, to prove it with cogent evidence as to their incorrectness. It is stated that the plaintiffs did not assail the entries made in CH Forms 41 and 45, and neither did they dispute the consolidation map. Therefore, given the provisions of sub-section (3) of Section 27, the plaintiffs ought to have moved under the provisions of the U.P. Land Revenue Act, 1901 for correction of the map and field book and record of rights. It is stated that the plaintiffs ought to have approached the consolidation authorities before the notification made under Section 52 of the Act 1953 for correction of the map. It is contended that since the suit is for injunction, therefore the plaintiffs ought to have established their title on the basis of map of consolidation proceedings. It is contended that the land of the plaintiffs is not at the spot mentioned in the map. It is further contended that Rule 83 of the UP Consolidation of Holdings Rules, 1954 provides for making of the consolidation map, whereafter a final map is prepared under Rule 90. It is stated that the map is prepared for the entire village and merely because areas of abadi have been shown on the consolidation map, the same cannot be put aside for considering the aspect of jurisdictional bar under Section 49 of the Act 1953. In support of his contentions, the learned counsel for the appellants has referred to the judgments in the case of **Rakesh Kumar vs. Board of Revenue & Ors.**², **Suba Singh vs. Mahendra Singh**³, (Paragraph 3), **Sita Ram vs. Chhota Bhondey & Ors.**⁴ (Paragraphs 3 and 9), and a judgment dated 29.09.2022 passed in the case of **Amar Nath Upadhyay & ors. vs. Mithilesh Upadhyay & Ors**⁵.

² 1972 RD 326

³ 1973 RD 455

⁴ 1990 RD 439

⁵ Matters under Article 227 No.1649 of 2015

15. The counsel for the respondents has stated that the bar of Section 49 of the Act 1953 would not apply in the present case and, therefore, the substantial questions of law, as framed, do not arise in the present appeal.

16. The main thrust of the arguments of the learned counsel for the appellants is with regard to the bar of Section 49 of the Act 1953. As far as the findings of fact recorded by the courts are concerned, the plot in dispute was found to be clearly identifiable on the basis of its location mentioned in the patta executed by the former zamindar in favour of the plaintiffs in the year 1942, which also found support from the report of the Court Commissioner. The trial court itself made a spot inspection and noted that the Amin Commissioner's report as well as the lease executed by the zamindar corroborated the spot position, and the plot in dispute was identifiable. It was also noted that the plot in dispute was undulated and not being cultivated and that there was no '*medh*' existing between the plot of the plaintiffs plot and the plot in dispute. The documentary evidence, including CH Forms 41 and 45 as well as the consolidation map, which all were filed by the defendants, the oral testimonies of the witnesses were duly considered and the affect and import of Section 27 of the Act, 1953 were also duly considered. It was also noted that the allegation made by the defendants was that they had given on rent a part of the suit property to two persons for setting up of a kiln but neither of those alleged tenants were produced as witnesses to corroborate the fact. It was accordingly found that there was no ground why the contention of the plaintiffs regarding their possession be not believed. Therefore, the suit was decreed.

17. The appellate court has also considered the suit case in its entirety and has framed an appropriate point for determination. It was noted that given the factual situation existing at the spot, the land in dispute was not covered by the definition of land appearing in Section 3(5) of the Act 1953. It was observed that the consolidation authorities had no jurisdiction to prepare a map with regard to the abadi land which was the purpose for which the suit property was being used. It was, therefore, held that even though the plaintiffs did not prefer any objection during consolidation operations, but since the authorities had no jurisdiction with regard to the suit property, the bar of Section 49 would not apply.

18. The judgments relied upon by the learned counsel for the appellant do not assist the case of the appellant in this appeal. In **Rakesh Kumar**, facts were that one Mata Prasad had a half share in the grove plot in dispute. He died leaving two sons, one of them Har Swarup died leaving widow Smt. Suraj Kumari, who was plaintiff-respondent. On commencement and end of the consolidation operations, the revenue records showed that Smt. Suraj Kumari was a co-tenant of that grove plot. She instituted the suit for partition under Section 176 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The suit was contested by the brother of Har Swarup, namely Sri Ram on the ground that it was barred by a family settlement, and that under the personal law, the plaintiff had no share or interest in the grove plot. The trial court held that the alleged compromise did not relate to the plot in dispute and it did not operate as an estoppel to bar a suit. It was also held that in view of Section

49 of the Act, 1953, the question whether the plaintiff had any title or share in that plot could not be re-adjudicated. This decree was affirmed in appeal as well in the second appeal and aggrieved therefrom, the defendant filed writ petition under Article 226 of the Constitution of India in the year 1970. In *Rakesh Kumar*, it was held as follows:-

“Section 27(2) provides that entries in the record of rights shall be presumed to be true until the contrary is proved. A person can prove that the entries are not true. If that is done the entries will be corrected. But this provision has to be read with Section 49. Reading the two together, the position would be that a suit or proceeding for the correction of entry on the ground that it is not true or correct will be entertainable only if it is not barred by Section 49. If the Civil or Revenue courts are debarred from entertaining such a question, obviously they cannot possibly enter into the merit of the dispute and to adjudicate the correctness of the entries.

In *Shah Mohammad's* case the facts were that the plaintiffs filed an objection in consolidation proceedings but the Consolidation Officer rejected them on the ground that the remedy of the plaintiff was before a competent court. Thus the final decision in consolidation proceedings itself referred the plaintiff to a regular court. That was a clear case where it could be said that the plaintiff could not take up any proceeding in Consolidation proceedings. As such Section 49 could not bar a regular suit.

That case also related to a grove plot. The learned Judge observed that in case of grove land, there is no adjudication of title by the Consolidation authorities. This observation is contrary to the decision of a Full Bench in *Dalel V. Baroo* (1) and cannot hence be treated as laying down the correct law.”

.....

In *Rishal Singh V. Board of Revenue* (3) a learned Judge held that Section 49 bars the adjudication of rights through a suit irrespective of the question as to whether the plaintiff or the defendant raises the question of title and that the right determined in consolidation proceedings, either, after contest or without contest are final. It was also held that the cause of action for a suit for partition is not dependent on the determination of the rights of the parties. In Consolidation proceedings the rights of the parties are determined and the co-sharers have a right to claim partition even after the closure of consolidation proceedings. We find ourselves in agreement with the views expressed in this decision.

In our opinion the courts below were justified in taking the view that the defence was barred by Section 49 of the Act.”

19. The land in dispute in the case of **Rakesh Kumar** was a grove. It is pertinent to state that neither in the plaint, nor in the written statement is there any averment that it is a grove. The PW-1 has stated that there are

certain trees on the disputed land. The land in dispute has been stated to be undulated which is affirmed in the spot inspection report prepared by the trial court judge on his visit to the spot. The spot inspection report only refers to a Peepal tree. The Advocate Commissioner's report encloses a map which reflects 10-12 trees over the land in dispute which indicates that it is not a grove.

20. A Division Bench of this Court in the case of **Baij Nath Rai Vs. D.D.C. 1986 SCC Online All. 395** was called upon to resolve conflict in **Rama Vs. State of U.P. (1971 RD 520)** and **Shambhu Vs. D.D.C Azamgarh (1975 AWC 469)**. The facts of the case referred were that the land in dispute was recorded as Banjar in the basic year record prepared under the Act, 1953. Both the parties claimed that the entries is incorrect. The petitioner case was that they were owner of the trees, whereas the respondent claimed that they were bhumidhar of the grove as they had planted trees over the land in dispute with the permission of the Zamindar. The consolidation Officer, however, declared the petitioners to be owner of the trees. The appeal filed by the respondents before the Settlement Officer (Consolidation) was allowed and the order of the Consolidation Officer was set aside and it was directed that the basic year entry in favour of the Gaon Sabha should be maintained. Both the parties filed revisions before the Deputy Director of Consolidation which were dismissed. It was held that no material was brought on record which could establish that it was grove before the date of vesting. The entry in 1364 Fasli of planting of trees by the petitioner was held insufficient to confer any right on him. It

was further held that since claim of the petitioner was confined to trees it could not be adjudicated by the consolidation authorities. This was the aspect which was referred by the learned Single Judge of this Court. The Court observed in Baij Nath Rai that the short question that calls for adjudication is the jurisdiction of the consolidation authorities to decide ownership of the trees on Banjar land or to be more precise trees standing on land other than the land which forms part of the holdings. This Court observed as follows:-

“2. Reverting to the short question which calls for adjudication is the jurisdiction of consolidation authorities to decide ownership of trees on a Banjar land or to be more precise trees standing on land other than the land which forms part of a holding.

3. Answer to it shall depend on proper understanding of meaning of words, landholding and ‘Banjar land’. Land has been defined by Consolidation Act to mean,

““Land” means land held or occupied for purposes connected with Agriculture, horticulture and animal husbandry (including pisciculture and poultry farming) and includes—

(i) the site, being part of holding, of a house or other similar structure, and

(ii) trees, wells and other improvements existing on the plots forming the buildings.”

4. It has been defined in Zamindari Abolition Act as under:—

“‘Land’ (except in Ss. 109, 143 and 144 and Chapter VII) means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming.”

5. A comparison of the two definitions indicates that the principal part of the definition in the Consolidation of Holdings Act has been borrowed from Zamindari Abolition Act, but it has been expanded and for the purposes of Consolidation Act even site for the house or well or trees standing over a plot has been included. But the trees etc. must exist on a plot which forms part of a holding. Holding under cl. (40-C) of Consolidation Act means a parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holder. Therefore, land can be holding under Consolidation Act only if it is held by tenure-holder that is a Bhumidhari, Sirdari or Assami. If Banjar land can be considered to be land within meaning of cl. (3) of S. 3 of the Act extracted earlier then only it can be held by a Bhumidhari, Sirdari or Asami and shall be covered in the definition of holding. Banjar land has not been defined in the Act. But cl. (12) of S. 3 of Consolidation Act adopts meaning of word and expression not defined in the Act but used or defined in Zamindari Abolition and Land Reforms Act. There is no definition of Banjar land in Zamindari Abolition Act. But para 124A of Land Records Manual

framed in pursuance of Land Revenue Act prescribing provision for making entry in annual register or field book provides as under:

(v) otherwise barren.

Note: Sub-cl. (v) will include land which cannot be brought under cultivation without incurring a high cost.”

6. This indicates that Banjar land is that land, which is unfit for cultivation and cannot be brought under cultivation, without incurring heavy expenditure. It is therefore, not land as defined in the Act. And if it is not land it could not be holding. Therefore, the Consolidation authorities could not adjudicate upon right or title of Banjar land. This is, what was held in *Rama's case* (AIR 1971 All 442) (supra). But Banjar land may be brought under cultivation or trees may be planted over it. If it is brought under cultivation then it stands converted into land as defined in Z.A. & L.R. Act or Consolidation of Holdings Act. It may then become holding and consolidation authorities may assume jurisdiction. They may also have jurisdiction where Banjar land was let out for converting it into land may be within few years for which remission or total exemption in revenue was granted. In absence of these circumstances the Consolidation authorities cannot assume jurisdiction in respect of Banjar land. Similarly if trees are planted on a Banjar land or it is let out for planting trees and the trees standing over it or after planting were such in number as to exclude cultivation when fully grown then it becomes grove land. And once Banjar land becomes grove land the Consolidation authorities can decide objections in their regard. It was held so and in our opinion rightly in *Shambhu's case* (1975 All WC 469) (supra). Grove land has not been defined in Z.A. Act or Consolidation Act. It was defined in U.P. Tenancy Act. It has been adopted in these Acts. It is extracted below:

““grove-land” means any specific piece of land in a mahal or mahals having trees planted thereon in such numbers that they preclude or when full grown, will preclude, the land or any considerable portion thereof from being used primarily for any other purpose, and the trees on such land constitute a grove.

7. Any land, therefore, having trees in such number as to preclude cultivation becomes grove land. And once a land banjar or otherwise, becomes grove land the Consolidation authorities shall have jurisdiction to decide. In cases where right or title is claimed on trees standing over land what has to be decided is if the trees standing over it were such in number that it became grove land. If the finding is in the affirmative the Consolidation authorities shall have jurisdiction to decide right or claim of parties. If the finding is in negative the objection has to be dismissed and parties directed to seek their remedy in Civil Courts.”

21. This judgment in *Baij Nath Rai* clinches the issues which are referred to in the two substantial questions of law framed in this case.

22. In **Suba Singh's** case, the plaintiff filed a suit for partition. The suit was decreed, but in appeal it was reversed. The dismissal of the suit was affirmed in the High Court and the plaintiff appealed before the Supreme

Court urging that the civil court had no jurisdiction to decide the question of title, turning on his sonship which had already been help in his favour by the consolidation authorities under the Act, 1953. In paragraph 9 of the judgement, the Supreme Court observed as follows:

“9. Now let us examine whether the matter falls within the exclusionary ambit of clause (2) of S. 49. The question further resolves itself into, whether the consolidation authorities had the jurisdiction to determine finally this complicated question of title when the cause of action had arisen subsequently to the finalisation, publication and even implementation of the consolidation scheme so far as Jagram was concerned. In our opinion the answer to this question must be in the negative. Section 27(1) requires the Director of Consolidation to cause soon after the consolidation scheme has come into force, the preparation of the record of rights and other revenue records, but this, in terms of that sub-section, is to be done in accordance with the provisions of the U.P. Land Revenue Act, 1901. According to Section 27(3), after the records have been so prepared, their further maintenance will be the responsibility of the Collector, and this, too, is to be done under Section 33 of the U.P. Land revenue Act, 1901. It was thus abundantly clear that an application for mutation on the basis of inheritance when the cause of action arose, after the finalisation and publication of the scheme under Section 23, is not a mater in regard to which an application could be filed “under the provisions of this Act within the meaning of clause 2 of Section 49. Thus, the other limb of Section 49, also is not attracted. The result is that the plea of bar of the civil courts jurisdiction to investigate and adjudicate upon the title to the land or the sonship of the plaintiff has no substance. Nothing done in consolidation proceedings is undone by that suit. To urge that the formal notification under Section 52 not having been published the court had no jurisdiction is to misread Section 49 and to exalt a ritual into a legal reality.”

23. It is pertinent to mention here that in **Suba Singh’s** case, there is no dispute as to the fact that the land in question therein was agricultural land and this was recorded in the consolidation operation. This judgment is of no assistance to the appellant.

24. In **Sita Ram’s** case, the submission on behalf of the appellant before the Supreme Court was that bar of section 49 of the Act, 1953 is applicable in respect of only those matters which could be adjudicated upon by the consolidation authorities. While referring to the case of **Gorakh Nath Dube Vs. Hari Narain Singh; 1974(1) SCR 339**, the Supreme Court

observed that question relating to the validity of sale deeds, gift deeds and wills could be gone in proceedings before the consolidation authorities. The distinction was made between the 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 the 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 affect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claim to rights, or interests in land which are the subject matter of the consolidation proceedings. But as regard 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 cancelled by a court having the power to cancel it. The Supreme Court then noticed that the respondent no.1 was claiming an interest in the land lying in the area covered by notification issued under Section 4(2) of the Act, 1953 on the basis that he is the son, which claim fell within the ambit of Section 5(2) had to be adjudicated by the consolidation authorities and hence the jurisdiction of the civil court to entertain the suit in respect of the said matter was expressly barred by Section 49 of the Act.

25. This judgment also is of no assistance to the appellants inasmuch as the facts of that case are different from the instant case.

26. The last judgment in the matter of **Amar Nath Upadhyay** relied upon by the learned counsel for the appellant is also of no assistance to the appellant as in that case, there was serious dispute with regard to the allocation of the property i.e. whether the same was in plot no. 1041 or 1043 and it was held that it was incumbent upon the court to first get identification of the property done and only thereafter proceed with the disposal of the application for injunction.

27. In the present case, the identity of the plot in dispute is not an issue at all. The land was clearly identified by the report of the Commissioner which was duly proved and the trial court itself had made spot inspection to verify the correct position at the site.

28. Given the facts and circumstances of the present case, the evidence relied upon by the court below that were relatable to the averments in the pleadings made by the parties, and the judgment in **Baij Nath Rai**, it is held that:

(i) the consolidation proceedings with regard to the suit property were without jurisdiction and therefore the suit is not barred by the provisions of Section 49 of the Act, 1953;

(ii) the observations and findings of the learned Judges of the trial and appellate courts in construing the definition of land are correct and are not erroneous.

29. The substantial questions of law are accordingly answered and this appeal is **dismissed**.

Date: 19.10.2023
SK/sfa

(Jayant Banerji, J)