

Court No. - 8

Case :- WRIT - B No. - 1190 of 2024

Petitioner :- Salik Ram And 2 Others

Respondent :- Deputy Director Of Consolidation, Shrivasti And Others

Counsel for Petitioner :- Rajeiu Kumar Tripathi

Counsel for Respondent :- C.S.C., Rakesh Kumar Srivastava

And

Case :- WRIT - B No. - 1192 of 2024

Petitioner :- Dilip Kumar And 2 Others

Respondent :- Dy. Director Of Consolidation, Shrivasti And 5 Others

Counsel for Petitioner :- Manoj Kumar Singh, Rakesh Kumar Srivastava

Counsel for Respondent :- C.S.C., Pankaj Gupta, Suresh Chandra
Goswami, R0208

Hon'ble Jaspreet Singh, J.

1. This order will decide the instant petition as well the connected Petition No.1192 Writ-B of 2024. However, for the sake of convenience the facts are being noticed from Writ-B No.1190 of 2024.

2. In both the writ petitions, the order passed by the DDC dated 27.08.2024 is under challenge.

3. Heard Shri Rajeiu Kumar Tripathi, learned counsel for the petitioners. Notice on behalf of respondent Nos.1 and 2 has been accepted by Dr. Krishna Singh and Shri Upendra Singh, learned counsel for the State- respondents. Shri Vikram Pandey, Advocate holding brief of Shri Pankaj Gupta, learned counsel has accepted notice on behalf of the Gaon Sabha, who is impleaded as respondent No.6 in connected petition and Shri Rakesh Srivastava, Advocate has filed Vakalatnama on behalf of contesting respondent Nos.3 to 5, which is taken on record.

4. At this stage, it will be relevant to mention that the present respondent Nos.3 to 5, namely, Dileep Kumar, Ashok Kumar and Smt. Dulara Devi are the petitioners in the connected Petition No.1192 Writ-B of 2024, wherein Salik Ram, Ram Sagar and Ram Chandra are respondents (these three persons are the petitioners in the instant petition No.1190 Writ-

B of 2024).

5. Shri Rajeiu Kumar Tripathi, learned counsel for the petitioners in Writ-B No.1190 of 2024 has filed his Vakalatnama on behalf of respondent Nos.3 to 5 in the connected Writ-B No.1192 of 2024, which is also taken on record.

6. Since, the controversy involved in the instant petitions is common between the parties and both are aggrieved by the same order, hence with the consent of learned counsel for the respective parties in both the petitions, the petitions are being disposed of finally at the admission stage without calling any counter affidavit as the facts are not in dispute and learned counsel appearing for the respective parties in both the petitions agreed that the order impugned is not sustainable in law.

7. In order to put the controversy in a perspective, the record indicates that the property in question initially belonged to one Ram Sudhi. The dispute relates to plots Nos.453 and 454 situated in Village- Khargaura Basti, Pargana & Tehsil- Ikauna, District- Shravasti. The petitioners of Writ-B No.1190 of 2024 claim rights to the property of Ram Sudhi on the basis of a sale deed dated 29.10.1986, whereas the private respondents in the said petition (who are the petitioners in the connected petition) claim rights from Ram Sudhi based on an agreement to sale dated 30th April, 1976.

8. The dispute arose on account of fact that the petitioners claiming title on the basis of the sale deed dated 29.10.1986. It was executed by Ram Sudhi in favour of Shri Bagawati and Smt. Badka (parents of the petitioners). It is also stated that on the strength of the said sale deed, the names of the parents of the petitioners was duly mutated in the revenue records on 30th June, 1987.

9. Contemporaneously, the record reveals that since the private respondents, who are successor-in-interest of Parashu Ram, who claim that Ram Sudhi had executed an agreement to sale dated 30th April, 1976 in respect of the property in dispute, but did not honour his commitment,

which led Parashu Ram to institute a suit bearing No.272 of 1990. The said suit came to be decreed ex parte on 29.01.1996. However, before the said decree could be put into execution, Ram Sudhi executed the sale deed dated 17.01.1997 in favour of Parashu Ram. The impact was that in respect of the property in question two sale deeds were set up, one by the predecessor-in-interest of the present petitioners and other by the predecessor-in-interest of private respondent Nos.3 to 5.

10. In the meantime, once the petitioners became aware of the sale deed dated 17.01.1997 executed in pursuance of the ex parte decree dated 29.01.1996, hence, an application under Order 9 Rule 13 of the CPC came to be filed seeking to recall the ex parte judgement and decree dated 29.01.1996. The said application came to be allowed on 07.10.1998 and it has been informed that this order was put to challenge before the revisional court as well as before this Court, but it do not find favour and the said order remained intact.

11. Another set of litigation was initiated by Ram Sudhi, who filed a suit seeking cancellation of the sale deed dated 29.10.1986 before the competent civil court, which was registered as R.S. No.191 of 1990. Shri Triapthi, learned counsel appearing for the petitioners in Writ-B No.1190 of 2024 submits that insofar as the pendency of this suit for cancellation, i.e., R.S. No.191 of 1990 is concerned, the petitioners are not aware of the same nor they are aware of the stage of the said suit as they have not been served.

12. In the aforesaid factual matrix, the proceedings before the Consolidation Officer came to be contested and three sets of objections were filed before the Consolidation Officer; (i) by the present petitioners, who claimed rights on the basis of the sale deed dated 29.10.1986; (ii) another set of objections filed by private respondent Nos.3 to 5 (herein) who claimed rights on the basis of the agreement to sale dated 30.04.1970 and sale deed dated 17.01.1997; and (iii) by Ram Sudhi himself, who stated and acknowledged the sale deed executed in favour of Parashu Ram dated 17.01.1997 but disputed the sale deed dated 29.08.1986.

13. The record further reveals that before the Consolidation Officer a

compromise was arrived at between Parashu Ram and Ram Sudhi on 22.05.2003, which has been brought on record as Annexure No.14 in the connected Petition No.1192 Writ-B of 2024. However, the Consolidation Officer, after hearing the parties and considering three issues which had been framed, came to the conclusion that the objections filed by the present petitioners as well as the objections of Ram Sudhi were rejected and the objections of private respondent Nos.3 to 5 came to be allowed.

14. This order dated 16.10.2003 came to be challenged by the petitioners before the SOC. In light of the submissions made before the SOC, it found that insofar as the sale deed executed in favour of the petitioners dated 29.10.1986 is concerned, the same has not yet been cancelled or set aside by any competent court of law. It also noticed that the ex parte decree dated 29.01.1996 passed in favour of Parashu Ram in regular suit No.272 of 1990 had been set aside on an application under Order 9 Rule 13 moved by the present petitioners vide order dated 17.10.1998. As a consequence, the sale deed executed by Ram Sudhi in favour of Parashu Ram would also not confer any right and to that extent it found favour with the sale deed of the petitioners dated 29.10.1986, accordingly, it allowed the appeal of the petitioners vide judgement and order dated 10.07.2008.

15. The order passed by the SOC was assailed by private respondent Nos.3 to 5 by filing a revision before the DDC and the DDC vide its judgement dated 27.08.2024 taking note of the sequence of the litigation in between the parties including considering that the suit for cancellation of the sale deed is still pending and held that the parties were required to get their rights adjudicated in the civil court, hence, it abated the proceedings vide order dated 27.08.2024.

16. It is in the aforesaid backdrop of facts that the present petitioners assail the order passed by the DDC. The private respondents also assail the same order dated 27.08.2024, though for different reasons. Learned counsel for the parties are not at variance to the basic proposition that once the consolidation proceedings had commenced, the consolidation proceedings could not have abated to await the outcome of the civil proceedings rather it would have been the civil proceedings, which would abate in the light of

commencement of proceedings under U.P. Consolidation of Holdings Act, 1953.

17. It is in this context that both the parties have come up before this Court in their respective petitions. As per the petitioners, the abatement would have deleterious effect on the rights of the petitioners, whereas a similar contention has been made by learned counsel for the private respondents that by the same order of abatement, it would also have an unfavorable impact on the rights of private respondent Nos.3 to 5, which stood crystallized in the light of the sale deed, which was executed by Ram Sudhi dated 17.01.1997. It is thus urged that it was open for the DDC to have heard the parties on merits and would have decided the issue/lis either way, but it was not open for the DDC to have abated the proceedings leaving it open for the parties to get their rights adjudicated in the civil court.

18. After hearing the parties, this Court finds that there are several contentious issues in between the parties. The impact of the sale deed executed by Ram Sudhi in favour of Parashu Ram in furtherance of ex parte decree dated 29.01.1996 viz-a-viz the sale deed dated 29.10.1986 allegedly executed by Ram Sudhi in favour of Bhagwati and Smt. Badka (the predecessor-in-interest of the petitioners). The date of commencement of consolidation operations and the fact whether any subsequent notification under Section 52 of U.P. Consolidation of Holdings Act, 1953 has been made or not is also an important issue, which ought to have been taken note of before considering the rights of the respective parties and when and which proceedings will abate. It may be true that the consolidation courts do not have the right to cancel an instrument but at the same time once a title 'lis' is before the Consolidation Authority, it is legally bound to consider the impact and give its finding thereon and determine whether the deed or instrument was a void or voidable document. Either way it is not appropriate or open for the DDC to have abated the proceedings as that is per se a jurisdictional error, which mars the judgement dated 27.08.2024.

19. This aspect of the matter was considered by a Full Bench of this

Court in **Ram Nath Vs. Munna 1976 RD 220**, wherein it was observed as under:-

“The Full Bench observed that the documents which are voidable can be cancelled by the civil court only and the consolidation authorities have no jurisdiction to ignore those documents, instead they are under a duty to give effect to these documents till they are cancelled by a competent court of law. If a sale deed or document of transfer is void the consolidation authorities have jurisdiction to disregard the same while determining title to the land but if the document is voidable then the consolidation authorities have no jurisdiction to disregard sale deed in that even the civil court is the only proper forum to adjudicate upon the validity of the sale deed and the consolidation authorities are bound to give effect to the sale-deed.”

20. This was also noticed by this Court in **Dharma Devi Vs. DDC 1976 SCC OnLine All 259**, wherein the Full Bench decision in the case of **Ram Nath (supra)** was followed and in para 8 and 9, it held as under:-

“8. In Ram Nath v. Munna, a Full Bench of this Court considered the effect of the Judgment of the Supreme Court. The Full Bench observed that the documents which are voidable can be cancelled by the civil court only and the consolidation authorities have no jurisdiction to ignore those documents, instead they are under a duty to give effect to these documents till they are cancelled by a competent court of law. The effect of the Full Bench judgment is that if a sale deed or document of transfer is void the consolidation authorities have jurisdiction to disregard the same while determining title to the land but if the document is voidable then the consolidation authorities have no jurisdiction to disregard sale deed in that event the civil court is the only proper forum to adjudicate upon the validity of the sale deed and the consolidation authorities are bound to give effect to the sale-deed. In Second Appeal No. 1909 of 1972 decided on 4th September, 1974, G.C. Mathur, J. expressed similar view. In Writ Petition No. 6035 of 1972 (Bind Basi V.D. D.C. Azamgarh), decided on 11th October, 1973, Ojha, J. also expressed a similar view.

9. It is necessary to keep in mind that the respondent Tribhuwan Nath himself raised objection to the jurisdiction of the civil court and his objection was upheld as a result of which Smt. Dharam Devi challenged the sale deed before the consolidation authorities. Admittedly, both the parties produced oral and documentary evidence before the consolidation authorities in support of their case. The Settlement Officer (Consolidation) recorded finding that the sale deed was void for want of consideration. In revision the Deputy of Consolidation did not consider of record any finding on that question, He did not consider the evidence produced by the parties, nor he recorded any finding as to whether the sale deed was void or voidable. He set aside the order of the Settlement Officer (Consolidation) on the ground that the consolidation authorities had no jurisdiction to disregard the sale deed. As already discussed the consolidation authorities have jurisdiction to disregard a void sale deed but if the sale deed is voidable they have no jurisdiction to ignore the same. The Deputy Director of Consolidation failed to appreciate this aspect of the question. The Settlement Officer (Consolidation) had already recorded a finding that the sale deed was void for want of consideration. The Deputy Director of Consolidation should have considered that finding on merits on appreciation of evidence. Since he failed to do that, his order is liable to be quashed.”

21. This issue was once again considered by this Court in ***Madhuri Devi and others Vs. DDC Sitapur Campt 2017 SCC OnLine All 6407*** and in para 13 to 15, it held as under:-

“13. Once Section 4 notification is published under the Act, 1953 then its consequences ensue as prescribed under Section 5 thereof and all rights and every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending stand abated.

14. A joint reading of Sub-section 2 of Section 5 and Section 9-A leave no doubt that once consolidation operation starts on the publication of notification under Section 4, then, any right, interest and title in respect of any land which is the subject matter of such consolidation operations, is to be determined by the Consolidation Authorities and none else, however, as far as cancellation of deeds are concerned it is the prerogative of the Civil Courts and Consolidation Authorities do not have any jurisdiction to cancel instruments i.e. sale deed or gift deed etc., but, this does not mean that in proceedings under Section 9-A (2) the Consolidation Courts can not take into consideration such sale deeds etc. for the purposes of determination of rights, title and interest of the parties in the land in question. This question fell for consideration before the Supreme Court way back in 1970 itself in the case of Gorakh Nath Dube's case (supra), wherein the Supreme Court took note of a Division Bench Judgment of this Court in Jagarnath Shukla v. Sita Ram Pande, 1969 ALJ 768, wherein, the question whether a suit for cancellation of a sale deed, which was pending on the date of notification under Section 4 of the Act abates under Section 5(2) of the Act. The jurisdiction of the Consolidation Authorities to go into questions relating to the validity of the sale deeds, gift deeds and wills also fell for consideration. The Supreme Court after noticing the aforesaid judgment found therein a fairly comprehensive discussion of the relevant authorities of the Allahabad High Court, the preponderating weight of which was cast in favour of view that question relating to the validity of sale deeds, gift deeds and wills could be gone into in proceedings before the Consolidation authorities because such questions naturally and necessarily arose and had to be decided in the course of adjudication on rights or interests in land which are the subject matter of consolidation proceedings. The Supreme Court opined that a distinction can be made between cases where a document is wholly and partially invalid so that it can be disregarded by any Court or authority and one where it has to be actually set-aside before it can cease to have legal effect. It held that an alienation made in excess of power to transfer would be, to the extent of excess of power, invalid. It further held that an adjudication on the effect of such purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to the rights or interests in land which are the subject matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction by the necessary implication of their statutory powers to adjudicate upon such rights and interest in land, to declare such documents effective or ineffective, but, where there is a document the legal affect of which can only be taken away by setting it aside or its

cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it opined that it must be held to be binding on them so long as it is not cancelled by a Court having the power to cancel it.

15. In view of what was held by the Supreme Court the legal position which can be culled out is that the validity of sale deed can also be looked into by the Consolidation Authorities, although, they do not have the jurisdiction to cancel it. They can very well see as to whether the deed in question on the basis of which any right, title or interest is claimed is a void document, if so, then they can very well ignore it by declaring it to be ineffective, however, if the legality being pointed out in respect of the document is such that it would at best be voidable at the instance of the aggrieved party, then, in such an event the Consolidation Courts are bound to give effect to such documents, unless and until it is cancelled by a Court of competent Civil jurisdiction, meaning thereby, voidable documents can not be ignored by the Consolidation Courts. This is the crux of the legal position with regard to the jurisdiction of the Consolidation Courts in this regard.”

22. Lately, the Apex Court in ***Khursheed and another Vs. Shaqoor 2024 SCC OnLine SC 2929*** in paras 9 to 11 held as under:-

“9. Invoking the extra-ordinary writ jurisdiction of the High Court under Article 226/227 of the Constitution of India, the respondent challenged the order dated 22.11.2018 of the Additional District Judge, Laksar by filing a Writ Petition before the High Court of Uttarakhand. The learned Single Judge of the High Court, by passing the impugned order dated 02.08.2019 allowed the Writ Petition filed by the Respondent & set aside the order dated 22.11.2018 of the Additional District Judge, Laksar and consequently ordered that the Civil Suit filed by the Respondent be restored to the file of the Civil Judge (Junior Division), Laksar, District-Haridwar. The learned Single Judge, after placing his reliance upon a judgment of this Court in *Gorakh Nath Dube v. Hari Narain Singh*, (1973) 2 SCC 535, came to the conclusion that as the allegation is that the sale deed was executed by playing fraud and by impersonation, it would be a “voidable” document and thus, any suit, for cancellation of a voidable sale deed will not abate by virtue of Section 5(2)(a) of the Consolidation Act. The distinction between ‘void’ and ‘voidable’ documents was made by this Court in the case of *Ningawwa v. Byrappa*, (1968) 2 SCR 797 and this is what was held:

4..... It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded. “The fact that the contract has been induced by fraud does not make the contract void or prevent the property from passing, but merely gives the party defrauded a right on discovering the fraud to elect whether he shall continue to treat the contract as binding or disaffirm the contract and resume the property. If it can be shown that ‘the party defrauded’ has at any time after knowledge of the fraud either by express words or by unequivocal acts affirmed the contract, ‘his’ election is determined for ever. The party defrauded may keep the question open so long as he does nothing to affirm the contract.” (*Clough v. L. & N.W. Ry.*) *[[L.R.] 7 Exch. 26, 34]*.

5. The legal position will be different if there is a fraudulent

misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable. (emphasis supplied)

10. This Court, in Dularia Devi v. Janardan Singh, 1990 Supp SCC 216 : AIR 1990 SC 1173 relying upon the law laid down in Ningawwa (supra) and Gorakh Nath Dube (supra) had held that a “voidable” document continues to be in force until it is set aside and such a document can only be set aside by a competent civil court. Further, such documents were held to be binding upon the Consolidation Authorities so long as they are not cancelled or set aside by a Court vested with the jurisdiction to do so. Moreover, in Ram Sakal Singh v. Mosamat Monako Devi, (1997) 5 SCC 192 this Court has held that the consolidation authorities do not have the jurisdiction and power to cancel a document, which is required to be set aside or cancelled and the document will continue to be valid till it is cancelled by a Competent Court i.e. a Civil Court. This court also held that if the document is void, it would be open for the Consolidation Authorities to disregard such a document & in such a case, they would get the exclusive jurisdiction to proceed with the matter. But if the document is voidable, the Civil Court is vested with the jurisdiction to declare the same to be voidable. In the case of voidable documents, not only would the Consolidation Authorities have no power to cancel such documents, but even the proceedings pending before any competent Civil Court would not abate.

11. The allegation here is that the fraudulent misrepresentation was by petitioner No. 1's mother, who executed the sale deed dated 09.08.2016 by impersonation, it would make the sale deed voidable, but not void. As such, in view of the law laid down by this Court in Gorakh Nath Dube (supra), the Sale Deed dated 09.08.2016 will be binding on the Consolidation Authorities unless it is set aside by a competent Civil Court and there would be no bar on jurisdiction of the Civil Court to try a suit for cancellation of such a sale deed.”

23. In light of the aforesaid discussions, this Court is of the clear view that impugned order dated 27.08.2024 passed by the DDC, Shravasti in Revision No.412 of 2023 is not sustainable and, accordingly, it is set aside. The revision shall stand restored on the Board of the DDC concerned.

24. A direction is issued to the DDC, Shravasti that it shall after affording full opportunity of hearing to the parties concerned shall decide the revision afresh taking note of the decisions referred herein-above and after taking note of the respective submissions advanced by learned counsel for the respective parties and decide the revision preferably within a period of three months from the date a certified copy of this order is placed before the authority concerned.

25. It is also made clear that the impugned order has been set aside purely on the ground that the DDC had no jurisdiction to abate the

proceedings directing the parties to get their rights adjudicated in the civil court without considering the twice impact of the two sale deeds and without recording a finding whether the two deeds were void or voidable and how the law operate. This fact apart, the Court has not expressed any opinion on merits insofar as the respective rights of the parties are concerned, which is left open to be considered by the DDC.

26. It is further provided that till the decision of the DDC in terms of this order, the parties shall maintain status quo that is to say that none of the parties will alienate, change the nature of the property or create any third party right.

27. With the aforesaid, both the writ petition No.1190 of 2024 and 1192 of 2024 are **allowed**.

28. Costs are made easy.

Order Date :- 04.12.2024
Ashutosh/-

(Jaspreet Singh, J.)