

Court No. - 7

Case :- WRIT - B No. - 2707 of 1983

Petitioner :- Ram Chet And Another

Respondent :- Deputy Director Of Consolidation Faizabad And Others

Counsel for Petitioner :- S.K.Gupta,U.S. Sahai

Counsel for Respondent :- M.A.Siddiqi,Ghulam Mohammad Kamil,M.U.Siddiqi,Uttam Kumar Awasthi,Ved Prakash Sharma

Hon'ble Alok Mathur,J.

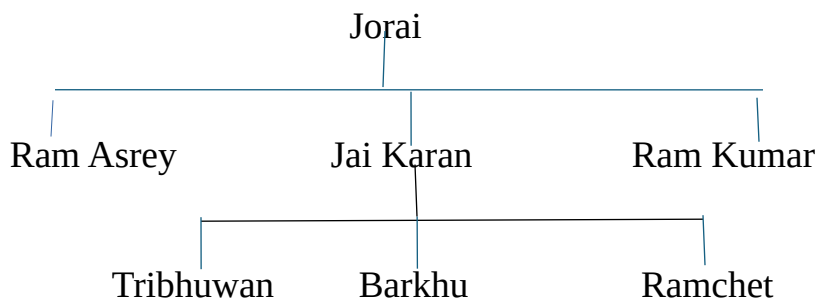
1. The petitioners by means of the present writ petition have assailed the order dated 08/04/1983 passed by Deputy Director of Consolidation whereby he has allowed the revision filed by respondent No. 3 and has set aside the order dated 14/04/1981 passed by the Consolidation Officer, as well as the order dated 16/01/1982 Passed by the Settlement Officer (Consolidation).

2. The facts and brief necessary for adjudication of the present case are that Khata No. 65 was recorded in the name of Jorai. On the death of Jurai proceedings under Section 12 of the Consolidation of Holdings Act, 1953 were initiated. Objections were filed by one Ram Asrey and Ram Kumar claiming themselves to be the legal heirs of the deceased Jorai and prayed for deletion of name of Jorai and mutating their name in his place. It was stated that Gata nos. 107, 130, 165 and 118 name of Ram Kumar be mutated in place of the deceased and in remaining of the land owned by Jorai name of the both the applicants be mutated.

3. The focal point of the dispute in the present case is the parentage of Jaikaran, who is father of Ram Chet and Barkhu. Jorai is said to

have 3 sons from 3 wives. Jaikaran was the son from Sugai from the previous marriage, and she had brought him along with her when she started living with Jorai.

4. According to the applicants family tree of Jurai is as under :-



5. Another objection was filed by Barkhu who prayed that from Chak No. 65 name of Jorai be deleted and in his place name of Ram Kumar, Jaikaran, Ram Asre be mutated.

6. The Consolidation Officer had framed 6 issues for determination including as to whether Ramchet and Barkhu were the legal heirs of Jurai, and are entitled to inherit the disputed property owned by Jorai. There was no dispute with regard to the fact that Jai Karan had died during the lifetime of Jorai. Ramchet had submitted before the Consolidation Officer that after the death of Jorai the entire property was divided and inherited by Ram Kumar, Ram Asre, Barkhu and Ramchet. Ramchet and Barkhu got 1/3 share and are in possession of the said property. The relationship between Ramchet and Ram Asre was strained on account of division of the property. It was also submitted that Jorai had 3 wives. From the 1st wife Jaikaran was born, from the 2nd Ram Asre and from the 3rd Ram Kumar. Ram Kumar in his statement had submitted that Jorai used to live with Ram Kumar and his mother while Ramchet, Barkhu and Ram Asre used to live separately.

7. Ram Asre had stated that Jorai had left his 1st wife and started living with Dharmi and out of the said relationship Ram Asre was born. After the death of Dharmi he started living with Sugai, and in fact Sugai had brought Jaikaran when she came to live with Jorai. The 1st husband of Sugai was Somai. After death of Sugai, Jorai married Jokhani and out of the said wedlock Ram Kumar was born.

8. Another independent witness Badai had stated that Jaikaran was not the son of Jurai. He has further stated that Jorai had left his legally wedded wife and started living with Dharmi, and out of the said relationship Ramasre was born, and after death of Dharmi he brought Sugai who had been previously married to Somai, and Jaikaran is the son of Sugai and Somai. After death of Jorai, Ramasre and Ram Kumar have inherited his property and are in possession of the same. He had also stated that in the Pariwar register for Gram Pakoli for house No. 21 name of Jorai is registered as being son of Katwaru, with his name wife being Jokhni and Ram asrey and Ram Kumar are shown to be his sons. No other name is indicated as member of the family.

9. The consolidation officer after analysing the entire evidence returned a finding that Jorai had 3 sons namely Ram Kumar Ramasre and Jaikaran, and Jaikaran had 2 sons namely Ramchet and Barkhu. He held that the property of Jorai had to be divided in 3 parts between Ram Kumar, Ramasre and Jaikaran, while the property of Jaikaran would be inherited by Ramchet and Barkhu. He also rejected the contention of Ram Kumar, that certain portion of land was purchased by Jorai from the money of Ram Kumar and therefore the said property is to be mutated in favour of Ram Kumar only. The Consolidation Officer while rejecting the said contention held that Ram Kumar was unable to demonstrate or produce any

evidence that the said land was purchased out of the funds provided by Ram Kumar, and therefore, even the said property was directed to be divided equally.

10. Two appeals were filed against order of the Consolidation Officer one by Ram Kumar being Appeal No. 1087/974 and other by Ram Asre being Appeal No. 1162/1124. The Settlement Officer (Consolidation) dismissed the appeals and relied upon the findings recorded by the Consolidation Officer. He was of the view that Ram Kumar was the son of Jorai, and he had stated before the Consolidation Officer that Jaikaran was son of Jorai, and there was no reason to disbelieve his statement as Ram Kumar was son of Jorai and it was the best evidence available and accordingly dismissed the appeals.

11. Ram Kumar and Ramasre preferred a revision against the judgment and order of the Settlement Officer (Consolidation) dated 16/01/1982 before the Deputy Director of Consolidation. The Deputy Director of Consolidation has gone into and analysed the evidence led in the present case to determine as to whether Jaikaran was the son of Jorai. After considering both the judgments before him, he was of the view that the Courts below were persuaded to hold that Jaikaran was a son of Jorai on the basis of the admission made by Ram Kumar before the Consolidation Officer. He thereafter proceeded to analyse the statement of Ram Kumar to determine as to whether in fact such an admission was made to the effect that Jaikaran was son a Jorai.

12. According to him it was stated by Ram Kumar that Jaikaran was son of Jorai's 1st wife Sugai, which does not mean that Jaikaran was born out of wedlock of Jurai and Sugai. He has also considered the fact that in the cross examination Ram Kumar he had pleaded

ignorance about the fact as to whether Sugai's 1st husband was Somai and whether Jaikaran was Somai's son.

13. The Deputy Director of Consolidation was of the view that the aforesaid statement does not amount to an admission to the effect that Jaikaran was son of Jorai. He stated that this statement has to be considered along with the relevant fact that the said statement was in the nature of a favour granted to the respondents who in return had stated that Ram Kumar was entitled to plot Nos. 117, 130, 165 and 118 alone as they had been purchased by Jorai out of the funds given by Ram Kumar..

14. He did not rely upon the death certificate submitted by the respondents as neither the document was deposited in the record room nor the respondents obtained a copy of the same. He even took into account the fact that in the family register names of the respondents were not recorded as the sons of Jorai.

15. The Deputy Director of Consolidation while examining the statements made before the Consolidation Officer, was of the view that Ramchet had contradicted his own statement, Ramchet/Rambharose was not even aware of the fact that Sugai was Jorai's wife, and only Badai had deposed in favour of the revisionist stating that Sugai was Somai's wife and out of the said relationship Jaikaran was born and that Sugai had subsequently remarried Jorai and brought him (Jaikaran) along with her at the time of marriage. On examining the aforesaid evidence Deputy Director of Consolidation was of the view that there is substantial material that Jaikaran is not proved to be son of Jorai, and thereby allowed the revision.

16. Shri U.S. Sahai, learned counsel for the petitioner has vehemently submitted that the revisional authority has not correctly appreciated the evidence and the findings recorded by the authorities below, while returning a finding that Jaikaran was not the son of Jorai. He submitted that there was sufficient material on record in this regard, which has been incorrectly rejected, and consequently the matter requires interference by this Court, and the impugned order deserves to be set aside, reinstating the finding recorded by the Consolidation Officer and the settlement Officer (Consolidation).

17. The learned Standing Counsel on the other hand has opposed the writ petition. He submitted that the revisional authority has revisited the entire factual matrix of the present case, and has correctly appreciated the statement of Ram Kumar. He submitted that the authorities below had not taken the correct interpretation of the statement of Ram Kumar, and merely on the basis of the extracts of his statement had returned a finding in favour of the respondents. He further submitted that the High Court in exercise of power under Article 226/227 of the Constitution of India would scrutinise the impugned order passed by revisional authority only to the extent as to whether he has exercised his powers within the confines of the statutory provisions, and would not re-appreciate the entire evidence as in case of an appeal.

18. I have heard the learned counsel for the parties and perused the record.

19. The only dispute which was raised and decided by all the authorities below was with regard to the fact as to whether Jaikaran was son of Jorai. The respondents are sons of Jaikaran, and in case it is proved that Jaikaran was son of Jorai, the respondents will be entitled to a share in his property, and their names would also have

to be entered in the revenue records. On the death of Jorai objections were filed before the Consolidation Officer. There is no dispute that Ram Kumar and Ramasre were sons of Jorai. Apart from Ram Kumar and Ramasre, Jaikaran was also said to be son of Jorai. Jaikaran had died during the lifetime of Jorai, and was survived by Ramchet and Barkhu who were his sons. It is Ramchet and Barkhu who have staked the claim that Jaikaran was son of Jorai, and accordingly they also have coparcenary interest in the property of Jorai.

20. Though the interest of Ram Kumar is in conflict with the interest of Ramchet and Barkhu, as in case Jaikaran is held not to be the son of Jorai then the entire property would have to be divided only between Ram Kumar and Ramasre, but in the statement made before the Consolidation Officer, he seems to have suggested that Jaikaran was the son of Jorai. Oral testimony of various witnesses were recorded, some of whom have stated that Sugai the mother of Jaikaran, had brought him along with her as a minor child when she started living with Jorai indicating that Jaikaran was not born out of wedlock with Sugai and Jurai. The said witnesses have further stated that previously Sugai was married to Somai and Jaikaran was born out of the said wedlock. Contrary version have also been stated on behalf of the respondents. The documentary evidence produced in shape of the death certificate was also disbelieved as that was not a certified copy nor was any copy filed before the authorities below.

21. The entire case rested on the testimony of Ram Kumar, and his statement has been duly considered and evaluated by all the authorities for deciding the matter. The Consolidation Officer as well as the Settlement Officer (Consolidation) while hearing the appeal came to conclusion that Jaikaran was the son of Jorai. The said

finding was returned considering the statement of Ram Kumar who was undisputedly the son of Jorai, his statement weighed heavily while coming to the said conclusion. The Deputy Director of Consolidation while reversing the aforesaid findings also looked into the statement of Ram Kumar in its entirety. As per the statement of Ram Kumar, following points can be inferred :-

1. Jaikaran was son of Sugai who was Jorai's 1st wife.
2. In cross-examination he pleads ignorance about the fact as to whether Sugai's 1st husband was Somai
3. He also pleads ignorance whether Jaikaran was Somai's son.

22. According to Deputy Director of Consolidation, fair reading of the statement of Ram Kumar does not indicate that he had made an admission with regard to the fact that Jaikaran was born out of the wedlock of Jorai and Sugai. There is no dispute that he was son of Sugai who was previously married to Somai. He has stated that in the entire statement Ram Kumar has not stated that Jaikaran was not borne out of the wedlock of Jorai and Sugai. It is in the light of the aforesaid facts, he has concluded that the Courts below have wrongly interpreted the statement of Ram Kumar to come to a conclusion that Jaikaran was the son of Jorai.

23. We have carefully gone through the judgments passed by the authorities below as well as considered the arguments raised by the parties. The judicial review in such matters is limited only to the aspect as to whether the authorities have exercised their power within the confines of the statutory provisions, and have considered all the material placed before them. After examining the impugned order in the light of the aforesaid aspects, this Court would not

reappreciate the evidence before the authorities and reverse the findings on merits as if this Court were sitting in appeal of the judgment of the Deputy Director of Consolidation. This fact also cannot be lost sight of that the authorities below were deciding the matter summarily, and in case the parties wanted to establish the rights it was open to them to file a regular suit. It has been consistent view of the Supreme Court as well as this Court with regard to the limitations placed on the exercise of judicial review of administrative/quasi judicial orders.

24. In the case of **Raj Kumar Dixit v. Vijay Kumar Gauri Shanker, (2015) 9 SCC 345** it was observed by the Supreme Court:-

“22. Reliance has been placed in Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477] which has been elaborately considered by this Court in Harjinder Singh v. Punjab State Warehousing Corpn. [(2010) 3 SCC 192] the relevant para of which reads thus:

“12. In Syed Yakoob case [AIR 1964 SC 477] , this Court delineated the scope of the writ of certiorari in the following words :

‘7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by

the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the

record. Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior court or tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened.’”

25. Examining the order of the Deputy Director of Consolidation in light of the judgment of Supreme Court, this Court is of the view that there is no error for returning a finding that Jaikaran is the son of Jorai. The statement of Ram Kumar has been duly considered from thich it is not borne out that any admission was made by him

before the Consolidation Officer that Jaikaran is the son of Jorai. He clearly stated that Jaikaran was the son of Sugai, who had married his father Jorai. The other reason for not accepting the statement of Ram Kumar was that after there was a trade-off/agreement between Ram Kumar and Ramchet to the effect that Ram Kumar was to be declared sole owner of certain plots which allegedly were purchased out of the money given by him to Jorai. This fact also could not be proved by Ram Kumar, and accordingly the Deputy Director of Consolidation held that the version of Ram Kumar could not be accepted and consequently allowed the revision. The reasoning given by Deputy Director of Consolidation is clearly consistent with the facts on record. From the version of Ram Kumar as quoted by him in his order, does not seem to be perverse or arbitrary, and he has fully supported his findings by giving adequate reasons. Once we find that he has fully appreciated the evidence on record, and given adequate reasons for his conclusions, it cannot be said that the findings are arbitrary or inconsistent with the facts on record requiring interference of this Court in exercise of powers under Article 226 of the Constitution of India. Accordingly we do not find any infirmity with the order passed by Deputy Director of Consolidation, and hence the writ petition is bereft of merits and is accordingly **dismissed**.

26. During pendency of the petition the petitioner had preferred Application Nos. 37582 of 2019 and 37583 of 2019 which have been allowed by this Court and steps were to be taken by the petitioner, which have not been taken, and accordingly by means of order dated 04/03/2024 the Court has recorded that if the steps are not taken in the given time, the petition shall stand dismissed without further recourse to the Court. Despite the aforesaid order no

steps were taken by the petitioner, and though we could have dismissed the petition as per order dated 04/03/2024, but in the interest of justice we proceeded to hear and decide the matter on merits.

Order Date :- 19.4.2024

A. Verma