

Neutral Citation No. 2023:AHC:200166

Reserved -: 05/10/2023

Delivered -: 17/10/2023

Court No. - 48

Case :- WRIT - B No. - 678 of 1977

Petitioner :- Daddan Ji

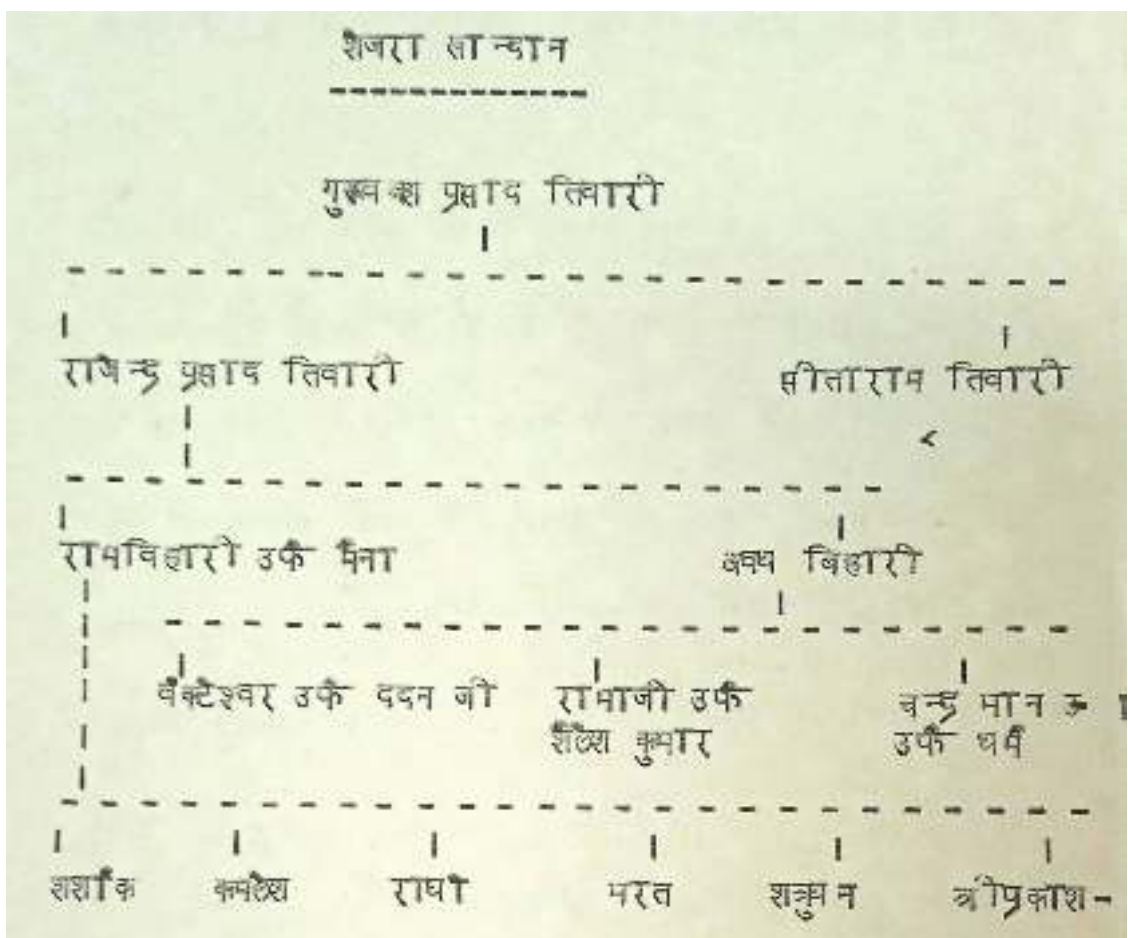
Respondent :- D.D.C.

Counsel for Petitioner :- Manish Deo Singh

Counsel for Respondent :- Suresh Chandra Varma, Prem Shankar Tripathi, S.C.

Hon'ble Saurabh Shyam Shamsbery,J.

1. This writ petition is of the year 1977.
2. During long pendency of writ petition, some of original petitioners and respondents have died and their legal heirs are on record. The parties are represented through their respective Advocates.
3. Sri Manish Deo Singh, Advocate has appeared on behalf of petitioners and Sri Suresh Chandra Varma and Prem Shankar Tripathi, Advocates have appeared on behalf of respondents and they have filed their respective written submissions also.
4. Factual matrix of present case is as follows -:
 - i. Genealogy of parties *inter-se* is not under dispute and is already part of judgment passed by Consolidation Officer and for reference, scanned image of pedigree is extracted hereinbelow -:



ii. The dispute arose around khata nos. 53, 54 and 98 of village Chatia as well as khata nos. 52, 53, 55 and 103 of village Ukina Khas, District- Deoria.

iii. In basic year, above referred khata numbers were recorded in co-tenancy of Sitaram, Rangnath, Venkateshwar, Ramji and Chandrabhan, all sons of Awadh Bihari.

iv. During consolidation proceedings, many objections were filed. Original respondents no. 2 to 7 have filed objections claiming share (i.e. 2/3 of entire property) of Sitaram on basis of two sale deeds dated 16.11.1970 (registered) and 10.12.1970 (unregistered) in regard to details mentioned therein.

v. Original respondent no.3 has filed objections claiming 1/2 shares in interest of Sitaram (deceased)

on land in dispute and has supported claim of original respondents no. 2 to 7 being his sons.

vi. Objections were objected by original petitioners and they have challenged validity of above referred both sale deeds being void as well as signatures of vendors were also disputed. Parties in support of their respective claim have produced their respective witnesses.

5. The Consolidation Officer by an order dated 30.06.1972 rejected claim of answering respondents and relevant parts thereof are quoted below:-

“बैनामे की सत्यता तथा उसका प्रतिदान दिया जाना और इस तथ्य को प्रमाणित करना वादी गण शशांक आदि पर भार स्वरूप निर्भर है। बैनामे में रजिस्टर के समक्ष कुछ भी नहीं दिया गया। इस बात की सहायता में आया है कि कथित बैनामे के कुछ ही दिन बाद सीताराम की मृत्यु हो गयी ऐसी परिस्थिति में वादी गण को साबित करना चाहिए परन्तु वादीगण ने कदापि साबित नहीं किया है। जबकि बैनामे की प्रत्येक बात इन्कार की गयी, यहां तक की बैनामे की दरखास्त को इन्कार भी की गयी है। इस प्रकार ----- साबित करने का भार वादीगण पर है। जो नहीं साबित किया जा सका है। परन्तु इसके प्रतिपक्षीगण ने इन्कार करते हुए परिस्थिति से यह साबित कर दिया है कि बैनामा फर्जी तथा धोखे से अमल आया है। यह बात सत्य ही है। कि धोखे की प्रत्यक्ष प्रमाण नहीं हो सकता है। परिस्थितियां ही प्रमाणित कर सकती है। जो इस मुकदमे में प्रति परिस्थितियां ही प्रमाणित कर सकती है। जो इस मुकदमे में प्रति पक्षीगण ने प्रमाणित किया है। बैनामे की वास्तविकता तथा उनके लिखावट ----- से प्रमाणित करने का भार वादी गण पर जो कही भी प्रमाणित नहीं किया जा सका है।

वादीगण ने प्रत्युत्तर के रूप में कोई ऐसा लिखित प्रत्युत्तर नहीं दिया है। जिसमें उन्हें किसी कथन पर विश्वास किया जा सके। यह है कि प्रत्येक पक्ष जिस तथ्य का कथन करे उसे लिखित रूप में ----- को तक उसके संदर्भ में प्रमाण प्रस्तुत करें इस प्रकार भी वादी गण मुताबिक कानून सही तथ्य का निरूपण करने में असफल रहे हैं। और जब जैसी बात मस्तिष्क में आयी उसे कह दिया सारी शहादत वादीगण ----- कही गयी है। बैनामा मुताबिक कानून साबित भी नहीं किया गया है।

पक्षों को यह मान्य है कि विवादित भूमि मौरिसान के समय की है, और सीर खुद कास्त की आराजियात रही है। यह भी मान्य है। तथा

कागजी प्रमाण से प्रमाणित है कि फरिकैन एक ही मकान में सम्मिलित रूप से रहते हैं। तथा खाता जात भी सम्मिलित है। ऐसी परिस्थिति में बैनामे की सत्यता प्रमाणित करने का भार वादीगण ने वहन नहीं किया है। तो उनके प्रतिकूल प्रभाव लिया जा सकता है। और इस मुकदमें में तो निश्चय ही लिया जाना उचित प्रतीत होता है।

सीताराम मृतक के वारिस रंगनाथ उर्फ भैया जी पुत्र राम बिहारी वेंकटेश्वर उर्फ ददन जी रामा जी उर्फ शैलेश कुमार व चन्द्रभान उर्फ धर्मदत्त है। सीताराम के कुल जायदाद के रंगनाथ का १/४ भाग व वकटेश्वर व रामा जी व चन्द्रभान पुत्रगण अवध बिहारी का ३/४ भाग होना न्यायोचित है। तथा तद्नुसार निर्णय किया जाता है। वाद बिन्दु नं० १ व ६ का सकारात्मक में तथा वाद बिन्दु नं० २ का नकारात्मक रूप में निर्णय दिया जाता है। वाद बिन्दु नं० ३,४,५ के निर्णय की अब आवश्यकता नहीं रह जाती है।”

[emphasis supplied]

6. Aforesaid order of the Consolidation Officer was challenged by answering respondents by way of filing appeals before the Assistant Settlement Officer of Consolidation and all appeals were dismissed vide an order dated 24.11.1976. Relevant parts thereof are mentioned hereinafter:-

“सीताराम ने इन दोनों बैनामों के द्वारा वह भूमि बेची है जो उन्हें १७६ के मुकदमे में उनके कुरे में दी गयी थी। यद्यपि कुछ नम्बरों में अन्तर भी है। सीताराम ने वाद संख्या ५८ अन्तर्गत धारा १७६ दाखिल किया था जिसमें दिनांक २०.०९.६४ को अन्तिम रूप से कुरे कन्फर्म कर दिए गए और दिनांक १०.०५.६५ की फाईनल डिग्री बन गयी। दिनांक २१.०५.६६ को वेंकटेश्वर ने इस फाईनल डिग्री के विरुद्ध कायमी की दरखास्त दी जो स्वीकार हुयी। इसके विरुद्ध सीताराम ने रिविजन दाखिल किया जो दिनांक २३.०९.६९ को माननीय राजस्व परिषद से खारिज हो गया। इस प्रकार १७६ के वाद संख्या ५८ में जो कुरे बने थे। वह समाप्त कर दिये गये। इसलिए जो स्थिति १७६ के मुकदमे के पूर्व थी वह पुनः वापस हो गयी। इस प्रकार संयुक्त खाते में सीताराम का हिस्सा १/२ था जो कुरा उनको १७६ के मुकदमे में दिया गया था उसका बैनामा करने का उन्हें कोई अधिकार नहीं रह गया था। इस सम्बन्ध में उत्तरवादी की ओर से आर०डी० १९७२ के पृष्ठ सं० ३६१ पर दी गयी रूलिंग का हवाला दिया गया जिसमें यह कहा गया है कि यदि एक पक्षीय आदेश निरस्त हो जाय तो पूरी भूमि में पूर्ववत हिस्सेदार हो जायेंगे। इस प्रकार १७६ के मुकदमे में जो कुरा सीताराम, रंगनाथ को दिया गया था उसमें सीताराम २।३ भाग के हिस्सेदार थे। उस कुरे को उनको बेचने का अधिकार नहीं था। यदि उन्हें बेचना ही था तो वह अपने संयुक्त खाते में अपना १।२ भाग बेच सकते थे। अपीलकर्ता के विद्वान अभिभाषक ने यह तर्क रखा कि चूंकि मौके पर १७६

के मुकदमे में बने कुरे के अनुसार ही पक्ष काविज थे तथा उनके बीच वाहमी बंटवारा था इसलिए उसी के अनुसार सीताराम ने बैनामा किया। यदि तर्क के लिए यह मान भी लिया जाय कि १७६ के अनुसार बंटवारा था और उसी के अनुसार पक्ष काबिज थे तब भी प्रत्येक गाटे पर प्रत्येक सह खातेदार का कब्जा माना जायेगा। बाहमी बंटवारे के कारण किसी गाटे से किसी सह खातेदार के अधिकार समाप्त नहीं हो जाते। अपीलकर्ता के विद्वान अभिभाषक का यह भी तर्क है कि ग्राम पटना की भूमि भी इस मुकदमे में थी और उस ग्राम में भी कुरे बन गये थे और उन्हीं कुरों के अनुसार सीताराम ने कुछ भूमि का बैनामा ददन जी आदि को भी किया। उनका यह तर्क है कि फाईनल डिग्री निरस्त हो जाने के बाद भी पक्ष उसी डिग्री के अनुसार काबिज रहे हैं, इसलिए इस डिग्री पाबन्दी उनके ऊपर है। परन्तु यदि ग्राम पटना में कोई गलत कार्य या आदेश हो गया हो तो उसी के आधार पर दूसरे ग्राम में गलत कार्यवाही को सही माना जाय सही नहीं होगा। मेरे पास ग्राम पटना की भूमि के सम्बन्ध में कोई विवाद नहीं है, इसलिए जो भी गलत या सही आदेश उस ग्राम की भूमि के सम्बन्ध में पारित हो गया है। उस सम्बन्ध में इस आदेश में कुछ कहना उचित नहीं है। मैं अपीलकर्ता के इस तर्क से सहमत नहीं हूँ कि चूंकि ग्राम पटना में १७६ में फाईनल डिग्री के कुरे के अनुसार पक्षों ने बैनामा किया है इसलिए इस ग्राम में भी इस डिग्री को मान लिया जाय।

सीताराम ने अपनी भूमि को बेचने के सम्बन्ध में बन्दोबस्त अधिकारी चकबन्दी से अनुमति भी प्राप्त की थी परन्तु उन्होंने अपने पूरी भूमि को बेचने की अनुमति प्राप्त की थी। जो बैनामा उन्होंने ग्राम चटिया व उकीना खास की भूमि का किया है, उसमें उन्होंने अपने पूरे अंश के सम्बन्ध में नहीं किये हैं। बल्कि सम्बन्धित गाटों में उन्होंने अपने २।३ भाग को मानते हुए उसमें से २।३ भाग का बैनामा किया है। अतिरिक्त गाटा सं० १२८ का बैनामा उन्होंने दिनांक १६.११.७० को नहीं किया है बल्कि इस भूमि का बैनामा अलग से उन्होंने ११.१२.७० को किया है। इस प्रकार उन्होंने अपने सम्पूर्ण जोत के अंश का बैनामा किया है, परन्तु उन्होंने अपने पूरे भूमि के किसी अंश का बैनामा करने की कोई अनुमति प्राप्त नहीं की थी और बिना अनुमति के जो भी बैनामा किया गया है वह सर्वथा अवैधानिक है इसलिए इस बैनामे के आधार पर शशांक शेखर आदि का दाखिल खारिज नहीं किया जा सकता है। अपीलकर्ता के विद्वान अभिभाषक ने यह तर्क रखा कि यह बैनामा बिना अनुमति के नहीं है। सीताराम ने अपने अंश का बैनामा करने की अनुमति प्राप्त कर ली थी और उसमें उन्होंने २।३ भाग का बैनामा किया इसलिए यह बैनामा बिना अनुमति के नहीं कहा जा सकता है। परन्तु मैं उनके तर्क से सहमत नहीं हूँ। सीताराम ने अपने पूरे हिस्से को बेचने की अनुमति प्राप्त की थी इसलिए इसके अनुसार वह अपना पूरा हिस्सा ही बेच सकते थे अपने पूरे अंश के किसी का बैनामा करने की अनुमति प्राप्त नहीं की थी इसलिए किसी अंश का बैनामा करने के लिए सक्षम नहीं थे और न ही इनके द्वारा किए गए बैनामा के आधार पर कोई अधिकार अपीलकर्ता को दिया जा सकता है।

उपरोक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुँचता हूँ कि चकबन्दी अधिकारी ने शशांक शेखर की दाखिल खारिज की आपत्ति को खारिज करने में कोई भूल नहीं की है। वंशावली के अनुसार जिस समय सीताराम मरे उनके चार भतीजे रामा उर्फ शैलेस, रंग नाथ उर्फ ददन जी, चन्द्रभान उर्फ धर्मदत्त उनके वारिस थे और प्रत्येक का हिस्सा सीताराम के अंश में १।४ हुआ। इसी अनुसार चकबन्दी अधिकारी ने दाखिल खारिज का आदेश दिया है। चकबन्दी अधिकारी के आदेश में कोई त्रुटि नहीं है उनके आदेश से मैं सहमत हूँ। अपील निराधार है।

आदेश

अतः अपील खारिज की जाती है।”

[emphasis supplied]

7. In the aforesaid circumstances, answering respondents filed a revision petition before the Deputy Director of Consolidation, which was allowed and concurrent findings of two lower Authorities were reversed by an order dated 23.04.1977 and relevant findings thereof are quoted below:-

“ग्राम पटना का बैनामा हुआ था चूँकि यह बैनामा भी इसपेसिफिक प्लाट का है और फरीकैन के कुर्रे के अनुकूल है, इसलिए यही समझा जायेगा कि बनकटेश्वर आदि के ही यह तसलीम है कि पक्षों के बीच वाहिनी बंटवारा है और पक्ष अलग अलग अपने कुर्रे पर काबिज दाखिल है। इस प्रकार शशांक आदि का कहना है कि इस्पेसिफिक प्लाट का बैनामा की (1) पिली ग्राम चटिया व ग्राम उकिना खास के बैनामे में बनकटेश्वर आदि द्वारा नहीं उठायी जा सकती। उनके विरुद्ध इस्टैपेल की बाधा है। मैं शशांक आदि के इस तर्क से सहमत हूँ कि श्री सीताराम को अपना पूरा हिस्सा बेचने की लिए सन् १९७० में व० अ० च० द्वारा पूर्व अनुमति देने की कानूनी आवश्यकता नहीं थी, अपना पूरा हिस्सा तो वह बिना किसी अनुमति द्वारा ही बेच सकते थे अपने अनुमति की दरखास्त में भी सीताराम ने केवल १/२ अंश लिखाया है। इसलिए एस०ओ०सी० द्वारा पूरे हिस्से के बारे में अनुमति देने का सवाल ही नहीं पैदा होता था। ऐसी सूरत में व० अ० च० द्वारा दी गयी अनुमति दिनांक २१.१०.७० में यदि पूरे हिस्से के बारे में अनुमति दिया जाना लिख दिया गया है, तो उसको केवल एक लेख की गलती ही माना जा सकता है।

चकबन्दी देहात में होती है जहाँ ज्यादा कानूनी सलाह कार नहीं मिल सकते हैं। अधिकतर लोग अनपढ़ व जाहिल होते हैं। इसलिए चकबन्दी में उत्पन्न वादी के निस्तारण में अधिक दृढ़ता से काम नहीं लेना चाहिए। ज्यादा कड़ाई से कानून का पालन करने से अनुचित हानि होने की संभावना है। ऐसी सूरत में न्याय व नेचुरल जस्टिस का ख्याल रखना

चाहिए और यह भी देखना चाहिए कि सीताराम का बैनामा करने का मंशा क्या था, सीताराम के कोई लड़का नहीं था वह अपने जीवन काल में ही अपनी जमीन को अपने भाई राजेन्दर की औलाद कर दिये ७-९८ एकड़ जमीन रंगनाथ के लड़को को दिया। क्योंकि वह तादाद में ज्यादा है, और ३-९९ एकड़ जमीन वंकटेश्वर आदि को दिया जो संख्या में कम है ग्राम पटना की जमीन का यह हस्तान्तरण पक्ष को तसलीम है और इन पर नाम भी बैनामो के आधार पर दर्ज हो चुके हैं।

परन्तु ग्राम उकिना खास व ग्राम चटिया में इसी प्रकार के बैनामे का वंकटेश्वर वगैरह विरोध करते हैं इन लोगो के विरोध का न्याय के हित में कोई उचित कारण दिखायी नहीं देता।

इस वाद में यह सवाल नहीं है कि सीताराम ने कोई व०अ०च० द्वारा अनुमति नहीं ली अगर अनुमति न ली गयी होती तब ही बैनामा वायड था परन्तु सीताराम द्वारा व०अ०च० से अनुमति ली गयी गलती यही है कि व०अ०च० द्वारा सीताराम के पूरे अंश के लिए अनुमति दे दी गयी है हालांकि सीताराम की इच्छा केवल अपने हिस्से के अंश को ही हस्तान्तरण करने की थी ऐसी सूरत में सीताराम द्वारा किया गया बैनामा में चाहे कोई त्रुटि हो लेकिन कोई अवैधानिकता नहीं है वंकटेश्वर आदि के इस तर्क में कोई बल नहीं पाया जाता कि कि बैनामा चकबन्दी अधिनियम की धारा ५ सी (२) तथा ४५ ए (२) के अन्तर्गत वायड है।

मैंने ग्राम पटना के खतौनी १३७५ से १३८० का अवलोकन किया और इसका उणिलान बैनामा दिनांक १२.११.७० जिसको सीताराम ने ग्राम पटना की जमीन के बारे में वंकटेश्वर आदि के हक में लिखा है, उससे मिलान किया। इसके अलावा मैंने उक्त खतौनी में नम्बरान का मिलान बैनामा दिनांक १६.११.७० से भी किया जिसके द्वारा ग्राम पटना के ७-९८ एकड़ भूमि का हस्तान्तरण सीताराम ने शशांक आदि के हक में किया। ग्राम पटना की भूमि में सीताराम का कानूनी अंश १/२ था, ग्राम पटना की कुल भूमि २१-८० एकड़ है इसमें से ३-९९ एकड़ भूमि सीताराम ने वंकटेश्वर आदि को बैनामा दिनांक १२-११-७० द्वारा दिया है, और ७-९८ एकड़ भूमि सीताराम ने शशांक आदि को बैनामा १६.११.७० द्वारा दिया है इन बैनामो का दाखिल खारिज भी हो चुका है इस प्रकार अपना सम्पूर्ण भाग सीताराम ने ग्राम पटना की भूमि का हस्तान्तरण कर दिया है, और अब इसका कोई शेष भाग नहीं रह गया परन्तु उपर्युक्त दोनों बैनामो इसपेसिफिक प्लॉट्स के बारे में किए गए गाटा संख्या- ३४१-२४, ५७८१-१५, ५८६१-३०, ६०२१२१-१६, ६४७१-४५, ६७३१-३६, ७०३१११-१७ ग्राम पटना की खतौनी में दर्ज है। परन्तु नम्बरान में से कोई भी भाग सीताराम द्वारा हस्तान्तरित नहीं किया गया है और इसका पूरा १/२ भाग इस खाते से बकिया इसपेसिफिक प्लॉट द्वारा हस्तान्तरित कर दिया गया यह बैनामा वंकटेश्वर आदि को मंजूर है क्योंकि इस बैनामे के आधार पर इन लोगो ने अपना नाम दर्ज भी करा लिया है, इस तरह से यह पूर्णतया साबित हो जाता है कि पक्षों के बीच वाहमी बंटवारा है। और यह वाहमी बंटवारा पक्षों को तसलीम भी है क्योंकि इस वाहमी बंटवारे द्वारा ग्राम पटना में बैनामे

किये गए हैं और खुद पक्षों ने अपने हक में बैनामा दाखिल खारिज करा लिया है। उनके विरुद्ध इस स्टोपेल बाधा है।

सीताराम ने जो बैनामा किया वह २।३ का २।३ यानी ४।९ भाग है उनका अंश १।२ था। इस अंश में तथा बय किये गए ४।९ में केवल १।१८ का अंतर है इस आधार पर बैनामा की अवैध कहना बाल की खाल निकालना होगा जो कानून का मंशा कभी नहीं होगी मंशा जोत छोटी होने से रोकना है न कि बैनामा रोकना।

इस तरह जो दूसरा तक वंकटेश्वर आदि ने बैनामा के खिलाफ इसपैसिफिक प्लाट्स का बैनामा किये जाने के आधार पर किया है, वह भी बलहीन है। और उसमें कोई जोर नहीं पाया जाता।

उपर्युक्त तथ्यों के आधार पर मैं इस निष्कर्ष पर पुहुंचता हूँ कि शशांक आदि की निगरानी स्वीकार किये जाने योग्य है और उक्त बैनामों के आधार पर उसका नाम दर्ज होना चाहिए।”

[emphasis supplied]

8. Aforesaid order of Deputy Director of Consolidation is challenged before this Court by way of this writ petition.

9. Learned counsel for petitioners has submitted following submissions -:

(a) That the Revisional Authority's order dated 23.04.1977 was passed prior to Amendment of 2002 as inserted vide Uttar Pradesh Consolidation of Holdings (Amendment) Act, 2002 (U.P. Act No. 3 of 2002) by which explanation no. 3 was added to Section 48 of Act of 1953, and said amendment was enforced retrospectively w.e.f. 10.11.1980. Prior to 1980, revisional jurisdiction u/s 48 of Act of 1953 was very limited and the Revisional Authority, if reached to a conclusion that findings returned by lower Authorities were illegal, it had only power to remit said case to his lower Authority, however, the Revisional Authority could not have himself re-appreciated or reassessed the evidence.

(b) That the Revisional Authority in impugned order had erroneously considered an issue of promissory estoppel and it ought not to have considered the same in regard to property situated in village Patna as it was outside the ambit of dispute before it.

(c) That alleged unregistered sale deed of approximately one acre of land dated 10.12.1970 was apparently at a throwaway price of ₹ 98/-, however, its actual market value at relevant time was approx. ₹ 7000/- and said sale deed was executed contrary to provisions of Section 25 of Indian Contract Act 1872 and therefore, it has to be considered as void.

(d) That alleged unregistered sale deed was in contravention with the provisions of Section 17 of Indian Registration Act, 1908 (for short “Act of 1908”) which mandates registration of documents and in case any conflict appears between a Central Act and provision of Section 51 of Act of 1953 i.e. a State Act, the Central Act would prevail as mandated by Article 254 of Constitution of India.

(e) That Section 5(1)(c)(ii) of Act of 1953 (as then it was) has provided that if a recorded tenure holder intends to transfer his entire holdings then there was no question for seeking permission from Settlement Officer of Consolidation, however, in present case, Sitaram (since deceased) moved an application to seek permission to sell his property which was an error apparent on record.

(f) That Revisional Authority committed anomaly in determining share of parties thereby there is an apparent illegality on record.

10. In support of his contentions, learned counsel has placed reliance upon judgment passed in **Nathoo Ram and another vs. Deputy Director of Consolidation, Varanasi and others, 2017 (124) ALR 753).**

11. Per contra, learned counsel for contesting respondents have submitted following submissions -:

(a) That the Revisional Authority in impugned order recorded a finding that sale deed dated 16.11.1970 through which Sitaram sold his agricultural land of village Patna to Shashank and others and no challenge/objection has been made to this sale deed and since same was not disputed either, therefore, sale deed in question could not be challenged.

(b) That the Revisional Authority has held that when sale deed dated 16.11.1970 executed by Sitaram in favour of above referred persons, was not hit by unsoundness of mind or undue influence, therefore, as to how the sale deed of another village of same date executed by same person could be objected and that since petitioners had also purchased some land from same vendor, therefore, they were estopped from challenging a transaction between Sitaram and Shashank when no suit for cancellation of those sale deeds was filed by the petitioners.

(c) That the Revisional Authority has clearly returned a finding that grant of permission for sale of entire land by Sitaram was a clerical mistake as that Sitaram could have sold only his share and legally reversed a finding of the Settlement Officer of Consolidation regarding technical defect in grant of permission under Section 5(1)(c)(ii) of Act of 1953 (as then it was) and held sale deed to be valid.

(d) That in impugned order, the petitioners had tactically admitted that there was a private partition between the parties and sale deed was as per this admitted division of the holdings and with these definite findings of fact, they have accepted that sale deed executed in favour of contesting respondents was not hit by provisions of Section 5(1)(c)(ii).

(e) That a finding of fact has been recorded holding that contesting respondents are entitled to land which was purchased by them from Sitaram.

(f) That there was no illegality in the order passed by Revisional Authority as it was well within its jurisdiction to pass such order, hence, petition is liable to be dismissed.

12. Heard learned counsel for parties, perused the record and written submissions.

13. On basis of above referred rival submissions, issues which fall for consideration of this Court are as follows -:

(a) Whether Revisional Authority within its power as provided under Section 48 of Act of 1953 (as then it was) was justified in reversing concurrent findings of facts as well as law of two lower Authorities?

(b) What would be effect of an unregistered sale deed in view of Section 17 of Act of 1908 as well as effect of its conflict, if any, with Section 51 of Act of 1953?

(c) What would be effect in a case where permission to sale under Section 5(1)(c)(ii) of the Act of 1953 was granted for a larger part of land but sale deed was

actually executed for lessor part of land i.e. only to extent of share of vendor?

(d) Whether principle of promissory estoppel was rightly applied by Revisional Authority or not?

Re- Issue (a) -:

14. It is not in dispute that when impugned order was passed on 23.04.1977, powers with Revisional Authority were limited and it was provided that Authority may call for records of any case decided or proceedings undertaken where he is of opinion that lower Authority has exercised jurisdiction not vested in him in law or fail to exercise jurisdiction vested in him or acted in the exercise of his jurisdiction illegally or with substantial irregularity and as a result of which substantial injustice appears to have been caused to a tenure holder. (See U.P. Act No. XXXVIII of 1958)

15. The issue of power of Revisional Authority was considered in **Nathoo Ram and another (supra)** on which learned counsel for petitioners has placed heavy reliance. The coordinate Bench after taking note of earlier judgments has reiterated in paragraph 61 and 62 thereof that -:

“61. In a recent decision in Jagdamba Prasad Vs. Kripa Shankar (2014) 5 SCC 707, the Court has considered Section 48 as amended in 1963, but thereafter in para 15, following earlier decision in Sher Singh Vs. Joint Director of Consolidation (supra), has said as under:

“15. According to the legal principle laid down by this Court in the case mentioned above, the power of the Revisional Authority under Section 48 of the Act only extends to ascertaining whether the subordinate courts have exceeded their jurisdiction in coming to the conclusion. Therefore, if the Original and Appellate

Authorities are within their jurisdiction, the Revisional Authority cannot exceed its jurisdiction to come to a contrary conclusion by admitting new facts either in the form of documents or otherwise, to come to the conclusion. Therefore, we answer point no. 1 in favour of the appellants by holding that the Revisional Authority exceeded its jurisdiction under Section 48 of the Act by admitting documents at revision stage and altering the decision of the subordinate courts.”

62. It is thus difficult to observe that Explanation III to Section 48 has brought scope of revision at par with appellate jurisdiction so as to assess evidence on pure issue of fact and recording findings de novo. Revisional power is not a power of first or second appellate Court which are final Courts of fact. The findings recorded therein would be possible to be interfered under Section 48 only on the grounds, discussed in Ram Dular (Supra), Sheshmani (Supra) and Jagdamba Prasad (supra).”

16. The Court will scrutinize in later paragraphs as to whether the Revisional Authority has acted within four corners of its power? And that whether there was a substantial irregularity in the orders passed by lower Authorities as result of which substantial injustice was caused to revisionist? After considering other issues, if so warrant.

Re- Issue (b) -:

17. Section 17 of Act of 1908 provides documents of which registration is compulsory which shall include any instruments which purports to operate to create any title of value of ₹ 100/- and onwards. However since consideration of unregistered sale deed dated 10.12.1970 was only ₹ 98/- i.e. less than ₹ 100/-, therefore, under provision of Act of 1908, there was no mandatory requirement of such document to be registered.

18. Section 51 of Act of 1953 provides that notwithstanding anything contained in any other law for the time being in force, no instrument in writing shall be necessary for affecting a transfer of holdings involved in giving effect to a final Consolidation Scheme nor shall any such instrument, if executed, requires registration.

19. From above referred Section 51, it would be evident that it commenced with a non-obstante clause that notwithstanding anything contained in any other law, therefore, it is presumed that it has taken into consideration of earlier enactment i.e. Act of 1908.

20. So far as argument of learned counsel for petitioners in regard to Article 254 (1) of Constitution is concerned, it states that -:

“If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.”

21. The Supreme Court in the case of **M. Karunanidhi vs. Union of India, 1979 AIR 898**, has held that three conditions must be specified to conclude that repugnance exists. These are (i) there is a clear and direct inconsistency between the Central Act and the State Act, (ii) such an inconsistency is absolutely irreconcilable and (iii) the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision

with each other and a situation is reached where it is impossible to obey the one without disobeying the other.

22. U.P. Consolidation of Holdings Act is an Act to provide for consolidation of agricultural holdings in Uttar Pradesh for development of agriculture. There are various provisions to achieve the object and for that special provisions and powers were provided to Authorities under the Act and that Section 51 was enacted for a limited purpose in regard to sale deed executed during consolidation proceedings and for that purpose, clause of non-obstante was included. It is not a case where there is a direct repugnancy between State and Central law. Therefore, the Court is of the opinion that Section 51 of the Act will operate within its scope and its legal consequence, if any, shall follow.

Re:- Issue (c) -:

23. Issue in regard to averment of permission to sale viz.-a-viz., area of sale was considered by this Court in the case of **Smt. Chandrawati vs. Deputy Director of Consolidation, 2023:AHC: 145981** and relevant paragraphs thereof are quoted herein below:-

“12. Now the Court proceeds to consider the issue involved and mentioned in paragraph 1 of present judgment. The petitioner (vendor) was legally entitled to execute sale deed of land mentioned in permission granted to her under Section 5(i)(c)(ii) of Act of 1953. Undisputedly, the petitioner has executed sale deed in excess of land mentioned in permission.

13. A sale deed could be held void only if the vendor has sold land without any legal right or against provisions of any law. Ownership of land in question is now not in dispute i.e. petitioner was owner of disputed land being part of sale deed.

14. Supreme Court in **Gorakh Nath Dube vs. Hari Narain Singh and others, (1973) 2 SCC 535** has held that :-

“5. There is no decision of this Court directly on the question whether a suit for cancellation of a sale-deed, which was pending on the date of the notification under Section 4 of the Act, abates under Section 5(2) of the Act. A decision of a Division Bench of the Allahabad High Court, in **Jagarnath Shukla v. Sita Ram Pande [1969 ALJ 768]**, directly dealing with the question before us, was then cited before us. Here, we find a fairly comprehensive discussion of the relevant authorities of the Allahabad High Court the preponderating weight of which is cast in favour of the view that questions relating to the validity of sale-deeds, gift deeds, and wills could be gone into in proceedings before the consolidation authorities, because such questions naturally and necessarily arose and had to be decided in the course of adjudication on rights or interests in land which are the subject-matter of consolidation proceedings. We think that a distinction can be made between cases where a 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. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject-matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective, but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it. In the case before us, the plaintiff's claim is that the sale of his half share by his

uncle was invalid, inoperative, and void. Such a claim could be adjudicated upon by consolidation courts. We find ourselves in agreement with the view expressed by the Division Bench of the Allahabad High Court in Jagarnath Shukla case that it is the substance of the claim and not its form which is decisive.”

(emphasis supplied)

15. As observed above, the sale deed in question is not a void instrument but it may be a voidable instrument i.e. valid to extent of land which would fall within the permission granted under Section 5(i)(c)(ii) of Act of 1953 and could be declared void in regard to excess land.”

24. In above legal and factual background where the vendor has executed a sale deed limited to his share whereas permission was granted of much larger area, the sale deed could not be held to be void rather it remains valid and legally enforceable as there was no illegality in sale deed as well as that it is not much in dispute that vendor was owner of area of land (his undisputed share) for which sale deed was executed.

Re:- Issue (d) -:

25. This issue relates to principles of promissory estoppel. The doctrine of promissory estoppel being equitable doctrine was evolved for equity to prevent injustice.

26. It is not in dispute that in the present case, same vendor by a sale deed dated 16.11.1970 has sold his agricultural land of another village viz., situated at Patna to some of the contesting respondents also.

27. However, admittedly said sale deed was not objected at the behest of petitioners either on the ground of competency of vendor or otherwise and finding has also been returned that petitioners had also purchased some land from same vendor and

therefore, they cannot take two stands at one time so much as that same vendor was competent to sold land in their favour as well as at land in other village and on other hand to object sale deed executed by same vendor to respondents, therefore, in background of referred factual aspects, the Deputy Director of Consolidation has rightly applied principles of promissory estoppel.

28. In this regard, few excerpts from Part-H (from paragraph 28 to 35) of the judgment of **State of Jharkhand vs. Brahmputra Metalics Ltd., 2020 SCC Online SC 968** would be relevant and are reproduced hereinafter -:

“H.3 Promissory estoppel - origins and evolution

28. Before the High Court, the State of Jharkhand sought to sustain its action on the ground that though the follow-up notification under Section 9 was issued on 8 January 2015, no outer limit for the issuance of a notification was prescribed and there was no vested right on the part of the respondent to get the notification implemented from an earlier date or to obtain the benefit of the policy until it was implemented by a follow-up notification. The decision in *Kalyanpur Cement* (supra) [(State of Bihar v. Kalyanpur Cement Limited, (2010) 3 SCC 274)] was sought to be distinguished on the ground that in that case no follow-up notification had been issued at all until the policy lapsed. In sum and substance, the objection was that the writ petitioner - the respondent here - had no vested right to claim that a follow-up notification should be issued and that the doctrine of *promissory estoppel* would not, in the facts, apply.

29. In order to analyze the contentions relating to the doctrine of *promissory estoppel* in the present case, it is necessary to discuss the origin of the doctrine and the evolution of its application. The common law recognizes various kinds of equitable estoppel, one of which is promissory estoppel. In *Crabb v. Arun DC* ([1976] 1 Ch. 179 (Court of Appeal)), Lord Denning, speaking for the

Court of Appeal, traced the genesis of promissory estoppel in equity, and observed:

“The basis of this proprietary estoppel - as indeed of promissory estoppel - is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law. The early cases did not speak of it as “estoppel”. They spoke of it as “raising an equity” If I may expand that, Lord Cairns said:“It is the first principle upon which all Courts of Equity proceed”, that it will prevent a person from insisting on his legal rights - whether arising under a contract or on his title deed, or by statute - when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties.”

30. The requirements of the doctrine of *promissory estoppel* have also been formulated in Chitty on Contracts (Hugh Beale, *Chitty on Contracts* (32nd edn., Sweet & Maxwell 2017)) (“*Chitty*”):

“4.086. For the equitable doctrine to operate there must be a legal relationship giving rise to rights and duties between the parties; a promise or a representation by one party that he will not enforce against the other his strict legal rights arising out of that relationship; an intention on the part of the former party that the latter will rely on the representation; and such reliance by the latter party. Even if these requirements are satisfied, the operation of the doctrine may be excluded if it is, nevertheless, not “inequitable” for the first party to go back on his promise. The doctrine most commonly applies to promises not to enforce contractual rights, but it also extends to certain other relationships.

4.088.....The doctrine can also apply where the relationship giving rise to rights and correlative duties is non-contractual : e.g. to prevent the enforcement of a liability imposed by statute on a company director for signing a bill of exchange on which the company's name is not correctly given; or to prevent a man from ejecting a woman, with whom he has been cohabitating, from the family home.”

31. *Chitty* (supra) clarifies that the doctrine of *promissory estoppel* may be enforced even in the absence of a legal relationship. However, it is argued that this would be an

incorrect application of the doctrine since it gives rise to new rights between the parties, when the intent of the doctrine is to restrict the enforcement of previously existing rights:

“4.089. It has, indeed, been suggested that the doctrine can apply where, before the making of the promise or representation, there is no legal relationship giving rise to rights and duties between the parties, or where there is only a putative contract between them : e.g. where the promisee is induced to believe that a contract into which he had undoubtedly entered was between him and the promisor, when in fact it was between the promisee and another person. But it is submitted that these suggestions mistake the nature of the doctrine, which is to restrict the enforcement by the promisor of previously existing rights against the promisee. Such rights can arise only out of a legal relationship existing between these parties before the making of the promise or representation. To apply doctrine where there was no such relationship would contravene the rule (to be discussed in para.4-099 below) that the doctrine creates no new rights.”

32. Generally speaking under English Law, judicial decisions have in the past postulated that the doctrine of *promissory estoppel* cannot be used as a ‘sword’, to give rise to a cause of action for the enforcement of a promise lacking any consideration. Its use in those decisions has been limited as a ‘shield’, where the promisor is estopped from claiming enforcement of its strict legal rights, when a representation by words or conduct has been made to suspend such rights. In *Combe v. Combe* ([1951] 2 K.B. 215) (“*Combe*”), the Court of Appeal held that consideration is an essential element of the cause of action:

“It [promissory estoppel] may be part of a cause of action, but not a cause of action itself.

.....

The principle [promissory estoppel] never stands alone as giving a cause of action in itself, it can never do away with the necessity of consideration when that is an essential part of the cause of action. The doctrine of

consideration is too firmly fixed to be overthrown by a side-wind.”

33. Even within English Law, the application of the rule laid down in *Combe* (supra) has been noticed to be inconsistent (*Wyvern Development, Re*, [1974] 1 WLR 1097 cited in Susan M. Morgan, “A Comparative Analysis of the Doctrine of Promissory Estoppel in Australia, Great Britain and the United States”, (1985) 15 Melbourne University Law Review 134, 139-141). The scope of the rule has also been doubted on the ground that it has been widely framed (In *Tungsten Electric Co. Ltd. v. Tool Metal Manufacturing Co. Ltd.*, [1955] 1 WLR 761, Lord Simonds states, “I do not wish to lend the authority of this House to the statement of the principle which is to be found in *Combe v. Combe* and may well be far too widely stated”). Hence, in the absence of a definitive pronouncement by the House of Lords holding that promissory estoppel can be a cause of action, a difficulty was expressed in stating with certainty that English Law has evolved from the traditional approach of treating promissory estoppel as a ‘shield’ instead of a ‘sword’ (In *Baird Textiles Holdings Ltd. v. Marks and Spencer Plc.*, (2002) 1 All ER 737, Court of Appeal stated that “there is no real prospect of the claim [estoppel] succeeding unless and until law is developed, or corrected, by the House of Lords”). By contrast, the law in the United States (American Law Institute, *Restatement of the Law (2d), Contracts* (1981), para 90) and Australia (*Waltons Stores (Interstate) Ltd. v. Maher*, (1988) 164 CLR 387) is less restrictive in this regard.

34. India, as we shall explore shortly, adopted a more expansive statement of the doctrine. Comparative law enables countries which apply a doctrine from across international frontiers to have the benefit of hindsight.

35. This Court has given an expansive interpretation to the doctrine of *promissory estoppel* in order to remedy the injustice being done to a party who has relied on a promise. In *Motilal Padampat* (supra), this Court viewed *promissory estoppel* as a principle in equity, which was not hampered by the doctrine of consideration as was the case under English Law. This Court, speaking through Justice P N Bhagwati (as he was then), held thus:

“12....having regard to the general opprobrium to which the doctrine of consideration has been subjected by eminent jurists, we need not be unduly anxious to project this doctrine against assault or erosion nor allow it to dwarf or stultify the full development of the equity of promissory estoppel or inhibit or curtail its operational efficacy as a justice device for preventing injustice...We do not see any valid reason why promissory estoppel should not be allowed to found a cause of action where, in order to satisfy the equity, it is necessary to do so.”

29. In background of facts of present case and law as referred above, since the petitioners have not disputed competency of same vendor who has executed sale deed in their favour or sale deed of land situated in other village, therefore, it would be an admission that common vendor was competent to execute sale deed to respondents also.

30. As referred above, action of petitioners would act as an estoppel whereby they were estopped from claiming enforcement of their legal rights and promissory estoppel could extend where it might be part of a cause of action, but not a cause of action itself, therefore, this Court is of view that in facts and circumstances of the present case, principle of promissory estoppel would be applicable as it would satisfy the equity.

31. In view of above discussion on relevant issues where this Court has reached to a conclusion that findings returned by the Deputy Director of Consolidation were not perverse and were supported by well established principles of law and therefore, the question which left for consideration while discussing **Issue (a)** that whether in above circumstances, the Court could hold that Revisional Authority has acted within parameters of provisions of Section 48 of the Act of 1953 (as it was then).

32. The Revisional Authority had jurisdiction to interfere with order or orders passed by lower authority or authorities only under such circumstances when authority has exercised jurisdiction not vested in him or failed to exercise jurisdiction vested in him or acted in the exercise of his jurisdiction illegally or with substantial irregularity and as a result of which substantial injustice appeared to have been caused to a tenure holder. (See U.P. Act No.XXXVIII of 1958).

33. The word 'substantial' carries importance. Word 'substantial' often means more than 'significant'. Word 'substantial' means 'having substance' 'essential', 'real', 'of sound worth', etc. According to P. Ramanatha Aiyar's: The Law Lexicon, 3rd Edition, 2012 meaning of word 'substantial' is 'considerable' and is not the same as 'not substantial'. Hindi translation of word 'substantial' as used in Amendment Act is 'सारवान्' i.e. which goes to the root of dispute.

34. The Supreme Court in *Ram Avadh & Ors Vs. Ram Das & Ors., (2008) 8 SCC 58*, has held that concurrent findings of two lower authorities could not be disturbed mainly on basis of assumption or without any basis. It would be relevant that above referred clauses were neither referred nor considered. The Court was essentially considering effect of U.P. Land Laws (Amendment) Act, 1982 (U.P. Act No.XX of 1982) as well as U.P. Consolidation of Holdings (Amendment) Act, 2002 (U.P. Act No. 3 of 2002), both enforced with effect from 10.11.1980.

35. As observed above, even at that point of time, statute had provided that in case lower Authorities have committed substantial irregularity which has resulted into substantial injustice, the Revisional Authority was within its jurisdiction to

interfere and as discussed above, there is no doubt that lower Authorities have committed substantial irregularity which has caused substantial injustice to respondents, therefore, revision filed by respondents was allowed whereby orders passed by two lower Authorities were interfered.

36. Therefore, impugned order cannot be faulted on the ground of incompetency or jurisdiction of Revisional Authority.

37. Outcome of above discussion is that there is no ground either factual or legal which warrants interference with impugned order under writ jurisdiction as provided under Article 226 of Constitution of India.

38. In these circumstances, this Court does not find any ground to allow this writ petition, therefore, petition being *sans merit* is **dismissed**.

39. No order as to costs.

Order Date :- October 17, 2023

Nirmal Sinha

[Saurabh Shyam Shamshery, J.]