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Reserved on 01.11.2023

Delivered on 08.11.2023

High Court of Judicature at Allahabad

Court No. - 48

Case :- WRIT - B No. - 805 of 1980

Bachcha Singh

.....

Petitioner

Through: Aditya Narain, Anil

Kumar Aditya, Advocates

Vs.

D.D.C. And Others

.....

Respondents

Through: Vishnu Singh, Dinesh

Kumar Singh, Advocates

CORAM : HON'BLE SAURABH SHYAM SHAMSHERY, J.

Hon'ble Saurabh Shyam Shamshery, J.

1. Heard Sri Aditya Narain and Sri Anil Kumar Aditya, learned counsel for the petitioner Sri Vishnu Singh and Sri Dinesh Kumar Singh, learned counsel for the respondents and learned Standing Counsel for the State.
2. In the present case the conclusion of Consolidation Officer and the Settlement Officer of Consolidation were interfered by the Revisional Authority.
3. The petitioner has claimed himself to be a 'co-grove holder' with the respondents on basis of revenue entry of 1334 fasli and onward.
4. The objections of respondents during consolidation proceedings were that those entries were fictitious but it was rejected by the Consolidation Officer on ground that long entries of more than 18-20 years could not be disturbed without any basis and principle of estoppel and acquiescence were determined against the respondents.
5. The Settlement Officer of Consolidation has rejected the appeal substantially on same ground though, additionally it was held that there was an

admission on behalf of the respondents in other proceeding that both belongs to common ancestral.

6. The Revisional Authority has passed an order accompanied by reasons that it was obligation upon the petitioner to prove basis of their revenue entries, however, failed to do so. Further, finding was returned that land was never recorded in the name of common ancestral of petitioner and respondents and since the petitioner has failed to prove the basis of entries in their favour, the Revision was allowed and impugned orders therein were set aside.

7. Learned counsel for the petitioner has referred relevant part of orders passed by the Consolidation Officer and Settlement Officer of Consolidation which are referred hereinafter that claim of the petitioner of joint property was admitted though not in specific words. The long entries were not disputed and the respondent claim was barred by the principle of estoppel and hit by acquiescence.

8. Learned counsel further submitted that the Deputy Director of Consolidation has erroneously shifted burden on petitioner to prove basis of old revenue entries as well as erroneously disturbed concurrent finding of two lower authorities, within its limited jurisdiction as then it was. There was an admission on behalf of respondents in earlier proceedings as well as in a power of attorney about joint property.

9. The relevant part of order of the Consolidation Officer is quoted herein below:

“ जहां तक वादी प्रतिवादी के एक ही परिवार के होने का प्रश्न है दोनों एक दूसरे को अवसर मिलने पर अपने परिवार का मानने से कतराते रहे है। मु०नं० 158/1932 ई. मे बच्चा सिंह व भभूती सिंह ने जो अर्जी दावा दिया है उसमे भी यही कुरसीनामा है तथा विवादित जमीन भी उसमे है। हीराराम बनाम बृजमोहन मु० नं० 531/1956 के अर्जी दावे

की प्रतिलिपि में वादी गण ने प्रतिवादी गण द्वारा दिया गया कुरसीनामा स्वीकार किया है उसमें उन्होंने कहा है कि प्रतिवादी गण रखैली औरत का अवलाद था, इससे जाहिर होता है कि किसी न किसी रूप से प्रतिवादी गण वादीगण के ही परिवार के हैं विवादित जमीन के अतिरिक्त और भी बहुत सी जमीन पर वादी, प्रतिवादी दोनों का नाम दर्ज है इससे जाहिर होता है कि दोनों एक ही परिवार के हैं। जैसा कि ऊपर कहा गया है कि वादी गण की ओर से यह बहस की गयी कि प्रतिवादी गण का नाम महज लेखपाल की गलती से दर्ज चला आ रहा है, यह भी बहस की गयी कि गलत इन्द्राज से किसी को कोई स्वत्व नहीं पैदा होता। 1972 आर०डी० पृ० 406 पढ़ी गयी व्यवस्था का उल्लेख करते हुए बहस यह की गयी कि बिना स्वत्व का इन्द्राज बलहीन होता है उसके उत्तर में प्रतिवादी गण की ओर से बहस की गयी कि प्रतिवादी गण का नाम 1334 फ० से चला आ रहा है एक्ट 1926 लागू होने के बाद 1334 फ० के इन्द्राज का महत्व विशेष रूप से होता है कि ऊपर कहा गया है कि यदि उस समय, प्रतिवादी गण का नाम लेखपाल की गलती से हुआ हो तो वादी गण के परिवार के लोग आपत्ति करते। उस समय उनके परिवार के ही कान्ता सिंह प्रतिवादी गण के मुख्तार आम थे अतः उसके जानकारी में ही प्रतिवादीगण का नाम दर्ज हुआ अतः उस इन्द्राज को लेखपाल की गलती से किया गया इन्द्राज नहीं माना जा सकता दूसरी बात यह कही गयी कि जब बैजनाथ मिश्र ने विवादित जमीन को अन्य गाटों के साथ नीलाम के लिए कुर्क कराया तो उस समय वादी गण के साथ साथ प्रतिवादी गण ने भी अपने अपने हिस्से के लिए आपत्ति किया था बाद में चलकर सुलह लगाया इससे जाहिर होता है कि प्रतिवादी गण का नाम जो 1334 फ० अर्थात् 1926 में दर्ज हुआ वह सही है ठीक उसके 6 साल बाद 1932 में कामता सिंह आदि बनाम बैजनाथ मिश्र का मुकदमा चला था, प्रतिवादीगण की ओर से वह बहस की गयी कि उनका

नाम विवादित जमीन पर बिना किसी स्वत्व के दर्ज नहीं है इस कारण 1972 आर.डी. पृष्ठ 406 पर दी गयी व्यवस्था इसमें लागू नहीं होगी इसके विरुद्ध प्रतिवादीगण की ओर से बहस की गयी कि 1967 आर.डी. पृष्ठ 396 पर उल्लिखित व्यवस्था के अनुसार लम्बे समय से नाम रहे इन्द्राज को निरस्त नहीं किया जा सकता उस व्यवस्था में 18 साल से दोनों पक्षों का नाम सह खातेदार की हैसियत से दर्ज चला आ रहा था उसमें यह आपत्ति की गयी कि मात्र 18 साल से दोनों पक्षों का नाम वार्षिक रजिस्टर में दर्ज होने एवं कब्जे में आने के कारण ही दोनों सह खातेदार हो जाएंगे, जहां तक इस मुकदमे का प्रश्न है, प्रतिवादीगण के नाम इन्द्राज 1334 फ० से चला आ रहा है अतः इतने पुराने इन्द्राज को यह कहकर निरस्त नहीं किया जा सकता कि फरजी दर्ज है इतना ही नहीं यदि यह भी मान लिया जाय कि प्रतिवादी गण का नाम बिना किसी आदेश के तथा बिना किसी स्वत्व के 1334 से दर्ज चला आ रहा है तो भी प्रतिवादी गण स्टापेल एवं एक्वीजीशन के सिद्धान्त पर विवादित जमीन के सह खातेदार हो जाएंगे यदि 1334 फ० में प्रतिवादी गण का नाम गलत दर्ज हो गया तो 50 साल तक वे खामोश क्यों बैठे रहे उन्होंने किसी सक्षम न्यायालय का दरवाजा क्यों नहीं खटखटाया।"

(Emphasis Supplied)

10. The relevant part of order of the Settlement Officer of Consolidation is quoted hereinbelow:

“ मौखिक साक्ष्य में मकखन सिंह का बयान हुआ है, जिन्होंने कहा है कि आराजी निजाई भौरो दयाल सिंह के जमाने की है और उन्हीं की शाख के लोग काबिज है और उन्होंने शजरा भी बताया है जो पूरा नहीं है इस तरह से दोनों पक्षों के तर्कों को सुनने के पश्चात यह स्पष्ट हो जाता है कि वादी और प्रतिवादी दोनों एक ही मूरिस परिवार के हैं अक्सर मिलने पर वह एक दूसरे को अपने परिवार का नहीं होना साबित करते हैं किन्तु

नकल अर्जी दावा तथा मुख्तारनामा से यह स्पष्ट हो जाता है कि शजरा पक्षो ने उस समय स्वीकार किया था और आज तक उक्त शजरा सही साबित होता है सन् 1334 से लेकर आज तक उत्तरवादी गण का नाम अंकित चला आ रहा है और इस बात की जानकारी पक्षो को रही है लेकिन उन्होंने कोई कानूनी कार्यवाही रेगुलर न्यायालय मे नहीं दाखिल कराया उसमे जो भी उनका अधिकार था समाप्त हो गया और वे स्टापेल और एक्वीसेन्स के सिद्धान्त से बाधित होते है। कामता सिंह मुख्ताराम की जानकारी मे उत्तरवादी गण का नाम दर्ज हुआ था इसलिए सन् 1334 का इन्द्राज लेखपाल की गलती नहीं माना जा सकता है क्योंकि उसी समय एक्ट 1926 लागू था और उसके अन्तर्गत 1334 फ० का इन्द्राज विशेष महत्वपूर्ण था इतने लम्बे अरसे के इन्द्राज को गलत मानना न्यायसंगत नहीं है।”

(Emphasis Supplied)

11. Learned counsel for the petitioner has placed reliance upon judgment passed in **Ram Avadh v. Ram Das, (2008) 8 SCC 58**. The relevant paragraph no. 12 thereof is quoted hereinafter:

"It is an admitted fact that in the year 1356 Fasli, the name of Faqir was entered along with Sanehi in the khatauni and yet it was held that this must be wrong because in respect of land in another village, the lease was held to be exclusively that of Sanehi and not for the benefit of Faqir. This, in our opinion, has been given exaggerated and undue importance by both the Revisional Court and the High Court. The fact remains that Faqir's name was entered in 1356 Fasli, which was not challenged by the respondents till 1366 Fasli i.e. for almost 11 years. From 1356 Fasli onwards, throughout, the names of Faqir and thereafter his sons are continuing in the revenue record and in that view of the matter, the concurrent findings of fact arrived at by the courts below should not have been disturbed by the Revisional Court and the High Court."

12. Mr. Vishnu Singh, learned counsel appearing on behalf of respondents have referred following part of the impugned order that every aspect of case was considered by the Deputy Director of Consolidation and since there was substantial illegality committed by both the Lower Authorities which has caused substantial injustice to the respondents, therefore, the concurrent findings were interfered.

“ 10. उपरोक्त व्यवस्था के परिपेक्ष में मेरा यह अभिमत है कि विपक्षीगण को मौन सहमति के आधार पर 1334 फ० की चली आ रही उनके नाम प्रविष्टि उन्हें कोई अधिकार देने में सक्षम नहीं है क्योंकि यह प्रविष्टि बिना किसी सक्षम न्यायालय के आदेश पर आधारित है और जैसा कि ऊपर उल्लेख किया जा चुका है विवादित भूमि कभी भी दोनों पक्षों के समान पूर्वज के नाम अंकित नहीं रही है। अतएव 1334 व 1308 के बीच कब और क्यों उनका नाम सहवागदार के रूप में आया यह न तो किसी अभिलेख से स्पष्ट है और न इस सम्बन्ध में कोई कागजी साक्ष्य प्रस्तुत किया गया है इस विवाद में यह भी उल्लेखनीय तथ्य है कि विवादित भूखण्ड बाग है अतएव सहखातेदार रहते हुए कब्जे के आधार पर भी कोई अधिकार मिलने की बात नहीं उठती है और अधीनस्थ न्यायालय की पत्रावलियों पर विपक्षीगण के सह अधिपत्य की बात भी स्पष्ट नहीं होती है।

11. विपक्षी गण की ओर से यह तर्क प्रस्तुत किया गया कि उपरोक्त वाद सं० 159 वर्ष 1932 में निगरानी कर्ता गण व उनके वंशजों ने वादपत्र के अनुसूची 'ब' में उल्लेखित भूमि में केवल 37/40 भाग को वागुजाशत कराने के प्रार्थना किया था और शेष 3/40 उनके अंश नहीं थे जिससे स्पष्ट होता है कि यह अंश विपक्षीगण का था वाद पत्र के अवलोकन से यह स्पष्ट है कि प्रस्तर 4 में निगरानी कर्ता गण व उनके वंशजों ने यह स्वीकार किया था कि 3/40 भाग उपलब्ध उस वाद के विपक्षीगण।

डिगरी दारान वैजनाथ सिंह भगवती व भूलन का था किसी अन्य साक्ष्य से यह स्पष्ट नहीं है कि यह 3/40 भाग विपक्षीगण व उनके पूर्वजों का था अतएव विपक्षीगण का यह तर्क निराधार है और इसके आधार पर उन्हें कोई उपशम नहीं मिल सकता है।

12- विपक्षीगण की ओर से यह भी तर्क प्रस्तुत किया गया कि आधार वर्ष के विवादित खाते के दूसरी भूमि 1373 के सम्बन्ध में निगरानी कर्ता गण हरी राम ने मु०सं० 531 वर्ष 1956 में विपक्षी गण को भी विपक्षी सं० 14 व 15 बनाकर सह खातेदार माना था और चूंकि इस कारण विवादित भू-खण्ड सं० 69 भी उसी आधार पर विपक्षी गण की सहवागदारी की भूमि मानी जानी चाहिए। विपक्षी गण के विद्वान अधिवक्ता के इस तर्क से मैं सहमत नहीं हूँ। क्योंकि उन्हें यह स्वतन्त्र रूप से सिद्ध करना चाहिए था कि वह किस प्रकार विवादित भू-खण्ड में सह बागदार है और जैसा कि ऊपर उल्लेख किया जा चुका है इस दिशा में वह पूर्णतया असफल है।

13. उपरोक्त प्रस्तारों में दिए गए विवेचन के परिपेक्ष में यह पूर्णतया सिद्ध हो जाता है कि विपक्षीगण के नाम सहवागदार की प्रविष्टि 1334 फ० में बिना किसी वैधानिक आदेश के चली आ रही है जो उन्हें कोई अधिकार देने के सक्षम नहीं है अधीनस्थ न्यायालयों ने मौन सहमति एवं विवन्धन के आधार पर विपक्षी गण को सहवागदार बने रहने का जो निष्कर्ष निकाला है वह न्यायिक दृष्टिकोण से उचित नहीं है अतएव मैं उनके आदेशों में हस्तक्षेप की आवश्यकता समझता हूँ।

(Emphasis Supplied)

13. Learned counsel for the respondent has referred paragraph no.7 and 8 of the counter affidavit which is reproduced hereinafter:

“7. That the contents of paragraph 5 of the writ petition are matters of record, which should be verified therefrom. It is further submitted

that the assertion of the petitioner that the judgment of the Deputy Director of Consolidation in favour of the opposite parties is wrong. The Deputy Director of Consolidation is the last court of fact. He having weighed the record available and come to the right conclusion that right petitioner's ancestor was wrongly entered in the revenue paper of 1334 fasli and onwards without any legal basis. The entries made therein are uauthorise and were without any proper order by the Court.

8. That the contents of paragraph 6 of the writ petition are denied. In reply it is stated that the assertion made in this paragraph on law and fact are wrong. The DDC has correctly placed the burden of proof about the correctness and validity of the entry of 1334 and onwards."

14. Learned counsel has also submitted that in order to show that land in dispute belongs to common joint family the material has to be brought on record i.e. it was created from common fund. Learned counsel for the respondent has placed reliance upon judgment passed in **Achuthan Nair vs. Chinnammu Amma and others, 1966 AIR SC 411.**

15. Heard counsel for parties and perused the record.

16. Original Petitioner's claim of 'co-grove holder' was accepted by Consolidation Officer and the Settlement Officer of Consolidation on basis of his long revenue entries and that original respondents' contrary claim was barred by estoppel and acquiescence. It remains undisputed that original petitioner has not shown any basis of on which his name was being entered and mentioned in revenue records.

17. The above referred concurrent findings were disturbed by the Revisional Authority, on ground that, since, land in dispute is a 'grove land', therefore, only on basis of possession or revenue entry, petitioner could not be declared a 'co-grove holder' and in such circumstances principle of estoppel and acquiescence would not be applicable and there was no basis of entries in favour of petitioner which had been abruptly recorded and that land in dispute was never recorded in name of their common ancestor.

18. At this stage, it would be relevant to mention few paragraphs of a judgment passed by the Supreme Court in **Pratap Singh(dead) through Legal Representatives Vs. Shriram(Dead) through Legal Representative (2020) 11 SCC 242** on issue of presumption of old revenue entries. The relevant paragraphs are reproduced hereinafter:-

“25. The presumption of truth attached to the revenue record can be rebutted if such entry was made fraudulently or surreptitiously (Vishwa Vijay Bharati case [Vishwa Vijay Bharati v. Fakhrul Hassan, (1976) 3 SCC 642]) or where such entry has not been made by following the prescribed procedure (Bhimappa Channappa Kapali v. Bhimappa Satyappa Kamagouda [Bhimappa Channappa Kapali v. Bhimappa Satyappa Kamagouda, (2012) 13 SCC 759 : (2014) 5 SCC (Civ) 419]). Even in Guru Amarjit Singh [Guru Amarjit Singh v. Rattan Chand, (1993) 4 SCC 349 : AIR 1994 SC 227] , where thirty years' old lease deed was produced, this Court had not accepted the proof of the relationship between landowner and tenant in absence of receipt of payment of rent.

26. Therefore, we find that the presumption of truth attached to the record-of-rights can be rebutted only if there is a fraud in the entry or the entry was surreptitiously made or that prescribed procedure was not followed. It will not be proper to rely on the oral evidence to rebut the statutory presumption as the credibility of oral evidence vis-à-vis documentary evidence is at a much weaker level.”

19. The petitioners have claimed rights of ‘co-grove holder’. The Consolidation Officer as well as Settlement Officer of Consolidation have concentrated only on long revenue entries and have not referred provision in regard to ‘grove-holder’ as well as that whether ancestor of petitioners and respondents were ever recorded as ‘grove-holder’, therefore, source or on basis of which the revenue entries were recorded, was never disclosed and admittedly petitioners have no reply to it, would become relevant.

20. Now, this Court proceeds to deal with issue that, whether in aforesaid factual circumstances, respondents would be barred from challenging long revenue entries in favour of petitioners, only on the basis of principles of estoppel and acquiescence.

21. A division bench of this Court in the case of **Shri Ram and others vs Deputy Director Consolidation, Allahabad and others (Civil Misc. Writ Petition No.8512 of 2008 decided on 10.3.2011)** has answered a reference made to it in respect of revenue entries that are on record for a long period of time, and has held that, *“Long standing entries which are questioned in an objection filed under the Uttar Pradesh Consolidation of Holdings Act, 1953 hold only a peremptory value and they cannot be taken to be an absolute proof for pressing the principle of estoppel, acquiescence and waiver and no automatic bar of section 49 of the Uttar Pradesh Consolidation of Holdings Act 1953 is attracted.”*

22. The Supreme Court, in a recent judgement in the **State of Jharkhand and others versus Brahmaputra Metalics Limited Ranchi and another, 2020 SCC OnLine 968**, has held under heading “H-3 Promissory Estoppel-Origin and Evolution” that:-

“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.”

23. Supreme Court in a very recent judgement passed in **Baini Prasad(dead) through LRs versus Durga Devi, (2023) 6 SCC 708** has held on issue of estoppel and acquiescence that:-

“17. Now, what remains to be considered is whether the defendant-appellant herein has pleaded and proved his plea of estoppel. The appellants would contend that non-framing of the question of estoppel as an issue is not fatal in the facts and

circumstances as also in view of the evidence available on record, in the case on hand. To buttress the contention, the appellants rely on the decision of this Court in Nedunuri Kameswaramma v. Sampati Subba Rao [Nedunuri Kameswaramma v. Sampati Subba Rao, AIR 1963 SC 884] . The relevant recital in para 6 of the said decision reads thus : (AIR p. 886)

“6. ... No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion.”

18. The position of law revealed from the afore-extracted recital from the said decision in Nedunuri Kameswaramma [Nedunuri Kameswaramma v. Sampati Subba Rao, AIR 1963 SC 884] cannot be disputed. In fact, for the very same reason despite the non-framing of the issue of estoppel we are inclined to consider the contentions founded on the principle of estoppel. We may hasten to add that indubitably the position is that to invoke the concept of estoppel the defendant has to specifically plead each and every act or omission, as the case may be, that constitutes representation from the plaintiff. Before delving into the said question it is only appropriate to refer to the enunciation of the settled position in respect of the concept of estoppel.

19. In the decision in R.S. Maddanappa v. Chandramma [R.S. Maddanappa v. Chandramma, AIR 1965 SC 1812] , this Court considered the object of estoppel. It was held that its object is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. It was therefore, further held that when one party makes a representation to the other about a fact he would not be shut out by the rule of estoppel if that other person knew the true state of facts and must consequently not have been misled by the misrepresentation.

20. In the decision in Pratima Chowdhury v. Kalpana Mukherjee [Pratima Chowdhury v. Kalpana Mukherjee, (2014) 4 SCC 196 : (2014) 2 SCC (Civ) 504] , while considering Section 115 of the Evidence Act, this Court held that four salient conditions are to be satisfied before invoking the rule of estoppel. Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant altering a position, should be such, that it would be iniquitous to require him to revert back to the original position. After holding so, it was further held that the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position.

21. In the decision in B.L. Sreedhar v. K.M. Munireddy [B.L. Sreedhar v. K.M. Munireddy, (2003) 2 SCC 355] , this Court held that when rights are invoked estoppel may with equal justification be described both as a rule of evidence and as a rule creating or defeating rights. The appellant relies on this decision, more particularly para 30 of the said decision and it reads thus : (SCC p. 370)

“30. If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.”

It is to be noted that in the said decision this Court clarified that a legal status expressly denied by a statute could not be conferred on the basis of estoppel.

22. The appellant has also relied on the decision of this Court in SBI v. M.J. James [SBI v. M.J. James, (2022) 2 SCC 301 : (2022) 1 SCC (L&S) 370] , more particularly, para 39 which read thus : (SCC p. 324)

“39. Before proceeding further, it is important to clarify distinction between “acquiescence” and “delay and laches”. Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See Prabhakar v. Sericulture Deptt., (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149. Also, see Gobinda Ramanuj Das Mohanta v. Ram Charan Das, 1925 SCC OnLine Cal 30.] In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See Vidyavathi Kapoor Trust v. CIT, 1991 SCC OnLine Kar 331.] which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. [See Krishan Dev v. Ram Piari, 1964 SCC OnLine HP 5.] Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See “Introduction”, U.N. Mitra, Tagore Law Lectures — Law of Limitation and Prescription, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.”

The position expounded as above certainly request consideration with reference to the facts of this case. In that regard we will have to consider whether there was acquiescence on part of the respondent and if so, whether lapse of time, if any, is of no importance or consequence, with reference to the factual position, in view of the exposition thereunder “that acquiescence would not apply if lapse of time is of no importance or consequence”

23. What is crystal clear from the enunciation of law in a catena of cases is that the equity will follow the law and it would tilt in favour of law and further that to claim equity the party must explain previous conduct.”

24. Now, this Court proceeds to apply above referred law of ‘principle of estoppel and acquiescence’, in the facts and circumstances of present case.

25. It is reiterated that there are long revenue entries of ‘co-grove holder’ in favour of petitioner without any basis (i.e. petitioner have failed to show any basis thereof) and that respondents have not taken any proceedings to expunge revenue entries before filing objection during consolidation proceedings. The Consolidation Officer and the Settlement Officer of Consolidation has rejected objection of respondents only on ground of plea of estoppel and acquiescence, whereas Deputy Director of Consolidation has held that since there was no legal basis of revenue entries of co-grove holder therefore, even long revenue entries could not be protected on basis of principle of estoppel and acquiescence and thus, interfered with concurrent findings of two lower authorities.

26. The conduct of respondents for not taking any objection to the long revenue entries would have any adverse effect or it would be deemed to be consent in itself, so much as it could not be questioned later on, have to be considered in factual background of this case.

27. The contesting respondents have filed a very detailed objection under section 9- A(2) of Act of 1953, wherein a specific objection was taken that they were in continuous possession and they came to know about revenue entries in favour of petitioners at belated stage. Objections are reproduce in its entirety hereinafter:-

“ उजुरदारी बाबत खाता नंबर 118 आराजी नंबर 69 मौजा नहिया हस्व जैल है:-

दफा 1- यह कि आराजी नंबर 69 का रकबा 3.98 डि बाग मौरूसी हम प्रार्थीगण की है और जमाना मुरिसान से हम प्रार्थीगण बतौर बागदार काबिज दखील चले आ रहे है और अब वाद नफाज जमीन्दारी एबालीशन एक्ट भूमिधर आराजी निजाई के है।

2- यह कि आराजी निजाई मे हिस्सा मक्खन सिंह 1/12 व मूलन 1/12 महाराज नरायन 1/12 राम दुलारी 1/12 कवल पत्नी 1/9 हीरा - 1/9 नन्द किशोर 1/9 लल्लन 1/6 शम्भू 1/12 इन्द्रावती 1/12 है व मौजिव उपरोक्त हिस्से के हम प्रार्थीगण वाग निजाई पर काबिज दखील है शजरा खानदान से स्पष्ट है।

3- यह कि मु० दुइजा माता नन्द किशोर प्रार्थी नवर 9 है और शीतला प्रसाद के मरने के बाद प्रार्थी नन्द किशोर नावालिग था। दर हकीकत शीतला प्रसाद के हिस्से के मालिक वरासत प्रार्थी नन्द किशोर हुआ मगर मालूम होता है कि गर लेखपाल देहा की गलती से श्रीमती दुइजा का नाम बतौर विधवा शीतला प्रसाद दर्ज कर दिया। दर हकीकत नन्द किशोर सिंह सह भूमिधर है और प्रार्थिनी मुसम्मात दुइजा का आराजी निजाई से कोई वास्ता सरोकार नहीं है। हम प्रार्थिनी दुइजा का नाम कलम जद करके उसकी जगह प्रार्थी नन्द किशोर का नाम सह खातेदार दर्ज होना जरूरी है।

4- यह कि आकार पत्र 5 जब प्रार्थीगण को हस्तगत हुआ तो देखने से पता चला कि उसमे प्रतिवादीगण का नाम बतौर सह खातेदार दर्ज है।

5- यह कि आ.नि. से प्रतिवादीगण से कोई वास्ता सरोकार नहीं है। मालूम होता है कि लेखपाल ने गलती खत कितावत से प्रतिवादीगण का भी नाम खाते मे दर्ज कर दिया है।

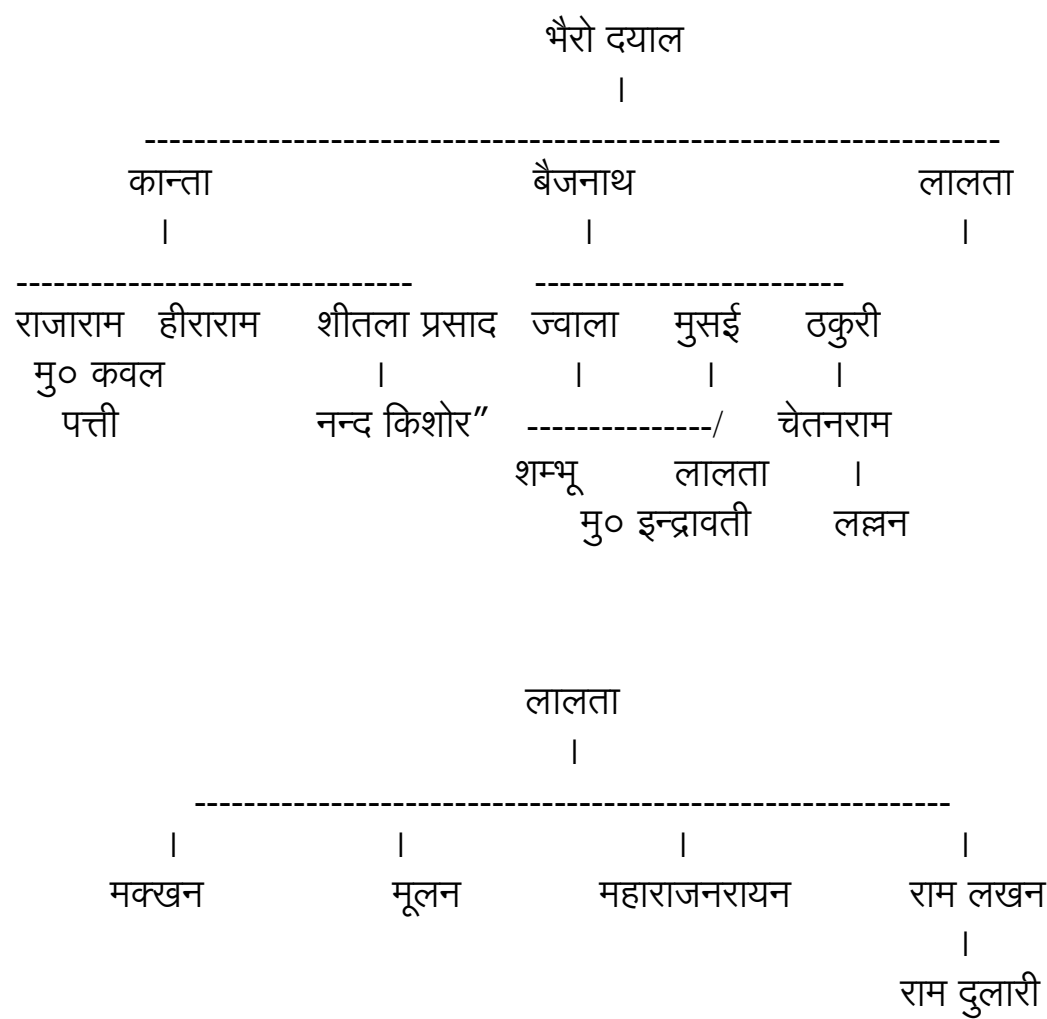
6- यह कि प्रतिवादी नम्बर 3 राम शिव पुत्र गया नाम का कोई भी सक्स मौजा बुढ़वा मे नहीं है और न तो कोई ऐसा आदमी भभूती सिंह के खानदान मे है उसका भी नाम खाते मे फर्जी तौर पर दर्ज हो गया है।

7- यह कि प्रतिवादीगण न तो हम वादीगण के खानदान के है और न तो हम वादीगण खाह मुरीसान हम वादीगण ने कभी कोई इन्तमालनामा वहक प्रतिवादीगण व उनके मुरीसान के हक मे कभी तहरीर किया है महज गलती पटवारी की वजह से प्रतिवादी गण का नाम खाते मे दर्ज हो गया है। प्रतिवादीगण का न तो कभी कब्जा दखल था और न तो उससे किसी प्रकार का वास्ता सरोकार नहीं है।

8- यह कि प्रतिवादीगण के नाम गलत इन्द्राज का पता हम वादीगण को कभी नहीं था दौरान चकबन्दी जब आ०पत्र० 5 मिला तब उपरोक्त इन्द्राज का पता चला।

9- यह कि मुसल्लम 69 नं बाग है सीरीस्ता चकबन्दी ने आराजी मजकूर मे 3 बटा कायम कर दिया है। 69/1-13 व 69/2-5 की मालियत कायम कर दिया है जो सरीही गलत है बटा जोत मजकूर मुसल्लम 69 नम्बर के जुज है उनकी मालियत नहीं कायम करनी चाहिये थी बल्की 69 नम्बर को चक परे करना चाहिये था आ.नं. 69 तथा 1373 पहले के दो खाते की आराजी थी परन्तु ऐसा प्रतीत होता है कि हाल के वर्षो मे ही दोनो आराजी को लेखपाल एक ही खाते मे कर दिया है।

10- यह कि वक्जूहात शदर प्रतिवादीगण का नाम खाते से खारिज किया जाय व मु० दुइजा के नाम के जगह नन्द किशोर का नाम दर्ज किया जाय और मुसल्लम आराजी नं० 69 को चक परे किया जाय।



28. As referred above, the Consolidation Officer has returned a categorical finding that, “जहां तक वादी प्रतिवादी के एक ही परिवार के होने का प्रश्न है दोनों एक दूसरे को अवसर मिलने पर अपने परिवार का मानने से कतराते रहे हैं।”, however only on ground that names of both rival parties were recorded jointly, on other land also, therefore, on presumption, a finding was returned that, "जाहिर होता है कि दोनो एक ही परिवार के हैं।". The Consolidation Officer has further held that despite there were prior litigation between the parties still no objection was filed by respondents

and finally it was held that, "यदि यह भी मान लिया जाय कि प्रतिवादीगण का नाम बिना किसी आदेश के तथा बिना किसी स्वत्व के १३३४ से दर्ज चला आ रहा है तो भी प्रतिवादीगण स्टापेल एंव एक्वीजीशन के सिद्धान्त पर विवादित जमीन के सह खातेदार हो जायेंगे यदि १३३४ फसली में प्रतिवादीगण का नाम गलत दर्ज हो गया तो ५० साल तक वे खामोश क्यों बैठे रहें उन्होंने किसी सक्षम न्यायालय का दरवाजा क्यों नहीं खटखटाया।".

29. The Appellate Authority has on one hand held that, “इस तरह से दोनों पक्षों के तर्कों को सुनने के पश्चात यह स्पष्ट हो जाता है कि वादी और प्रतिवादी दोनों एक ही मूरिस परिवार के हैं। अवसर मिलने पर वह एक दूसरे को अपने परिवार का नहीं होना साबित करते हैं” but immediately thereafter returned a contrary finding that, “किन्तु नकल अर्जी दावा तथा मुख्तारनामा से यह स्पष्ट हो जाता है कि शजरा पक्षों ने उस समय स्वीकार किया था और आज तक उक्त शजरा सही साबित होता है।” and finally rejected the appeal on basis of principle of estoppel and acquiescence. The only basis of finding that parties belonged to one family was a ‘Power of Attorney’ which could not be considered as a substantial proof of plea of joint family. Power of Attorney in itself would not be a sufficient to prove a plea of joint family.

30. In aforesaid circumstances, on conjoint reading of oral and documentary evidence and finding returned by Deputy Director of Consolidation that only on basis that rival parties were co-tenure of other land, therefore, same corollary that they ought to have been deemed to be co-grove land would not be a correct legal position and on the view principle of estoppel and acquiescence would not be applicable in the present case.

31. The act of respondents of not challenging the revenue entries even for a long period, would in itself be insufficient to declare entries to be genuine as there was nothing on record that respondents by words or any

other conduct have intimated or conveyed or accepted respondents being ‘co-grove holder’. In **Pratap Singh (supra)**, Supreme Court has held that long revenue entries could be rebutted if made surreptitiously or prescribed procedure was not followed and both in entirety are present in present case. Supreme Court in **State of Jharkhand and others versus Brahmaputra Metalics Limited Ranchi and another (supra)** has held that promissory estoppel could be used as ‘shield’ instead of a ‘sword’, therefore, interference by Deputy Director of Consolidation was within its jurisdiction, since lower authorities have committed substantial illegality.

32. The Court has discussed terms ‘substantial illegality’ and ‘substantial injury’ used in Section 48 of Act of 1953, (as then it was) in **Moti Lal vs, D.D.C. and others, 2023:AHC:197946**, and relevant paragraph thereof are mentioned hereinafter :-

“5. (i).....X X X X X X
 X X X X X X X

(xviii) 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 in law 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 Act No.XXXVIII of 1958).

(xix) 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.

(xx) 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 effect of U.P. Land Laws (Amendment) Act, 1982 (U.P.Act No.XX of 1982) enforced with effect from 10.11.1980. ”

33. In aforesaid circumstances, discussion and analysis, I am of considered opinion that interference caused by Deputy Director of Consolidation was within jurisdiction and petitioner have failed to point out any illegality or irregularity in the impugned order.

34. The writ petition is accordingly, **dismissed**.

Order Date :- 08.11.2023

A. Tripathi/P. Pandey

[Saurabh Shyam Shamshery, J]