

Court No. - 21

Case :- WRIT - B No. - 1329 of 1981

Petitioner :- Yadunandan

Respondent :- Kripa Shanker And Others

Counsel for Petitioner :- A.K.Verma,Ankit Pande,D.K. Rastogi,G.P. Tripathi,S.C.Misra,Santosh Kumar Misra,Vijai Bahadur Verma,Vinod Kumar

Counsel for Respondent :- S.C.Srivastava,Aditya Narayan,Akash Dikshit,CSC,Diwakar Pratap Pandey,Girish Chandra Rastogi,J.C. Srivastava,Nishant Shukla,Prabhakar Vardhan Chaudha,Pradeep Kumar Srivastava,Sampurnanand Shukla

Hon'ble Jaspreet Singh, J.

1. Heard Shri Vijai Bahadur Verma, learned counsel for the petitioner and Shri Aditya Kumar Tiwari learned counsel appearing for the private respondents and the learned Standing Counsel for the State respondents.
2. The petitioner has approached this Court assailing the order dated 31.10.1980 passed by the Joint Director of Consolidation, U.P. Camp, Pratapgarh, whereby it has upheld the order passed by the Settlement Officer of Consolidation dated 04.03.1980 as a consequence the order passed by the Consolidation Officer dated 07.01.1978 has been set aside dismissing the claims of title of the petitioner.
3. The dispute relates to primarily three plots bearing no.25, 31 and 206 which was part of Khata No.5 in the base year Khatauni recorded in the name of the petitioner.
4. Upon commencement of consolidation operations in village Poore Kolahal, Pargana and Tahasil Patti, District Pratapgarh, two sets

of objections were filed by the private respondents, namely, Kripa Shankar and Girja Shankar. The same was contested by the petitioner stating that all the three plots belonged to the petitioner and the private respondents did not have any right and their names had been incorrectly mentioned in the few revenue records.

5. The Consolidation Officer considering the nature of disputes, pleadings and objections framed three issues **(i)** Whether the objectors namely Kripa Shankar and Girja Shankar were the bhoomidhars and Sidar of plots no.25, 31 and 206? **(ii)** Whether the disputed Plots No.25, 31 and 206 was the bhoomidhari land of the petitioner? **(iii)** Whether the Plot No.31 was a Gram Sabha property?

6. After due contest, the Consolidation Officer by means of its judgment dated 07.01.1978 dismissed the objections filed by Kripa Shankar and Girja Shankar in so far as it related to Plots No.31 and 25. However, in respect of Plot No.206, it directed the name of the petitioner Yadunandan to be deleted and in his place name of Kripa Shankar and Girja Shankar be incorporated.

7. Being aggrieved against the judgment of the Consolidation Officer, two sets of appeals came to be filed. One set of appeal was preferred by the petitioner Yadunandan relating to Plot No.206 as his name was deleted and the Consolidation Officer directed the name of Kripa Shankar and Girja Shankar to be incorporated. The other set of appeal was filed by Kripa Shankar and Girja Shankar relating to Plots No.31 and 25. Both the appeals were heard together and were decided

by means of order dated 04.03.1980 and the Settlement Officer of Consolidation dismissed the appeal of the petitioner Yadunandan and allowed the appeals of Kripa Shankar and Girja Shankar.

8. The petitioner being aggrieved against the order passed by the Settlement Officer of Consolidation filed a revision and the revisional court also dismissed the revision by means of judgment dated 31.10.1980 as a result the entire claim of the petitioner was rejected and the name of Kripa Shankar and Girja Shankar was incorporated in respect of all the three disputed Plots No.25, 31 and 206. It is in this backdrop that the petitioner Yadunandan had filed the instant petition assailing the three orders.

9. At this stage before proceedings further, it will be relevant to notice that the original parties as they were pleaded in the writ petition have died and their legal heirs have been brought on record. However, for the sake of convenience, this Court shall refer to the parties as they were impleaded before the courts below and at the time of institution of this writ petition.

10. Shri Vijai Bahadur Verma, learned counsel for the petitioner has firmly submitted that the disputed Plots No.25, 31 and 206 which inter alia comprised of Khata No.5 was recorded in the name of the petitioner in the base year. The private respondents had filed their objections before the Consolidation Officer under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 claiming that the said three plots were their ancestral property coming down from their

forefathers and they have been in its possession since long. It was also stated that Plot No.206 was a grove land whereas the Plots No.25 and 31 were claimed to be sirdari plots.

11. Shri Verma has further urged that the petitioner Yadunandan had purchased the property from its erstwhile owner and he has been its owner in possession. It has further been urged that the contentions raised by the private respondents that the property in question was their ancestral property was patently erroneous since apart from few stray entries in the revenue records, the respondents could not establish the property in question as their ancestral property. It is urged that if the said property in dispute was ancestral property of the private respondents, then there should have been a continuity of the entries in the revenue records pertaining from the time of their ancestors upto the time it devolved upon the present private respondents.

12. It is further submitted that the petitioner had filed several documents which clearly indicated the origin and how the property came into the hands of Yadunandan right from 1928 onwards. A complete chain and chronological events were explained with corroborating evidences which have not been taken note of by the three Consolidation Authorities. The petitioner had also shown the discrepancies in the alleged claim of the private respondents so much so that the revenue entries in their favour were self contradictory

which clearly established that the basis of the claim of the respondents was misconceived.

13. It has further been urged that the documents that were filed by the petitioner could not be disputed nor any documentary evidence was filed by the private respondents which could cast any doubt or cloud over the documentary evidence filed by the petitioner. It is also submitted that the three Consolidation Authorities have not considered the aforesaid documents nor they have been seen in the correct light which has vitiated the three judgments under challenge.

14. Attention of the court was drawn by Shri Verma towards the supplementary-affidavit filed on behalf of the petitioner on 16.10.2019 alongwith which all the documents were brought on record with the averments that the same were part of the record before the Consolidation Courts. It has also been submitted that the property in question belonged to one Musai who had mortgaged the same in favour of Janki. It was also brought on record to establish that the said mortgage was redeemed and since the possession of the land was with the predecessor of the respondents for which the predecessor of the petitioner had to file a suit for possession in the year 1948 which was decided in terms of a compromise and in execution of the compromise decree, the possession came into the hands of Musai and thereafter the petitioner purchased the said property from Musai by means of sale deed dated 05.03.1953.

15. Shri Verma has also taken the Court through various documents to indicate that one Ram Lal had filed a suit in the year 1955 seeking cancellation of the sale deed in favour of the petitioner. The said suit bearing Regular Suit No.82 of 1955 was dismissed on 19.05.1958. The said dismissal order was challenged in Regular Civil Appeal No.222 of 1958 which was allowed on 11.01.1960 which was further challenged by the petitioner in a second appeal before this Court bearing No.331 of 1960 which came to be allowed partly on 01.09.1968, wherein the sale deed of the petitioner was upheld. It has further been submitted that every time there was a challenge to the rights of the petitioner and his predecessor, namely, Musai it was successfully contested and defended and the rights of Musai, predecessor the present petitioner Yadunandan were upheld.

16. On the contrary, the private respondents did not have any basis to claim the said property. The contesting respondents had claimed that the said property was ancestral. However, they could not establish the same. They also made contradictory statements; inasmuch as no right could have accrued in favour of contesting respondents in respect of Plot No.25 since the same had been purchased by Yadunandan by means of sale deed in the year 1953.

17. The stand of private respondent that the Plot No.31 was sirdari of the respondent also was not plausible as it comprised part of Khewat No.5 which was recorded in the name of Musai and the same was also transferred to the petitioner by the sale deed of 1953 and

these facts could also be corroborated from the plaint of Suit No.25 of 1948 in pursuance whereof relief of possession as sought by Musai and his daughter Sahdei was granted and in execution of the decree passed in the aforesaid suit, Musai, had got possession thus neither the said property could be treated to be the ancestral of the private respondent nor they were in possession and their claim was based on falsehood.

18. It has further been urged that in so far as the other limb of the submission made by the private respondents that they had acquired bhoomidhari rights over Plot No.25 is concerned, is also not made out as no document was placed on record on behalf of the private respondents to indicate that they had deposited five times of the land revenue to acquire bhoomidhari rights in the two plots.

19. In absence of any such cogent proof for deposit of land revenue, no bhoomidhari rights could be conferred on the private respondents. The respondents had placed random document on record which could not complete the chain of title and possession of the respondents and thus this aspect has not been appropriately considered by the Consolidation Courts resulting in sheer miscarriage of justice.

20. It has further been urged that the claim of the respondents relating to Plot No.206 was also not made out; inasmuch as it was a grove land and it could not be established that the respondents were its bhoomidhar. The case as set up by the respondent was mired with with several discrepancies which could not be cleared by the respondents

yet by relying upon incorrect revenue entry which were not even proved in accordance with law but has been made the basis to allow the objections filed by the private respondents, which is an incorrect exercise of jurisdiction by the three consolidation courts and in such circumstances the writ petition deserves to be allowed.

21. Shri Aditiya Narain Tiwari, learned counsel for the private respondents has contested the aforesaid writ petition, primarily raising a ground that the property comprising of Plots No.25, 31 and 206 were the ancestral property. It was urged that the private respondents had Sirdari rights in two plots and after having deposited five times of the land revenue, the private respondents were conferred with bhoomidhari rights. The same were also noticed by the three consolidation courts and relying upon the revenue entries which were old, findings of facts have been returned in favour of the private respondents, which are not liable to be disturbed in exercise of writ jurisdiction.

22. Shri Tiwari has further urged that once the private respondents had deposited the requisite amount with the Collector and necessary orders in this regard have also been placed on record, hence their rights of bhoomidhari were established.

23. It is also pointed out that the petitioner could not clarify as to how the Plots No.25, 31 and 206 belonged to the petitioner as the petitioner had also filed certain revenue records but no corresponding order passed by the competent revenue court were brought on record

to lend credence to the revenue entries upon which the petitioner was banking.

24. Shri Tiwari has further urged that in so far as the pedigree as mentioned in the writ as well as noticed by the Consolidation Authorities are concerned it clearly indicated that the great grand father of the private respondents Janki was the person in whose name the property had been recorded. After the death of Janki, the same came into the hands of Ramnath and thereafter in the hands of present private respondents, thus the claim as set up by the private respondents that the property was ancestral was clearly proved, hence the findings which have been recorded by the Settlement Officer of Consolidation and the Deputy Director of Consolidation upholding the claims of the private respondents does not suffer from any palpable error which may persuade the Court to interfere in pure findings of fact and as such the writ petition deserves to be dismissed.

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

26. In order to appreciate the submissions of the respective parties, it will also be worthwhile to take a glance at the three impugned orders passed by the Consolidation Authorities to examine the reasoning given by them which led to to passing the impugned orders.

27. The Consolidation Officer in its judgment dated 07.01.1978 after framing the issues considered the revenue entries recorded in the Khatauni and found that in so far as Plot No. 25 is concerned, though,

an application was given to deposit 5 times of the land revenue which was allowed but the amount was not deposited, hence, the claim of the private respondents on this plot did not find favour with the Consolidation Officer.

28. In so far as the Plot No. 31 is concerned, the Consolidation Officer found that the said plot had been sold to Yadunandan and his name was recorded on the basis of a sale deed, hence, for this reason as well, the name claim made by the private respondents did not find favour.

29. As far as Plot No. 206 is concerned, it found that the name of Yadunandan was incorrectly recorded as this plot number did not find place in the Khevat relating to 1359 fasli and since the name of Musai was not recorded, hence, Yadunandan could not get any right over the said plot by virtue of the sale deed in his favour, hence, his name was incorrectly recorded which was corrected by the Consolidation Officer by allowing the objections filed by Sri Kripa Shanker and Girija Shanker in respect of Plot No. 20.

30. The Settlement Officer of Consolidation who was seized of the two appeals, Appeal No. 7067/291/378 filed by Yadunandan being aggrieved against the order passed by the Consolidation Officer has his right in Plot No. 206 did not find favour with the Consolidation Officer. The other appeal bearing No. 7025/1761/370 was filed by Kripa Shanker and Girija Shanker as they too were not satisfied by the

order of the Consolidation Officer as their claim in respect of Plot Nos. 25 and 31 did not find favour with the Consolidation Officer.

31. Both the appeals were taken up together and the SOC noticed that the sale deed in favour of Yadunandan was not valid. It also noticed that even though the private respondents had made an application to deposit five times of the land revenue against which an appeal was preferred which was dismissed and even though if the deposit receipt was not placed on record, it would not infer that the amount is not paid or the rights would not be conferred on the private respondents, hence, the rights of the private respondents in respect of Plot No. 25 was upheld.

32. In so far as plot no. 31 is concerned, it found that the name of Yadunandan was fraudulently incorporated as there was no order dated 02.04.1955 placed on record to substantiate the same. Thus, the ground for upholding the right of the private respondents over plot no. 31 was the absence of the order passed by the Pargana Adhikari dated 02.04.1955, even though, the said order was clearly mentioned in the Khatauni and the said entries continued thereafter.

33. The Settlement Officer of Consolidation while taking note of Plot No. 206 found that the same was recorded in the name of Baccha and Ram Nath their bhumidhari and there was no order to indicate as to how the name of Yadunandan was incorporated and in order to ascertain the veracity the file was summoned but there was no cogent order, hence, it was concluded that the incorporation of the name of

Yadunandan was fraudulent, hence, the appeal of Yadunandan in so far as Plot No. 206 was concerned was dismissed by means of order dated 04.03.1980.

34. When the matter came up before the Deputy Director of Consolidation, it also echoed the same sentiment as expressed by the Settlement Officer of Consolidation and dismissed the revision preferred by the petitioner.

35. Thus, from the above, it would reveal that the Consolidation Authorities upheld the rights of the private respondents on the premise that Plot No. 25 and 31 were sirdari and as the private respondents were permitted to deposit five times of the land revenue and the said order, though, contested by the petitioner till one level but did not assail it any further, hence, it became final and thus the rights were conferred on the private respondents.

36. The mutation entries in the name of the petitioner were found to be fraudulent as there was no corresponding order passed by the Competent Court. For the aforesaid reasons, the contentions of the petitioner were negated.

37. In light of the aforesaid reasoning, if the documents placed on record are examined, it would reveal that initially the predecessors-in-interest of the petitioner and the private respondents were Zamindars namely Sitaram, Suryabali, Musai and Janki, however, for the present controversy, it is the shares of Musai and Janki which are relevant.

38. In an around the year 1930, Khewat No. 4 was in the name of Musai which comprised of 12 plots measuring five bighas, 19 Biswas. Out of which 13 biswansi of land was mortgaged to Janki in May, 1928. Musai is also said to have executed a gift deed in favour of his daughter Sahdei in the year 1928 relating to Plot Nos. 28, 31, 180, 232 and 99 measuring 2 Bighas, 11 Biswa and 12 Biswansi, however, it is the case of the petitioner that despite Musai having executed a gift in favour of his daughter, the possession was not handed over to her.

39. It is further the case of the petitioner that in an around the year 1938 Sri Musai had left his village for a pilgrimage. During this time, a rumour was floated that Sri Musai had left for his heavenly abode while on pilgrimage. On the said basis, the only son of Musai namely Ram Niwas @ Ram Niwaz got his name mutated in respect of all the properties which were in the name of Musai.

40. It is also the case of the petitioner that Ram Niwas @ Ram Niwaz after paying the mortgage money to Janki got the mortgage redeemed on 29.05.1946 and he came into possession. It is also the case that Sri Ram Niwas @ Ram Niwaz was a bachelor and he expired.

41. During this time, Sri Musai had not returned from the pilgrimage and allegedly Ram Nath and Baccha took advantage of the situation and got the plot recorded in their name.

42. In the aforesaid backdrop, it is further stated that in September, 1947, Musai returned from his pilgrimage and found that Ram Nath

and Baccha had taken over his properties, his son had expired, hence, he instituted a suit bearing Regular Suit No. 25 of 1948 along with his daughter Sahdei before the Court of Munsif, Kunda, Pratapgarh seeking possession of his properties.

43. This suit was contested wherein Ram Nath had filed his written statement. This suit came to be compromised on 28.07.1948 and in furtherance thereof Musai filed an execution case bearing No. 610 of 1948 and on the basis of the said compromise, the execution was done and Musai got the possession. Sri Musai later sold the property in question to Sri Yadunandan by means of sale deed dated 05th March, 1953.

44. The petitioner has also stated that one Sri Ram Lal had instituted a suit against Musai for recovery of money bearing R.S. No. 94 of 1948 which was decreed on 15.10.1949. The aforesaid decree was affirmed by the Revisional Court on 28th April, 1950 and in pursuance of the execution proceedings the property of Musai which comprised of Khewat No. 5 situate in Village Pure Kolahal was attached. Since Musai had sold the property to Yadunandan, hence, against the attachment order Yadunandan filed his objections under Order 21 Rule 58 C.P.C. Upon due contest, the said objections filed by Yadunandan were accepted by the Court.

45. In the said proceedings, it was found that the property purchased by Yadunandan was part of Khewat No. 5 and the rights of Yadunandan were upheld, even though, this matter was

escalated before the First Appellate Court where Yadunandan lost but Yadunandan further carried the matter in appeal before the High Court which was allowed by the High Court on 03.11.1970 and the order passed by the Trial Court dated 06.11.1954 in favour of Yadunandan was upheld.

46. It will also be relevant to notice that Ram Lal who had lent money to Musai noticing that Musai had sold the property to Yadunandan, hence, Ram Lal filed another suit seeking cancellation of the sale deed dated 05th March, 1953 executed by Musai in favour of Yadunandan. Even these proceedings came up to the High Court where the rights of Yadunandan were upheld.

47. The documents pertaining to the above mentioned litigation wherein judicial orders were passed have not been appropriately noticed by any of the three Consolidation Authorities. From the bare perusal of the three impugned orders, it would reveal that selective references have been made by three Consolidation Authorities and that too in a cursory manner without examining the impact, effect of the judicial orders which were placed on record.

48. Apparently, prior to the enactment of the Uttar Pradesh Consolidation of Holdings Act, 1953, certain proceedings had been initiated by Musai in the Court of Munsif, Kunda, Pratapgarh which was decided in terms of a compromise. On the strength of the said judgment, Musai had received the possession.

49. Simultaneously, in another proceedings initiated by a third person namely Ram Lal who sought recovery of money from Musai and in execution of a decree in favour of Ram Lal for recovery of money, property of Khewat No. 5 was attached. This attachment order was contested by Yadunandan and as already referred to hereinabove, he succeeded uptill the High Court.

50. Apparently, in light of the aforesaid documents, it cannot be said that Musai did not have any right and if he did then he also had the right to transfer his property to Yadunandan by means of sale deed dated 05.03.1953. Thus, the findings returned by the Settlement Officer of Consolidation and affirmed by the Deputy Director of Consolidation that the sale deed of Yadunandan dated 05.03.1953 was bad does not flow from the records rather significantly the suit for cancellation of the sale deed filed by Ram Lal which was affirmed by this Court has been totally ignored and thus the finding of the Settlement Officer of Consolidation and affirmed by the Deputy Director of Consolidation to the aforesaid effect is an outcome of ignorance of the material on record resulting in perversity.

51. In so far as the findings returned by the Settlement Officer of Consolidation and the Deputy Director of Consolidation to the effect that Ram Nath and Baccha had sought permission to deposit five times of the land revenue and had acquired bhumidhari rights is also not made out from the records as from the perusal of the documents brought on record in the counter affidavit filed by the private

respondents it indicates, that an attempt was made to seek permission to deposit five times of the land revenue only in respect of Plot No. 25 but not in respect of Plot No. 31. Even though there was litigation in respect thereto and after a certain stage it was not taken forward by Yadunandan but this would only indicate that permission to deposit the amount was given in respect of Plot No. 25 but there is no evidence on record to indicate that in pursuance of the said order any amount was deposited in the Government Treasury.

52. Mere passing of an order will not confer the bhumidhari rights rather it is the deposit of the aforesaid amount in conjunction with the order would confer the rights. In this regard, a specific query was put to Sri Tiwari, the learned counsel for the private respondents, though, he submitted that the amount was deposited but he could not deny the fact that there was no evidence filed either before the three Consolidation Authorities or before this Court to indicate that five times of land revenue was deposited.

53. In view of the aforesaid facts and the material on record, it would indicate that the private respondents had attempted to seek bhumidhari rights for which they had filed an application but that too related only to Plot No. 25 and not Plot No. 31 and no material evidence was brought on record to indicate that the amount was deposited, thus, the rights of the private respondents in respect of Plot No. 25 seeking bhumidhari rights is not established.

54. Another aspect that needs to be seen at this stage is that the private respondents had endeavored only to claim rights over one plot which for the reasons noticed above, could not be established, hence, claiming right on Plot No. 31 without any basis which has been given by the Settlement Officer of Consolidation and the Deputy Director of Consolidation is also a perverse finding as it is not supported by any evidence.

55. The reasoning of the Settlement Officer of Consolidation and the Deputy Director of Consolidation in respect of Plot No. 31 is patently erroneous and in respect of Plot No. 25 in absence of any receipt regarding deposit of five times of land revenue cannot come to the aid of the private respondents to claim rights and the findings of the Settlement Officer of Consolidation and Deputy Director of Consolidation in this regard also being perverse cannot sustained judicial scrutiny.

56. As far as Plot No. 206 is concerned, as per the private respondents, the same was grove land and was also recorded as such. This fact is not disputed. Once this fact remains undisputed then as per the provisions of the Uttar Pradesh Consolidation of Holdings Act, 1953, it would be clear that in terms of explanation appended to Section 3 that grove land is exempted from the allotment of chaks, hence, the three Consolidation Authorities did not possess the jurisdiction to entertain the claim of the private respondents in respect of plot No. 206 which was a grove plot.

57. Thus, in this context too, the findings returned by the Consolidation Officer, Settlement Officer of Consolidation and the Deputy Director of Consolidation are perverse.

58. In light of what has been discussed above and noticing the stand taken by the private respondents, it would reveal that they have not been able to establish the origin of their title in respect of the property in question. It is their case that their property was ancestral. Apart from few random and stray entries in certain revenue records, they could not indicate as to who acquired the property in the first instance and how it remained with the ancestors throughout which came into the hands of the private respondents on succession.

59. Moreover, as per the revenue records filed by the private respondents they claimed plot no. 25 and 31 being Sirdari plots and in some record it has been shown a “Khudkhast” and this is quite contrary as if it has been Khudkhast then there was no requirement for the private respondents to deposit 5 times of land revenue to acquire the Bhumidahri Status.

60. At best, the claim of the private respondents who traced their origin from Janki, if examined, will show that Janki had the right to the property which was part of Khewat No. 5 of Musai, having come into hands for a limited purpose when the said property had been mortgaged by Musai in favour of Janki and that too, a small part.

61. There is no document to indicate that Janki had foreclosed the mortgaged and acquired title. On the other hand, there is

contemporaneous material to indicate that after Musai had left for his pilgrimage, his son Ram Niwas had paid the mortgage money and redeemed the mortgage.

62. The learned counsel for the respondents, though, contested the above position but the fact remains that the petitioners have brought on records documents relating to the suit filed by Musai in the year 1948 seeking possession wherein the predecessors-in-interest of the private respondents were a party and in pursuance of the execution of the decree, possession came into the hands of Musai.

63. Though, feeble plea has been taken by the learned counsel for the respondents regarding the title of the respondents but could not cogently explain the origin, acquisition, continuity and identity of the disputed plot from the time of their ancestors into the hands of the private respondents and is equally well settled that mere mutation entries do not confer title.

64. Sifting through the documentary evidence which has been placed on record by the petitioner, it reveals that in the suit filed by Musai and Sahdei in the Court of Munsif, Kunda, Pratapgarh, where Baccha, Ram Lal and Ram Nath were parties to the said suit bearing No. 25 of 1948. A copy of the plaint which is on record indicates that the details of the properties mentioned in the schedule which included the plots of Khata No. 4 and 5 relating to Musai.

65. Paragraph 3 of the plaint of Regular Suit No. 25 of 1948 importantly stated that Janki was handed over the possession in terms

of the mortgage that he had created and moreover, in the schedule of properties, plot nos. 31 and 25 were also mentioned. A copy of the written statement filed in Regular Suit No. 25 of 1948 also indicated that in paragraph 5, it was admitted by the defendants that Ram Niwas @ Ram Niwaz had got the property redeemed. The judgment passed by the Munsif, Kunda dated 21.07.1948 affirms the fact which were stated by Musai.

66. The documents relating to the execution were also filed and brought on record including documents relating to the suit filed by Ram Lal. The said judgment dated 06.11.1954 by which the objections filed by Yadunandan under Order 21 Rule 58 C.P.C. were upheld and it also support the case of the petitioner.

67. The decision of this Court dated 03.11.1970 passed in Appeal No. 25 of 1963 also indicates the right of Yadunandan which was upheld. Though, large number of documents were placed on record including the judgment passed by this Court in Second Appeal No. 331 of 1960 decided on 01.09.1977 filed by Yadunandan which was partly allowed wherein the High Court had observed that even though the sale deed in favour of Yadunandan dated 05th March, 1953 would be governed by the doctrine of lis-pendense in terms of Section 53 of the Transfer of Property Act but as far as the sale deed and its validity and the order passed in favour of Yadunandan under Order 21 Rule 58 C.P.C. were not touched, reversed or set aside.

68. Taking note of the aforesaid, this Court is of the clear view that the private respondents could not set out a clear case claiming title to the property and vacillating stand has been taken which was refuted by the petitioners who have filed number of documents to establish their case but unfortunately the said documents have not been considered by the three consolidation authorities and their reasoning has faulted for non-consideration of evidence on record. Any finding recorded by any Authority which is in ignorance of the material on record or is an outcome of misreading of a document or is based on inadmissible evidence or the Authority comes to a conclusion which upon consideration of the material on record, may not be recorded by any prudent person, such findings are is nothing but perversity.

69. Normally, in such circumstances, the court may have remanded the matter to DDC but considering that the parties have been litigating since 1977 and this petition is pending since 1981 and it has been more than 40 years hence instead of remanding the matter, this court after examining the records, pleadings and documents have arrived at the conclusion that the private respondents could not sustain their claim in respect of all the three disputed plot Nos. 25, 31, 206. Moreover, the said documents ought to have been considered but not done by the three courts, hence they have been noticed and its impact has been considered by this court.

70. For the foregoing reasons, this Court finds that judgment of the Deputy Director of Consolidation dated 04.03.1980 and the

Settlement Officer of Consolidation dated 07.01.1978 cannot be sustained and are accordingly set aside, however, as far as the decision of the Consolidation Officer dated 31.10.1980 is concerned, it is set aside only in part to the extent that it relates to Plot No. 206.

71. Subject to the aforesaid, the writ petition is *allowed*. Costs are made easy and the consequences shall follow.

(Justice Jaspreet Singh)

Order Date :- May 31, 2024
ank/-