

Neutral Citation No. - 2023:AHC-LKO:70767

Reserved

Court No. - 19

Case :- SECOND APPEAL No. - 130 of 1981

Appellant :- Rajeev And Others

Respondent :- Majeed And Others

Counsel for Appellant :- G.S. Nigam, Hari Om Singh, Pramod Kumar Pandey, R.K. Misra, R.N. Gupta, S.K. Srivastava, S.N. Pandey, Shailendra Sachan, Uma Shankar Sahai

Counsel for Respondent :- P.L. Mishra, Abhisht Saran, M.A. Khan, Madan Gopal Misra, Mohd Aslam Khan, Mohd. Shubhan, Rahul Kumar Kashyap, Shanu Kashyap

Hon'ble Jaspreet Singh, J.

1. This is the defendant's second appeal assailing the judgment and decree dated 29.01.1981 passed by the 3rd Additional District Judge, Kheri dismissing the defendant's first appeal and affirming the judgment and decree dated 20.01.1979 passed in Civil Suit No. 320 of 1977 cancelling the sale deed dated 28th June, 1977.

2. The instant second appeal was admitted by this Court by means of order dated 04.02.1981 on the following substantial question of law which reads as under:-

“(i) Whether it was open for the Lower Appellate Court to make misstatement of fact by observing that the certified copies filed by the defendant did not bear the signatures of any person of the Copying Department whereas it did bear the signatures of the copiest who also compared the same and the copy had also the date of issue as 10.01.1978?”

3. In order to answer the aforesaid questions of law, it will be necessary to examine the case of the respective parties. For the sake of convenience, the Court shall refer to the parties as they were originally impleaded at the time of institution of the suit.

4. In order to appreciate the controversy involved in the instant appeal, certain brief facts giving rise to the instant appeal is being noticed hereinafter:-

5. The original plaintiffs namely Majeed, Shafaqullah and Dubar instituted a suit before Munsif, Lakhimpur Kheri seeking cancellation of sale deed dated 28.06.1977 executed by Rajjan and Khursheed (original defendants nos. 1 and 2) in favour of Rajeev and Pankaj (minor original defendant nos. 3 and 4 through their father Sri Swami Dayal).

6. The controversy arose in view of the fact that the original defendants Rajjan and Khursheed Ali, their names were not recorded in the plot bearing No. 179 measuring 3.99 acres situate in Village Dauli, Pargana, Kasba and District Kheri, however, upon commencement of the Consolidation Operations in the said village, the original defendants Rajjan and Khursheed had filed their objections under Section 9-A (2) of the Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter referred to as “the Act of 1953) seeking rights of co-tenancy. The proceedings before the Assistant Consolidation Officer culminated in a compromise dated 04.06.1962 wherein the names of Rajjan and Khursheed on the basis of the said compromise was incorporated in respect of plot No. 179.

7. On the basis of their names having been recorded during the consolidation operations and also in the Khatauni which was prepared in terms of C.H-41 and C.H-45, accordingly, the original defendants nos. 1 and 2 sold their half share in the said plot in favour of the minor original defendants Rajeev and Pankaj for a valuable sale consideration of Rs. 14,000/- by means of a registered sale deed dated 28.06.1977.

8. Being aggrieved against the said sale deed, the plaintiffs instituted the suit for cancellation of sale deed dated 28.06.1977 which was registered as Suit No. 320 of 1977 on the ground that the original defendants nos. 1 and 2

did not have half share in the property in dispute rather in terms of compromise dated 04.06.1962 arrived at between the parties before the Assistant Consolidation Officer, the rights of Rajjan and Khursheed was limited to only 4 Bighas and not half share in the plot No. 179.

9. The defendant nos. 1 and 2 and the defendant nos. 3 and 4 filed their separate written statements. The primary contention of the two sets of the defendants were that in terms of the compromise the names of Rajjan and Khursheed was incorporated but it was not limited to 4 Bighas rather since the compromise stated that the names of Rajjan and Khursheed be incorporated as co-tenants then each would have an equal share and it is in this view that the defendants nos. 1 and 2 had half share which they sold in favour of defendant nos. 3 and 4 through their father Swami Dawal for a valuable sale consideration of Rs. 14,500/- by means of the impugned said sale deed and as such the suit of the plaintiff was liable to be dismissed.

10. Upon the exchange of pleadings, the Trial Court framed five issues, however, the crux of the controversy was encapsulated in the issues mentioned hereinafter:-

(i) whether the plaintiff no. 1 and 2 had a right in the disputed property to the extent of 4 Bighas or half share as contended by the respective parties?

(ii) Whether the suit was barred by Section 49 of the Act of 1953?

11. The Trial Court considering the oral and noticing the documentary evidence including the compromise arrived at between the parties before the Assistant Consolidation Officer and held that the defendant nos. 1 and 2 only had a limited share of 4 bighas and not half share in the disputed property.

12. It also found that the suit was not barred by Section 49 of the Act of

1953 and thus by means of its judgment and decree dated 20.01.1979, the suit of the plaintiffs came to be decreed.

13. The defendants preferred a Regular Civil Appeal under Section 96 C.P.C. registered as Civil Appeal No. 15 of 1979. The Lower Appellate Court also after noticing the evidence found that the compromise which was filed by the plaintiff appeared to be genuine and it provided that the defendants no. 1 and 2 would have share of only 4 Bighas. The Lower Appellate Court noticed that the certified copies filed by the defendants did not inspire confidence, inasmuch as, it did not bear the signatures of any official of the Copying Department. It also found that the contents of the sale deed executed by the defendants no. 1 and 2 in favour of defendants nos. 3 and 4 also raised suspicion as D.W. 2 Khursheed who was a vendor in his cross-examination stated that he had received only Rs. 2,000/- in cash from Swami Dayal, the father of the defendants nos. 3 and 4 and further Swami Dayal had executed a promissory note for Rs. 10,500/- for the balance sale consideration whereas the contents of the sale deed indicated that Rs. 2,000/- was paid in cash, Rs. 2,000/- was kept in deposit with the purchaser and earlier a sum of Rs. 10,500/- had already been paid and received by the vendors. This was in clear variance with the statement given by the vendor. This also raised suspicion regarding the sale deed to suggest that why would the vendor sell the property and receive only a minuscule part of the sale consideration.

14. The Lower Appellate Court Court also found that the suit was not barred by Section 49 of the Act of 1953, coupled with the fact that the plaintiffs had proved the compromise by examining himself as well as Sri Ram Lotan as P.W. 2 who was the Pradhan as well as a member of the Consolidation Committee who was also present before whom the compromise had been

entered. The defendants on the other hand did not produce any witness of the Consolidation Committee and taking a re-look at the evidence led by the respective parties, the Lower Appellate Court found that the case of the defendants was not proved and accordingly the judgment and decree passed by the Trial Court was affirmed by the Lower Appellate Court by means of judgment and decree dated 29.01.1981.

15. It is this judgment which is under challenge before this Court in the instant second appeal.

16. Sri U.S. Sahai, learned counsel for the appellants has vehemently urged that the suit itself was barred by Section 49 of the Act of 1953 and the two Courts have committed an error in skirting the issue.

17. It is further submitted that the certified copy of the compromise which was filed by the defendant-appellant clearly indicated that their rights of the defendants Rajjan and Khursheed was not limited to 4 Bighas as stated by the plaintiffs. It was also pointed out that the original files has been weeded out and the certified copy which was filed did not indicate any embargo over the extent of share of the defendant nos. 1 and 2.

18. On the basis of the said compromise dated 04.06.1962, the same was further translated into C.H From-41 and C.H. Form-45 which clearly attained finality and without assailing the entries in C.H From-41 and C.H. Form-45, there could not be a challenge by the plaintiffs to the sale deed dated 28.06.1977.

19. It is further submitted that the certified copy filed by the defendant relating to the compromise which was arrived at between the parties before the Assistant Consolidation Officer had the signatures of the Copying

Department and the finding recorded by the Lower Appellate Court that the certified copy did not bear the signatures of the Copying Department is patently erroneous and shows non-application of judicial mind and was an error apparent on the face of the record. Thus, any finding based on any misstatement was patently erroneous which had resulted in sheer miscarriage of justice, consequently, the appeal deserves to be allowed after setting aside the two judgment and decrees passed by the Lower Appellate Court as well as the Trial Court. In support of his submissions, Sri U.S. Sahai, learned counsel for the appellants has relied upon the decision of the Apex Court in ***Sita Ram Vs. Chhota Bhondey and Others 1991 Suppl. (1) SCC 556.***

20. Sri M.G. Mishra, learned counsel appearing for the plaintiff-respondents on the other hand has drawn the attention of this Court to the two documents filed before the Trial Court, both being the certified copies, however, the one filed by the plaintiff-respondents was taken and issued prior in time and the certified copy filed by the defendant-appellant was issued in later point of time.

21. It is submitted that the totality of the circumstances and the facts indicate that it was the defendant-appellant who had a motive of interpolating with the records especially when they had obtained the certified copy after the certified copy had been received by the plaintiff-respondents.

22. It is also urged that under no circumstances, the names of Rajjan and Khursheed could have been incorporated, however, it is only to burry the hatchet that the names of Rajjan and Khursheed was permitted to be incorporated and their rights were also confined to 4 Bighas. The plaintiffs had otherwise the remaining share and this was incorporated in the

compromise.

23. Sri Mishra further submits that the entries in C.H From-41 and C.H. Form-45 is on the basis of compromise and significantly what needs to be noticed is that the order passed by the Assistant Consolidation Officer is on the basis of compromise. Even though the order of the Assistant Consolidation Officer states that the parties had entered into a compromise but the compromise needs to be seen, inasmuch as, it clearly limited the rights of the defendant nos. 1 and 2 upto 4 Bighas only. Therefore, merely because the Assistant Consolidation Officer decided the case on the basis of compromise which thereafter went on to be translated while preparing C.H From-41 and C.H. Form-45 but the genesis was the compromise which clearly indicated the limit of the share of the defendant nos. 1 and 2 was up to 4 Bighas only.

24. Thus, the facts and circumstance indicates that the alleged certified copy filed by the defendants-appellant was different to the one filed by the plaintiffs-respondents and noticing the same in context with the other evidence led by the defendants which raised doubt over the bonafides, consequently, the Lower Appellate Court affirmed the findings of the Trial Court and these being pure findings of fact are not liable to be disturbed in exercise of powers under Section 100 C.P.C. consequently, the appeal deserves to be dismissed.

25. The Court has heard the learned counsel for the parties and also perused the material on record.

26. Though, the substantial question of law confines itself to the alleged miss-statement made by the Lower Appellate Court in context with the certified copies of the compromise filed both by the appellants and the

respondents but the learned counsel for the appellant has also raised the issue regarding the applicability of Section 49 of the Act of 1953.

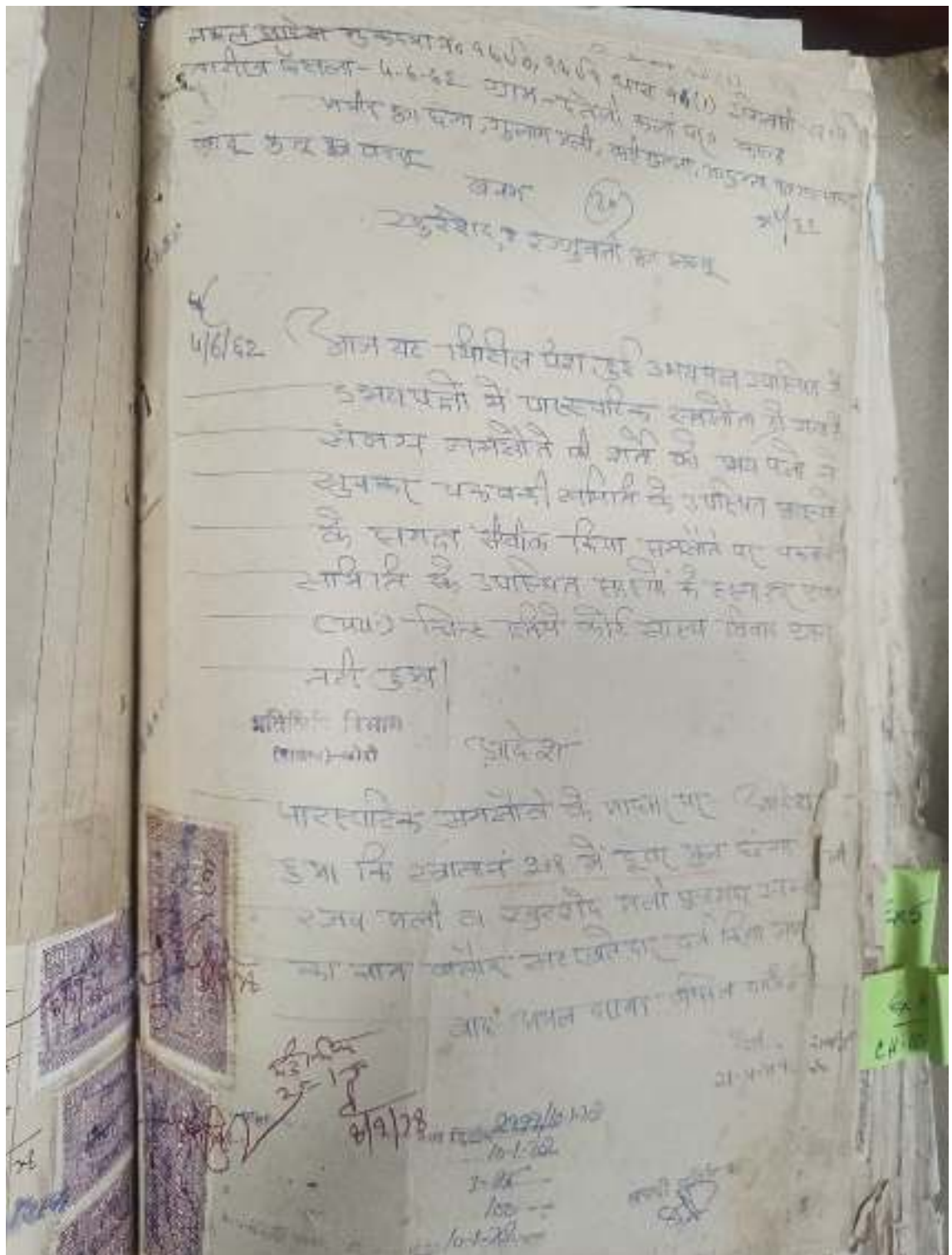
27. Having considered the submissions and from perusal of the material on record, this Court finds that the certified copy of the compromise filed by the plaintiff is bearing Exhibit-1, the order passed by the Assistant Consolidation Officer is marked as Exhibit.-2 whereas the certified copy filed by the defendant-appellant is marked as Exhibit. 6 and Exhibit. 7.

28. This Court has compared the two certified copies. In so far as the certified copy filed by the plaintiff-respondents is concerned marked Exhibit. 1, it is the copy of the compromise which states that a compromise has been arrived at between the parties and the names of Rajjan and Khursheed be incorporated, however, they will only have 4 Bighas of share.

29. It also indicates that the signatures/thumb impressions of the parties and the members of the Consolidation Committee along with the signatures of the Assistant Consolidation Officer present and it is dated 04.06.1962. It also indicates that the Copying Department (Revenue, Kheri) issued the said copy with signatures of the officials dated 23.06.1977. Exhibit- 2 filed by the plaintiff-respondent is the copy of the order passed by the Assistant Consolidation Officer stating that the parties had entered into a compromise and as per the terms of the compromise, the order is being passed and the names of Rajjan and Khursheed be incorporated as co-tenants and the file be consigned to record.

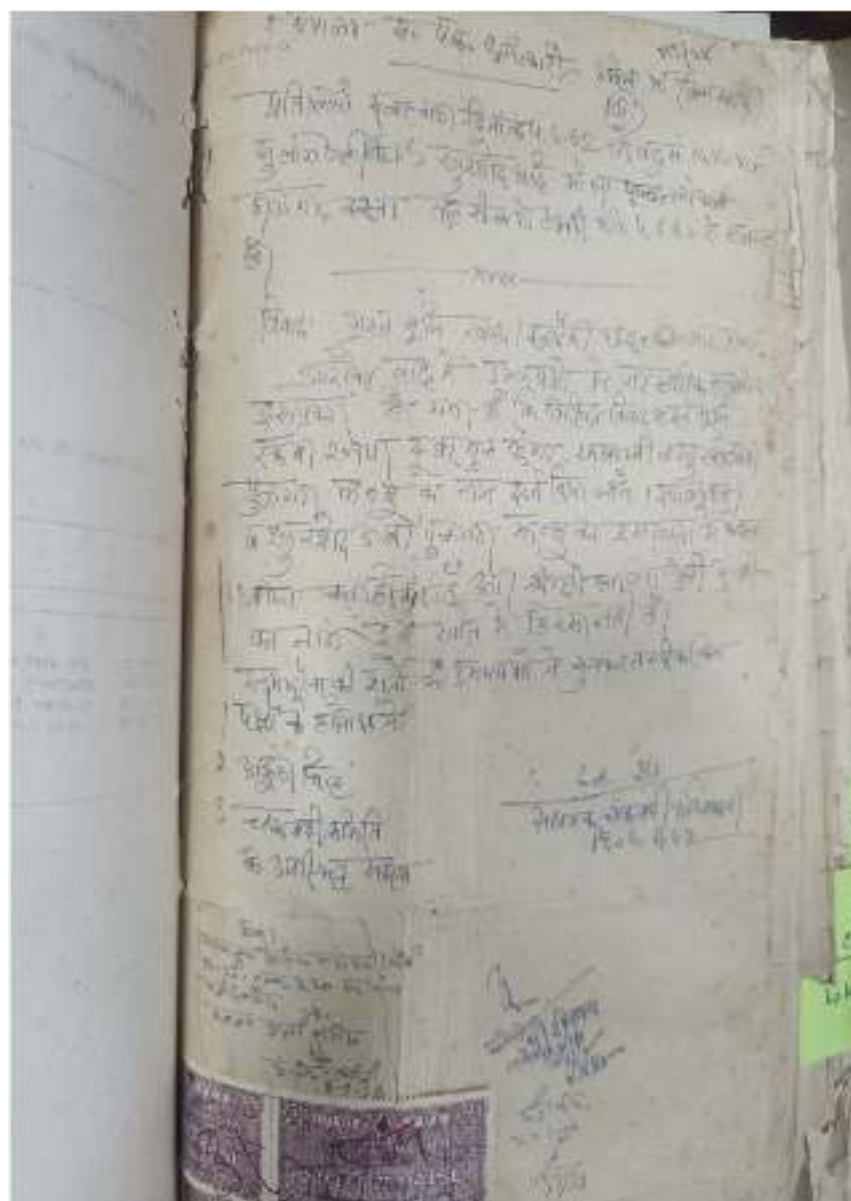
30. In juxtaposition to the said Exhibits. 1 and 2 filed by the plaintiffs-respondents, the defendants has filed the certified copy of the order dated 04.06.1962 and it would indicate that it only refers to the compromise but

there is apparently no signatures of the Copying Department (Revenue, Kheri) and, hence, for clarity, the relevant document has been scanned and is being reproduced to indicate that though there is a seal of the Copying Department but there is no signature thereon.

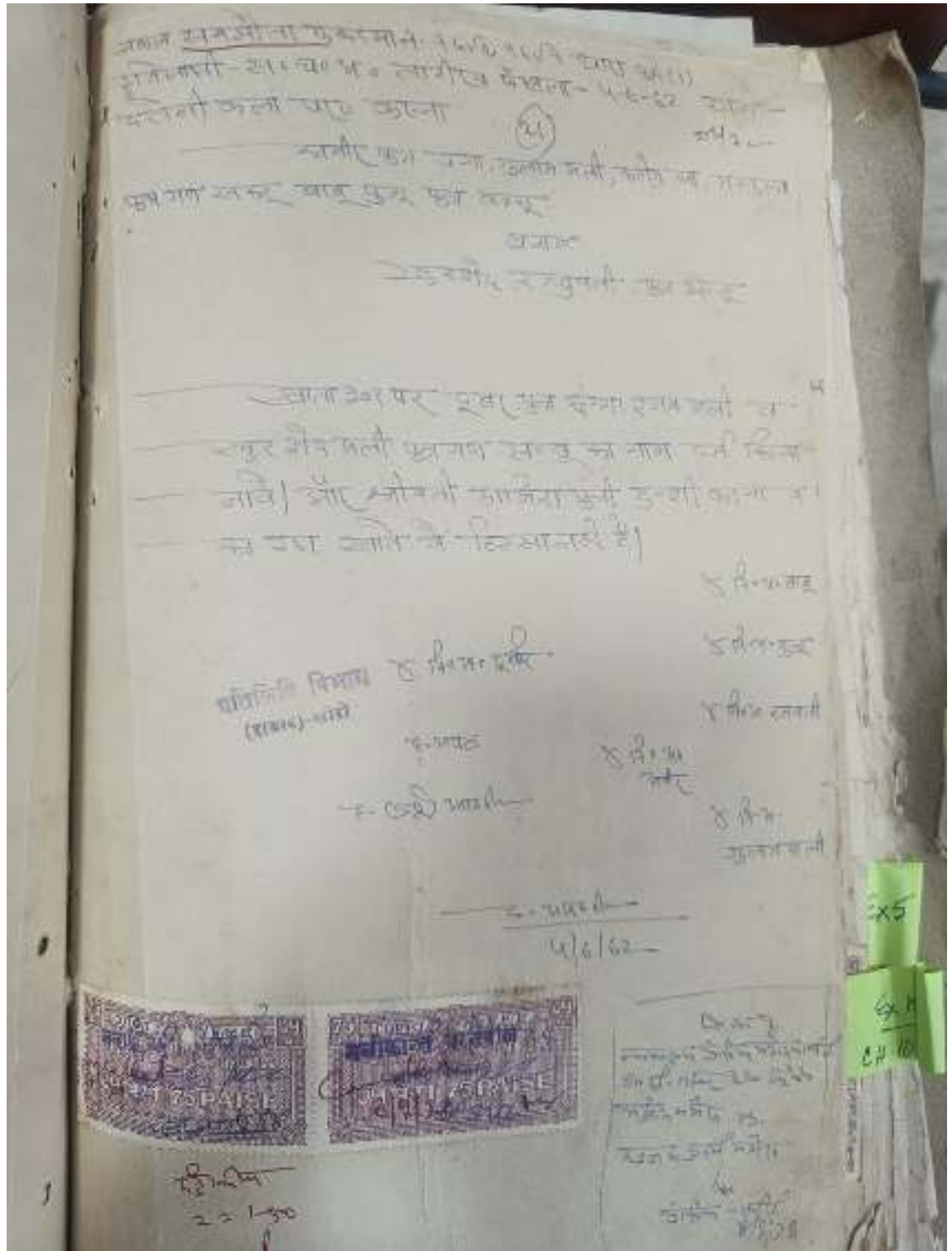


31. This document is Exhibit. 6 and similarly while noticing Exhibit-7 which is the copy of the compromise filed by the defendant-appellant, it would indicate that even this document though has a seal of the Copying Department, but there is no signatures.

32. Another distinguishing feature is that the copy of the compromise which has been filed by the defendants marked as Exhibit- 7 is quite different in text and tenor in context with the copy of the compromise filed by the plaintiff-respondent marked as Exhibit-1. Apparently, there is a quite contradiction between the two and in order to appreciate the difference, this Court is scanning the Exhibit- 1 which is the certified copy filed by the plaintiff-respondents.



33. In context with the aforesaid, if the compromise, a certified copy of which has been filed by the defendant-appellants is seen which has also been scanned for the ease of reference it reads as under:-



34. It would further indicate that there is apparent discrepancy between the two both in terms of text as well as its tenor.

35. Having noticed the aforesaid, apparently, this Court does not find that there is any misstatement made by the Lower Appellate Court while considering the two sets of documents filed by the plaintiff and the defendant to come to the conclusion that the certified copies filed by the defendant-appellants did not inspire confidence and this is apparently a finding of fact which is substantiated from the perusal of the said documents, hence, this Court does not find that there is any error committed by the Lower Appellate Court while dealing with the said issue.

36. This is not all, for the reason that the entries made in C.H Form-41 and C.H. Form-45 only relates to the translation of the effect of the compromise and C.H Form-41 and C.H. Form-45 are mere entries. If the source of the said entry is polluted, it cannot be said that without dispelling or rectifying the original conditions of the compromise, the entries made in C.H Form-41 and C.H. Form-45 would override the actual contents of the compromise. Rather it would be the other way round.

37. It is also to be seen in context with the evidence which was led by the parties and this Court finds that there is some substance to the submissions made by the learned counsel for the respondents which has also been noticed by the Lower Appellate Court that the alleged sale deed in question dated 28th June, 1977 has been executed by the original defendant nos. 1 and 2 in favour of two minor children through their father for a total sale consideration of Rs.14,500/-.

38. The issue regarding the sale consideration and its quantum is not

important in the given case but what is more important is to see that apparently in terms of the compromise the defendants nos. 1 and 2 has four bighas to their credit, however, they are selling half share i.e. to say much more than their share and while accepting the sale consideration, the vendors state that they had received Rs. 2,000/- in cash, Rs. 2,000/- remained in security with the purchasers and the father of the minor purchasers also executes a promissory note for Rs. 10,500/-, though, in law, this may not raise any illegality if the definition of the word 'sale' is noticed as provided in Section 54 of the Transfer of Property Act, 1882 but normally such conditions do not emerge as in cases of sale generally the entire or major portion of the consideration is received by the vendors and in few cases only a minuscule part of the 'sale' consideration is left while executing the sale deed but it is not so in the instant case as while receiving a very small portion a major portion is left out to be paid later but then no time limit for its payment and its mode etc. has been mentioned rather the deed is silent on two points as quite evident from the deed.

39. There is no evidence to indicate that later the purchasers honoured the said promissory note and paid the remaining sum which was kept as security. The said promissory note has also not been brought on record. This is apparently for the reason that the instant litigation was instituted and the purchasers and the sellers had taken a chance in respect of the sale deed, subject to the outcome of the litigation. This inference has been drawn by the Lower Appellate Court and in context with the surrounding circumstances as well as noticing the evidence and cross-examination of Khursheed who was examined as D.W. 2, it does give rise to certain speculation and the defendants could not dispell the aforesaid surreptitious circumstance or explain under

what conditions D.W. 2 had given this statement regarding the payment of sale consideration and it is in stark contrast with the contents of the sale deed executed by the defendant nos. 1 and 2 in favour of the minor defendant nos. 3 and 4 through their father Swami Dayal, this has been noticed in para 14 of the judgment, hence, is not being repeated.

40. In the aforesaid circumstances, the inference which has been drawn from the evidence and the material on record and is a pure finding of fact which does not appear to be perverse requiring this Court to intervene.

41. Now, dealing with the issue regarding the bar of Section 49 of the U.P.C.H. Act, 1953, it may be stated that both the Courts have held that the suit was not barred by the Section 49 of the Act of 1953. Even this Court while admitting the appeal did not frame any question of law regarding the suit being barred by Section 49 of the Act of 1953, however, since it has been raised by the appellant during the course of argument, accordingly, this Court finds that it will be appropriate to deal with the same.

42. In the given facts and circumstances, this Court finds that the finding recorded by the two courts that the suit is not barred by Section 49 of the Act of 1953 is not erroneous. Apparently, in case if any issue or finding has attained finality during the consolidation proceedings, only then the challenge to such issue would be barred by Section 49 of the Act of 1953 which operates in the nature of res-judicata, however, what needs to be seen in the present case is that in order to answer the aforesaid questions of law, it will be necessary to examine the case of the respective parties.

43. It is not disputed between the parties that Rajjan and Khursheed had entered into a compromise on 04.06.1962. It is also not disputed that on the

basis of the said compromise, the name of Rajjan and Khursheed was incorporated as co-tenants. It is also not disputed that on the basis of compromise, C.H Form-41 and C.H. Form-45 were prepared. The core of controversy is as to whether the right of the defendant nos. 1 and 2 was confined to 4 Bighas or they had half share.

44. Both the parties led the evidence and filed the certified copies to buttress their submissions and the Courts below noticing the conflicting contentions has placed reliance on the certified copies issued by the Revenue Authorities and the same has been accepted in favour of the plaintiffs-respondents. Thus, it would be seen that actually there is no challenge to the entry rather the entry has been accepted and the correct entry is required to prevail and this could have been seen by the Civil Court as this issue never arose while the consolidation proceedings were in operation.

45. Even in the decision of ***Sitaram (supra)*** in paragraph 14 it has been noticed by the Apex Court while relying upon the earlier decision of the Apex Court in ***Suba Singh Vs. Mahendra Singh (1974) 1 SCC 418*** and the relevant portion thereof reads as under:-

“14. In that case after the scheme for consolidation under Section 23 of the Act had been confirmed one Jag Ram, who was held to be a bhoomidar under the scheme, had died. Jag Ram had four sons including Ram Bhajan who had predeceased Jag Ram. The plaintiff-appellant claimed himself to be the son of Ram Bhajan and had applied for mutation in the consolidation proceedings on that basis which was allowed. Thereafter he approached the civil court for partition of the property of Jag Ram. The question was whether the said suit was barred by Section 49 of the Act. This Court held that it was not so barred on the view that the question as to who were the heirs of Jag Ram was not a matter arising out of consolidation proceedings and further that the said question of inheritance to the estate of Jag Ram arose after the consolidation operations had been substantively completed. In this context this Court has observed that there is no provision in the Act for any dispute of title which arises subsequent to confirmation of the statement under Section 23 to be decided by way of arbitration or otherwise and that the consolidation authorities had no jurisdiction to determine finally the complicated question of title when the cause of action had arisen subsequent to the

finalisation, publication and even implementation of the consolidation scheme so far as Jag Ram was concerned. This would show that in this case this Court was considering the question whether a dispute as to title which arises subsequent to confirmation of the statement under Section 23 could be adjudicated upon by the consolidation authorities. As pointed out earlier the position has been changed after the amendments that have been introduced in the Act by the Amendment Acts of 1958 and 1966.”

46. For the aforesaid reasons and also noticing the dictum of the Apex Court, this Court finds that the suit was not barred in terms of Section 49 of the U.P.C.H. Act, 1953.

47. For the aforesaid reasons, this Court does not find that there is any merit in the appeal, which is consequently ***dismissed***. The judgment and decree passed by the two courts below dated 29.01.1981 and 20.01.1979 are affirmed.

48. In the facts and circumstances, there shall be no order as to costs. The records of the Trial Court be returned forthwith.

(Jaspreet Singh, J.)

Order Date :-30th October, 2023
Asheesh