



A.F.R.

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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 3000129 of 2002

Ram Yggya

.....Petitioner(s)

Versus

Addl. Commissioner J Faizabad and others 3

.....Respondent(s)

Counsel for Petitioner(s)	: R.s.pande, Ankit Pande, Virendra Bhatt
Counsel for Respondent(s)	: C.S.C.,

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Dr. R.S. Pande, learned Senior Advocate assisted by Sri Virendra Bhatt, learned counsel for the petitioner and Sri S.P. Maurya, learned Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioner has prayed as under :-

"(i) a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 30-3-2002 passed by opposite party No.2 contained in Annexure No-2 and order dated 28-10-2002 passed by opposite party No-1 contained in Annexure No-1 to this petition.

(ii) ...

(iii) ..."

3. The dispute pertains to Gata No. 613, measuring 19 biswa and 5 biswansi, situated in village Rampur Puwari, Pargana Amsin, Tehsil and District Faizabad (now Ayodhya). Originally, the land was recorded in the name of late Shankar Singh after the abolition of zamindari, and was

thereafter cultivated by Sita Ram, father of the petitioner, since the year 1953. His name was recorded in the Khasra and subsequently in Khatauni Part-II under Class-9 entries on the basis of continuous possession.

4. On 9-8-1965, Smt. Dukharaji filed a suit under Section 209 of U.P. Z.A. & L.R. Act, 1950 seeking declaration and possession. Her claim of Sirdari rights was dismissed. On 3-1-1978, Sita Ram obtained a decree under Section 229-B of the U.P. Z.A. & L.R. Act, wherein he was declared bhumidhar of Gata No. 613. Based on this decree, his name was entered in Khatauni for the years 1387–1392 Fasli. In ceiling proceedings, Plot No. 613 was included as surplus land by order dated 9-12-1976.

5. Sita Ram thereafter filed a correction application on 1-12-1978, asserting that Gata No. 615, and not Gata No. 613, should be treated as surplus. The Prescribed Authority passed a correction order on 17-04-1979, declaring Gata No. 615 surplus in place of Gata No. 613.

6. The petitioner filed an objection under Section 11(2) of the Ceiling Act on 23-07-1997, asserting (i) that Gata No. 613 was wrongly treated as surplus because the land had already been decreed in favour of his father on 3-1-1978, (ii) that the entries in the revenue records supported continuous possession since 1953, and (iii) that the case involved a double entry, one in ceiling Khata No. 473 and another in petitioner's Khatauni.

7. The Prescribed Authority rejected the objection on 30-03-2002, holding that (i) Gata No. 613 belonged to the original tenure-holder Smt. Dukhrani, (ii) the decree dated 03-01-1978 was passed after the cut-off date 24-01-1971, and any transaction or declaration after the cut-off date is to be ignored under Section 5(6) of the Ceiling Act.

8. The Additional Commissioner dismissed the appeal on 28-10-2002, observing that (i) the order dated 03-01-1978 conferred no benefit upon the petitioner, (ii) the correction order dated 17-04-1979 was obtained by suppression of material facts and without hearing the State or

original tenure-holder, (iii) and the ceiling notice (Form 3) originally proposed to declare both Gata 613 and Gata 615 surplus.

9. Submission of learned counsel for the petitioner is that the declaratory decree dated 03-01-1978 in Suit under Section 229-B has attained finality and established Sita Ram's rights as bhumidhar. The said decree has never been challenged, and the name of father of petitioner stood duly mutated in revenue records.

10. Learned counsel for the petitioner submits that the petitioner asserts possession since 1953, corroborated by Class-9 entries in Khasra and Khatauni Part-II, thus, Gata 613 could not have been treated as surplus land.

11. It is contended that Gata No. 613 was wrongly recorded twice—once in ceiling Khata No. 473 and again in the petitioner's Khatauni. Such double entry, it is submitted, vitiates the ceiling determination.

12. Further submission of petitioner's counsel is that the Prescribed Authority, upon being satisfied that surplus land had been wrongly identified, rightly corrected the record by substituting Gata 615 in place of Gata 613.

13. It is further urged that the ceiling authorities failed to consider the decree of 1978 and the mutation entries which had attained finality since 1953.

14. In support of the submission advanced, learned counsel for the petitioner placed reliance upon the following judgments :-

(i) **Dirvijay Singh Vs. State of U.P. (1984 LCD 324)**. Relevant paragraph 3 is being quoted below :-

"3. I have heard the learned counsel for the parties. Under the Act the third party has a right to file the objection u/s 11 (2) of the Act. The petitioner being a third party could file the objection. Only the question of delay was required to be considered. The objection could not be rejected merely because the matter was contested by the recorded tenure

holder upto High Court. That will not put to an end to the right of the claimant. The view taken by the prescribed authority and the District Judge is manifestly erroneous and cannot be sustained."

(ii) Shafir Vs. District Judge Gonda (1985 LCD 290). Relevant paragraphs 8, 9 and 10 are being quoted below :-

"8. Learned counsel for the petitioners has urged that the Prescribed Authority has rejected the objection filed by the petitioner under Section 10(2) of the Act merely on the ground that in the ceiling proceedings the Prescribed Authority cannot determine the claim of the petitioners who have claimed sirdari rights over certain plots of the disputed holding on the ground of adverse possession for more than the prescribed period of limitation. It was urged that the Prescribed Authority has wrongly refused to consider the claim of the petitioners on merits which should have been considered and decided on merits according to law in view of the decision of the Full Bench of this Court in the Case 'Upper Ganges Sugar Mills Ltd.', reported in 1967 ALJ 556 and also in Dilbagh Singh's case reported in 1978 ALJ 717. I find much substance in the contention of the learned counsel for the petitioners.

9. In Dilbagh Singh's case (Dilbagh Singh v. State of U.P.) it was held by the Division Bench that Section 11(2) permits a tenure-holder to file objections. Such tenure-holders may be those who have been served with a notice and a statement under Section 10(2). It also includes tenure-holders who have not been given or served with any such notice or statement. The construction put by the Full Bench also embraces persons who claim to be tenure-holders and who having come to know of the declaration of their land as surplus land of some other person wish to challenge that declaration or notification thereof in the gazette under Section 14. They are all entitled

to file an objection under Section 11(2) and get an adjudication thereon as required by Section 12.

10. In this view of the matter I find that the objection which the petitioners had filed required to be decided on merits under Section 12. The petitioners have claimed that they are tenure-holders of certain plots of the disputed holding recorded in the name of opposite party No. 4. They thus claimed that opposite party No. 4 is not tenure-holder of those plots and the petitioners have acquired rights by adverse possession having remained in adverse possession for more than the prescribed period. Thus those plots could not be shown in the notice issued to the opposite party No. 4 under Section 10(2) of the Act nor the same could be treated to be holding of the opposite party No. 4 and declared surplus land in his hands because in the event petitioners succeed in establishing their Sirdari rights and title by adverse possession over the land in dispute it could not be treated to be part of the holding of opposite party No. 4. The Prescribed Authority, therefore, was required to determine this question on merits as to whether the plots, which were claimed by the petitioners as their Sirdari land could be factually and legally sustained or not. The Prescribed Authority should, therefore, consider the claim of the petitioners after giving them full opportunity to lead evidence in support of their claim. The opposite party No. 4 will also be given opportunity to contest the claim of the petitioners. Even in the case which has been remanded by the learned District Judge for considering the claim of opposite party No. 4 for being decided by now on merits, the Prescribed Authority will consider the objections filed by the Petitioners on merits in respect of the plots in which they have claimed rights by adverse possession. The objection would be treated to be maintainable as one under Section 11(2) of the Act as held by this Court in the aforesaid decisions and will be decided on

merits even if the land in which petitioners have claimed title by adverse possession has been notified under Section 14(1) of the Act because the deletion of Section 14(2) will not bar maintainability of such objection, as held in Ram Kumar Singh v. State of U.P., [Writ Petition No. 981 of 1976.] decided on 10-10-1984."

(iii) Abdul Hafiz Khan & another Vs. District Judge Bahraich & others (1986 LCD 477). Relevant paragraphs 7, 8 and 9 are being quoted below :-

"7. So far as the question regarding maintainability of objection under Section 11(2) of the Act after the surplus land had been notified under Section 14(1) of the Act, is concerned, I find that it stands concluded by a Full Bench Decisions of this Court in Baldeo Singh v. State of U.P., [1980 L.L.J. 31.] . According to the majority view expressed in the said decision an objection can be entertained under Section 11(2) of the Act even after the surplus land had been notified under Section 14(1) of the Act. The deletion of Sub-section (3) of Section 14 of the Act will not affect the tenability of that objection. In this view I do not find any merit in the contention of the learned Standing Counsel that the petitioners had no right to file objection under Section 11(2) of the Act. Even if the name of the objectors is not recorded over the land in dispute as tenure-holder they could file an objection under Section 11(2) of the Act as held by the Full Bench of this Court in Upper Ganges Sugar Mills Ltd. v. Civil Judge, Bijnor [1969 A.L.J. 556.] ,

8. In the present case the petitioner had filed an objection on 28th October, 1978 (Annexure-4) asserting that they are the tenure-holders of the land which they had received in the aforesaid decree for partition and that the opposite party No. 4 Nazim Ali Khan is not the tenure-holder of the land situate in village Kanjarwa and his surplus land be

determined excluding the land of village Kanjarwa, which belongs to the petitioner. This objection was filed under Section 13-A of the Act though in fact it purported to be an objection under Section 11(2) of the Act and deserved to be treated as such for deciding it on merits. It is well settled that wrong mentioning of the section or nor mentioning a correct section in the objection filed would not by itself disentitle an objector to appropriate relief which the Prescribed Authority could grant to the objector in accordance with the law. In Ram Kumar Singh v. State of U.P. [1985 L.L.J. 81.] . I had an occasion to consider similar question, whether an objection filed under sub-section (3) of Section 14 could or could not be treated to be one under Section 11(2) of the Act. It was held in Ram Kumar Singh's case (supra) that even without formal application for amendment the Prescribed Authority (Ceiling) should have proceeded to decided the objection treating it to be one under Section 11(2) of the Act because wrong mentioning of section or not mentioning of correct section in the objection not by itself disentitle the objector to the appropriate relief which the Prescribed Authority could grant in accordance with the law.

9. In Abdul Rahman v. The Prescribed Authority [1979 A.C.J. 10.] a similar question arose for consideration before the Division Bench and it was held :-

“Although the application made by the petitioners purported to be under Section 13-A of the Act it was substantially an objection under Section 11(2), of the Act.”

The Prescribed Authority in the aforesaid case was, therefore, directed to consider the claim of the petitioners treating the application as an objection under Section 11(2) of the Act."

(iv) **Hari Ram v. Special Additional District Judge Faizabad & others (1989 LCD 85)**. Relevant paragraph 7 is being quoted below :-

"In view of the discussion held above, it is clear that the petitioners had to be heard and their objections had to be treated as objections under Section 11(2) of the U.P. Imposition of Ceiling on Land Holdings Act, specifically when the land was recorded in the revenue records in their names in pursuance of an order of mutation passed in their favour. It will not affect their case if earlier any order was passed in proceedings between Chandra Bhan Singh and others and the State. As a matter of fact, under the first proviso to Rule 8 of the U.P. Imposition of Ceiling on Land Holdings Rules, a notice should have been issued to the petitioners as well. The opposite parties have dismissed the objections and the appeal preferred by the petitioners erroneously. The matter had to be considered on merits on the objections filed by the petitioners."

(v) **Ravindra Kaur Grewal v. Manjeet Kaur [(2019) 8 SCC 729]** on adverse possession. Relevant paragraphs 13, 14 and 20 are being quoted below :-

"13. In Somnath Burman v. S.P. Raju [Somnath Burman v. S.P. Raju, (1969) 3 SCC 129 : AIR 1970 SC 846] , this Court has recognised the right of a person having possessory title to obtain a declaration that he was the owner of the land in a suit and an injunction restraining the defendant from interfering with his possession. This Court has further observed that Section 9 of the Specific Relief Act, 1963 is in no way inconsistent with the position that as against a wrongdoer, prior possession of the plaintiff, in an action of ejectment is sufficient title even if the suit is brought more than six months after the act of dispossession complained of and that the wrongdoer cannot successfully resist the suit by

showing that the title and the right to possession vested in a third party. This Court has observed:

“10. In Narayana Row v. Dharmachar [Narayana Row v. Dharmachar, ILR (1903) 26 Mad 514] a Bench of the Madras High Court consisting of Bhashyam Ayyangar and Moore, JJ. held that possession is, under the Indian, as under the English law, good title against all but the true owner. Section 9 of the Specific Relief Act is in no way inconsistent with the position that as against a wrongdoer, prior possession of the plaintiff, in an action of ejectment, is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that the wrongdoer cannot successfully resist the suit by showing that the title and right to possession are in a third person. The same view was taken by the Bombay High Court in Krishnarao Yashwant v. Vasudev Apaji Ghotikar [Krishnarao Yashwant v. Vasudev Apaji Ghotikar, ILR (1884) 8 Bom 871] . That was also the view taken by the Allahabad High Court—see Umrao Singh v. Ramji Das [Umrao Singh v. Ramji Das, 1913 SCC OnLine All 56 : ILR (1914) 36 All 51] , Wali Ahmad Khan v. Ajudhia Kandu [Wali Ahmad Khan v. Ajudhia Kandu, 1891 SCC OnLine All 38 : ILR (1891) 13 All 537] . In Subodh Gopal Bose v. Province of Bihar [Subodh Gopal Bose v. Province of Bihar, 1949 SCC OnLine Pat 30 : AIR 1950 Pat 222] the Patna High Court adhered to the view taken by the Madras, Bombay and Allahabad High Courts. The contrary view taken by the Calcutta High Court in Debi Churn Boldo v. Issur Chunder Manjee [Debi Churn Boldo v. Issur Chunder Manjee, ILR (1883) 9 Cal 39] ; Ertaza Hossein v. Bany Mistry [Ertaza Hossein v. Bany Mistry, ILR (1883) 9 Cal 130] , Purmeshur Chowdhry v. Brijo Lall Chowdhry [Purmeshur Chowdhry v. Brijo Lall Chowdhry, ILR (1890) 17 Cal 256] and Nisa Chand Gaita v. Kanchiram Bagani [Nisa Chand Gaita v.

Kanchiram Bagani, ILR (1899) 26 Cal 579] , in our opinion does not lay down the law correctly.”(emphasis supplied)

It is apparent from the aforesaid decision that a person is entitled to bring a suit of possessory title to obtain possession even though the title may vest in a third person. A person in the possessory title can get injunction also, restraining the defendant from interfering with his possession.

14. Given the aforesaid, a question to ponder is when a person having no title, merely on the strength of possessory title can obtain an injunction and can maintain a suit for ejectment of a trespasser. Why a person who has perfected his title by way of adverse possession cannot file a suit for obtaining an injunction protecting possession and for recovery of possession in case his dispossession is by a third person or by an owner after the extinguishment of his title. In case a person in adverse possession has perfected his title by adverse possession and after the extinguishment of the title of the true owner, he cannot be successfully dispossessed by a true owner as the owner has lost his right, title and interest.

20. There is an acquisition of title by adverse possession as such, such a person in the capacity of a plaintiff can always use the plea in case any of his rights are infringed including in case of dispossession. In Mandal Revenue Officer v. Goundla Venkaiah [Mandal Revenue Officer v. Goundla Venkaiah, (2010) 2 SCC 461 : (2010) 1 SCC (Civ) 466 : (2010) 1 SCC (Cri) 1501] this Court has referred to the decision in State of Rajasthan v. Harphool Singh [State of Rajasthan v. Harphool Singh, (2000) 5 SCC 652] in which the suit was filed by the plaintiff based on acquisition of title by adverse possession. This Court has referred to other decisions also in Annakili v. A. Vedanayagam [Annakili v. A. Vedanayagam, (2007)

14 SCC 308] and P.T. Munichikkanna Reddy v. Revamma [P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59] . It has been observed that there can be an acquisition of title by adverse possession. It has also been observed that adverse possession effectively shifts the title already distanced from the paper owner to the adverse possessor. Right thereby accrues in favour of the adverse possessor. This Court has considered the matter thus:

“48. In State of Rajasthan v. Harphool Singh [State of Rajasthan v. Harphool Singh, (2000) 5 SCC 652] , this Court considered the question whether the respondents had acquired title by adverse possession over the suit land situated at Nohar-Bhadra Road at Nohar within the State of Rajasthan. The suit filed by the respondent against his threatened dispossession was decreed by the trial court with the finding that he had acquired title by adverse possession. The first and second appeals preferred by the State Government were dismissed by the lower appellate court and the High Court respectively. This Court reversed the judgments and decrees of the courts below as also of the High Court and held that the respondent-plaintiff could not substantiate his claim of perfection of title by adverse possession. Some of the observations made on the issue of acquisition of title by adverse possession which have bearing on this case are extracted below: (SCC p. 660, para 12)

‘12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none. The decision in P. Lakshmi Reddy v. L. Lakshmi Reddy [P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 SC 314] , adverted to the ordinary

classical requirement — that it should be nec vi, nec clam, nec precario — that is the possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus.’

50. Before concluding, we may notice two recent judgments in which law on the question of acquisition of title by adverse possession has been considered and reiterated. In Annakili v. A. Vedanayagam [Annakili v. A. Vedanayagam, (2007) 14 SCC 308] , the Court observed as under: (SCC p. 316, para 24)

‘24. Claim by adverse possession has two elements: (1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession. He must continue in the said capacity for the period prescribed under the Limitation Act. Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title.’

51. In P.T. Munichikkanna Reddy v. Revamma [P.T. Munichikkanna Reddy v. Revamma, (2007) 6 SCC 59] , the Court considered various facets of the law of adverse possession and laid down various

propositions including the following: (SCC pp. 66 & 68, paras 5 & 8)

'8. ... to assess a claim of adverse possession, two-pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially "wilful neglect" element on part of the owner established. Successful application in this regard distances the title of the land from the paper-owner.

2. Specific positive [Ed.: The matter between two asterisks has been emphasised in original as well.] intention to dispossess [Ed.: The matter between two asterisks has been emphasised in original as well.] on the part of the adverse possessor effectively shifts the title already distanced from the paper-owner, to the adverse possessor. Right thereby accrues in favour of adverse possessor as [Ed.: The matter between two asterisks has been emphasised in original as well.] intent to dispossess [Ed.: The matter between two asterisks has been emphasised in original as well.] is an express statement of urgency and intention in the upkeep of the property. (emphasis in original)'''

(emphasis supplied)"

15. On the other hand, learned Standing Counsel submits that any declaratory decree, transfer, application or correction made after 24-01-1971 must be ignored while determining surplus land. The decree dated 03-01-1978 and correction order dated 17-04-1979 are, therefore, legally irrelevant.

16. It is further submitted by learned Standing Counsel that Gata No. 613 was declared surplus on 09-12-1976, which was never challenged by the original tenure-holder, Smt. Dukhrani. The authorities validly took possession under Section 14. The respondents contend that the application dated 01-12-1978 was based on incorrect facts, that no opportunity of hearing was given to the State or original tenure-holder,

and the order dated 17-04-1979 was passed on misrepresentation and is void.

17. In support of his submission, he placed reliance upon the following judgments :-

(i) **S.P. Chengalvaraya Naidu v. Jagannath [1994 (1) SCC 1]**. Relevant paragraphs 5 and 6 are being quoted below :-

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by

another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

(ii) A.V. Papayya Sastri v. Govt. of A.P. [2007 (4) SCC 211]. Relevant paragraphs 22, 26, 38 and 39 are being quoted below :-

"22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or

undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of “finality of litigation” cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants.

38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent court of law after hearing the parties and an order is passed in favour of the plaintiff applicant which is upheld by all the courts including the final court. Let us also think of a case where this Court does not dismiss special leave petition but after granting leave decides the appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as a nullity, whether by the court of first instance or by the final

court. And it has to be treated as non est by every court, superior or inferior."

18. It is submitted that entries not made as per the procedure in Land Records Manual have no evidentiary value. The Class-9 entries relied upon by petitioner were made without proper notice to the original tenure-holder.

19. Learned Standing Counsel further placed reliance on the following judgments :-

(i) **Mohd. Raza Vs. D.D.C. Banda (1990 AWC 605)**. Relevant paragraphs 14, 15 and 16 are being quoted below :-

"14. The other case in Srinath v. D.D.C., 1983 Rev. Dec. 53 : (1983 All LJ 453), it was held that the procedure under Para A-80 and A-81 of the U.P. Land Records Manual not having been followed on the relevant date such entries cannot be relied upon the also no mention of the oral evidence which was not material would not be sufficient ground for interference in writ jurisdiction.

15. In Ganga Ram v. D.D.C., (1981) UPLTNOC 213) decided by Hon. K.N. Misra, J. (supra) it was held that the right of adverse possession cannot be acquired on the basis of such entries in which P.A. 10 notice were not served on the recorded tenure holder.

Similarly in Ram Sakal v. State of U.P., 1987 Rev. Dec. 264 : (1987 All LJ 1218) it was held that entries, if not made in the revenue record in accordance with the procedure prescribed under law cannot confer any right in case P.A. 10 notice were not issued and served on the main tenant whose rights are short to be extinguished by the trespasser.

16. In view of the discussions made above I am of the view that the entries in the revenue papers in favour of the petitioner were not prepared by following the procedure prescribed under Paras A-80, A-81 and Para 423(5) of the U.P. Land Records

Manual and P.A. 10 notice were not served on the main tenant respondent No. 2. Such entries were of no evidentiary value and would not confer any right to the petitioner nor they can be of any assistance leading to the extinguishment of the right of the tenure-holder; the respondent No. 2. As regards the oral evidence of petitioner, the person claiming right under Section 210 of the U.P. Zamindari Abolition and Land Reforms Act, and the statement of respondent No. 2 the person who was main tenant and whose rights were tried to be proved to have come to an end under Section 210 have been considered. It cannot be said that the Deputy Director of Consolidation has overlooked or failed to consider the material oral evidence on the record. I accordingly do not find any substance in the submission of the learned counsel for the petitioner and the objection of respondent No. 2 under S. 9(2) of the Act was correctly allowed. There has been no ground made out for interference in the impugned order under Article 226 of the Constitution of India."

(ii) Gurmukh Singh & another Vs. D.D.C./ A.D.M. (F. & R.) Nainital & others [1997 (2) AWC 649]. Relevant paragraphs 6 and 10 are being quoted below :-

"6. It is clear from para 102-C of the Land Records Manual that the entries will have no evidenciary value if they are not made in accordance with the provisions of Land Records Manual. There is presumption of correctness of the entries provided it is made in accordance with the relevant provision of Land Records Manual and secondly, in case where a person is claiming adverse possession against the recorded tenure holder and he denies that he had not received any P.A. 10 or he had no knowledge of the entries made in the revenue records, the burden of proof is further upon the person claiming adverse possession to prove that the tenure holder was duly given notice in prescribed form P.A. 10. Para A-81

itself provides that the notice will be given by the Lekhpal and he will obtain the signature of the Chairman, Land Management Committee as well as from the recorded tenure holder. It is also otherwise necessary to be provided by the person claiming adverse possession. The law of adverse possession contemplates that there is not only continuity of possession as against the true owner but also that such person had full knowledge that the person in possession was claiming a title and possession hostile to the true owner. If a person comes in possession of the land of another person, he cannot establish his title by adverse possession unless it is further proved by him that the tenure holder had knowledge of such adverse possession.

10. The petitioners led evidence to prove adverse possession. They relied upon the Khatauni 1375-1377 F and also twelve year Khasra, 1386-1397 F. Surjan Singh, father of the petitioners also tendered oral evidence. Khatauni 1375 F indicated that respondent No. 3 Mangal Singh, father of respondent No. 4 was recorded as sirdar of the land in dispute. In column No. 9 there is entry that Jagtar Singh is in possession and has been shown in column No. 9 in respect of plot No. 150. This entry is alleged to have been made by the Supervisor Qanungo. The petitioners did not lead any evidence to show that before making such entry the Supervisor Qanungo had issued any notice to the recorded tenure-holder. The petitioner did not file any copy of Khasra which could show that in the remarks column the date of the Partial and the date of issuance of P.A. 10 was made. The diary of the Lekhpal was also not summoned. The petitioner was relying upon these entries to prove his adverse possession. The person who is recorded as tenure-holder is otherwise entitled to notice when an authority makes an entry regarding possession against him, which in effect creates a right in favour

of another person in respect of the and for which the entry is made in the Khasra. Secondly, respondent No. 2 has believed the oral evidence adduced on behalf of the respondents 3 and 4 that Jagtar Singh was related to them. Respondent No. 3 is brother in law of Jagtar Singh and respondent No. 4 is his nephew. The findings recorded by the respondents are not illegal."

(iii) Sabhai & another Vs. D.D.C. Faizabad & others [2024 (1) AWC 812 (LB)]. Relevant paragraphs 24, 43 and 44 are being quoted below :-

"24. A perusal of the facts indicated in the order dated 27.03.1982, which have not been refuted by the petitioners by filing the copy of the memo of revision, it is apparent that before the Revisional Authority the petitioners did not take plea related to the finding of the Assistant Settlement Officer of Consolidation, according to which, Dukhi and Khelawan were held as sons of Ghurai. On other hand, it appears that plea of adverse possession was taken to claim their rights over the land of Khata No. 162. The revisional authority, after observing that there is no evidence on record from which it can be deduced that the notice (PA-10) was served on the main tenants, held that the claim of revisionist(s)/petitioners is not sustainable and thereafter dismissed the revision vide order dated 27.03.1982. The relevant portion of the same reads as under:—

“Learned counsels for the parties were heard and the records were perused carefully. Revisionists set up two cases. Their first case was that their father was in virtual occupation of the land in 1356 F 1359 F and that on the basis of above entries, they became Sirdar from Adhivasi after the abolition of Zamindari. Alternatively they pleaded in their second case tht they have perfected their title on the basis of adverse possession. With regard to the first case, the revisionists have filed extract of Khasra for

1359 F in which their father Sahdeva is recorded in remarks column as Marfat Sahdeva. No other evidence is there on the record in this aspect. AS opposed to it, Dukhi and others have filed extracts of Khatauni for 1356F and 1359F. These pieces of evidence show that they are recorded in class 4 in these years over the disputed land. In addition to this, they have filed rent receipts in supports of their case. Musai etc. too have admitted in their statements that Dukhi etc. are in possession over the land. In view of this there does not appear to be any force in the first case of the revisionists. As regards the case of adverse possession, revisionists have filed extracts of Khasra for 1366F to 1367F and again from 1368F and 1379F and 1379F. In 1366F and 1367 F, Sahdeva is recorded qubiz with date diary and PA-10 over plot No. 373/2 and qubiz over other plots. Same is the position in 1367 F. There after he is recorded under clause 9 upto 1379F. Lower appellate Court has said that these entries are not in accordance with the provisions Land Record Manual. Revisionists have not brought on record any piece of evidence to show that PA-10 was ever served on the main tenant. So these entries will certainly not be termed to be regular. Another important circumstances in this respect leads me to conclude that the revisionists have not come, with clear hands in this court. Musai etc. directed their appeal against Dukhi etc. but not against Sabhai etc. for reasons best known to them. Lower appellate court seems to be correct in holding that Musai etc. are in collusion with Sabhai etc. to grab the disputed land one way or the other. In view of these findings, I do not find any force in this revision.”

43. The decision of Board of Revenue in the case of Hazari v. Mathura (B.R.), 1991 SCC OnLine BoR (UP) 27; 1992 RD 79; is not an authority on the question that where the person is claiming rights over the land on the basis of plea of adverse

possession and relies upon the recorded entries, he is not to establish that the entries were made in accordance with the mode and manner prescribed under law. In the instant case, the claim of the petitioners based upon the plea of adverse possession was based upon the entries in Khasra and Khatauni, as such, they were required to prove the said entries and they failed to prove the same by adducing proper evidence.

Thus, for the reasons aforesaid, the findings recorded by the Assistant Settlement Officer of Consolidation and Deputy Director of Consolidation, according to which, the entries in Khasra and Khatauni produced by the petitioners were not made in the revenue record in terms of mode and manner prescribed in U.P. Land Records Manual and that no evidence was produced by the petitioners to prove that before making entries PA-10 was issued and served upon the recorded tenure holder and Land Management Committee, are justified."

20. It is further argued by learned Standing Counsel that the decree of 03-01-1978 was passed without serving PA-10 notice on the original tenure-holder, ex parte in the absence of Smt. Dukhrani and contrary to the ongoing ceiling proceedings. Such decree, the respondents submit, cannot override the statutory scheme of the Ceiling Act.

21. After having heard the rival submissions advanced by learned counsel for the parties, I perused the material on record as well as the law reports cited by the parties.

22. The writ jurisdiction of this Court is invoked to examine whether the authorities below proceeded in accordance with law in rejecting the petitioner's objection and dismissing the appeal.

23. A decree which has attained finality and has not been challenged ordinarily must be given effect to and is a relevant piece of adjudicatory material. Decrees which determine possessory rights or bhumidharship

are relevant for assessing the character of the holding and the claim of the person in possession. The 1978 decree, in the absence of any challenge on record, operates as a final adjudication between the parties to the suit and cannot be brushed aside mechanically in ceiling proceedings without dealing with its effect.

24. Persons claiming to be tenure-holders, third parties or those who assert possessory rights are entitled to file objections under Section 11(2) of the Ceiling Act (and allied provisions) and their objections are required to be adjudicated on merits. The statutory scheme does not permit summary rejection of bona fide objections without affording an adequate opportunity to adduce evidence or without considering documentary evidence such as a final decree and mutation entries.

25. The statutory bar against taking into account transactions occurring after the cut-off date 24.01.1971 is an important consideration in ceiling determination. However, the bar is not an instrument for obliterating antecedent rights, orders or possession which have been established and which are not vitiated. Where orders or decrees have been obtained by playing fraud or by material suppression, they may be treated as nullities. Conversely, where a decree is final and unchallenged and corroborated by continuous possession and mutation entries, the ceiling authorities are required to consider such material and adjudicate objections accordingly.

26. Entries in Khasra and Khatauni have evidentiary value when made in accordance with the procedural safeguards set out in the Land Records Manual (including service of P.A.10 notices, Lekhpal diary notings, etc.). If entries are found not to have been made in accordance with prescribed procedure, a court may treat them with caution. That said, procedural irregularity is a question of fact to be established by cogent material — and a summary dismissal of the petitioner's objection without examining such material is impermissible. In view of the above, the impugned orders are bad in law and are liable to be set aside.

27. The record on file shows an apparent inconsistency in the manner in which Gata No. 613 has been treated in the ceiling Khata and in the

petitioner's Khatauni. Double-recording of the same plot, if proved to be a result of error or misidentification, vitiates the ceiling determination and requires rectification after adjudication on merits.

28. On the facts of the present case, the order of the Prescribed Authority dated 30.03.2002 records the existence of the 1978 decree but rejects the objection on the ground that the decree was passed post cut-off and therefore irrelevant; the Appellate Authority in its order dated 28.10.2002 upheld that view and further observed that the correction order was obtained by suppression. Neither authority, however, conducted a full factual inquiry into (i) whether the 1978 decree was obtained with clean hands, (ii) whether PA-10 and other procedural steps required for the entries were complied with, and (iii) whether the correction order dated 17.04.1979 was vitiated by fraud or misrepresentation. The consequence is that the petitioner's right to have his objections decided on merits was denied.

29. The petitioner has relied on a consistent line of authority recognising (i) the maintainability of objections under Section 11(2) even post-notification, (ii) the duty of the Prescribed Authority to adjudicate such objections on merits, and (iii) the relevance of long-standing possession and decrees declaring bhumidhar rights.

30. In **Dirvijay Singh** (Supra), the Court held that objections under Section 11(2) cannot be rejected merely because earlier proceedings had attained finality inter se the recorded tenure-holder. This authority reinforces the principle that third-party claimants are entitled to a full adjudication on merits—precisely what has been denied to the petitioner herein.

31. In **Shafir** (Supra), the Division Bench held that the Prescribed Authority must adjudicate the claim of a person asserting tenure-rights or adverse possession on merits and cannot refuse to consider such claims merely because ceiling proceedings had advanced or a notice under Section 10(2) had been issued. The ratio applies squarely to the present

case, where the petitioner's claim of possession and declaratory decree was disregarded without substantive adjudication.

32. **Abdul Hafiz Khan** (Supra) reiterates that objections under Section 11(2) are maintainable even after Section 14 notification and that wrong citation of provision does not vitiate an objection when the substance discloses a valid claim. This Court notes that the petitioner's objection dated 23.07.1997, though challenged on procedural grounds by the respondents, did raise substantive grounds requiring examination.

33. In **Hari Ram** (Supra), the Court required authorities to treat objections as maintainable under Section 11(2) where mutation entries existed pursuant to orders in favour of the objectors. This directly supports the petitioner's contention that the 1978 decree and consequent entries could not be ignored.

34. The petitioner also relied on the Supreme Court judgment in the case of **Ravinder Kaur Grewal** (Supra), reiterating the jurisprudence on possessory title and adverse possession, affirming that even a possessor without documentary title may assert and defend rights against all except the true owner. This judgment underscores the legal relevance of long, continuous possession alleged since 1953.

35. On the other hand, the respondents rely heavily on the doctrine that orders obtained by fraud are nullities and that post-cut-off transactions must be ignored in ceiling determination.

36. The respondents cite **S.P. Chengalvaraya Naidu** (Supra), where the Supreme Court held that an order obtained by suppression or misrepresentation is void and non est. This Court affirms the correctness of that proposition of law; however, whether the correction order dated 17.04.1979 or the 1978 decree were obtained through fraud is a factual determination which was never adjudicated by the authorities below.

37. The respondents further relied on **Mohd. Raza** (Supra); **Gurmukh Singh** (Supra); and **Sabhai** (Supra), to submit that entries not prepared in accordance with the Land Records Manual (particularly without PA-10 notice) lack evidentiary value. These authorities indeed require strict

proof of compliance with revenue record procedures. However, neither the Prescribed Authority nor the Appellate Authority undertook a factual inquiry to test whether the entries relied upon by the petitioner were procedurally compliant. Summary rejection on assumptions cannot substitute a factual finding. The Supreme Court as well as the High Courts in catena of judgments have held that reasons are heartbeat to derive at a conclusion and without reasons, the order is lifeless.

38. Thus, when all cited authorities are considered collectively, two principles emerge which decisively govern this case: (i) The petitioner's objection under Section 11(2) was maintainable and required full adjudication on merits, including examination of possession, mutation entries, the 1978 decree, and allegations of fraud; and (ii) Revenue entries and decrees may be disregarded only after a factual finding of procedural illegality or fraud—neither of which has been determined by the authorities below.

39. Therefore, the impugned orders suffer from non-application of mind and failure to consider governing judicial precedents which impose a duty of adjudication.

40. For the reasons recorded above, this Court is satisfied that the authorities below committed jurisdictional error in rejecting the petitioner's objection and in dismissing the appeal without full adjudication on the key factual issues.

41. Consequently, the impugned order dated 30.03.2002 passed by the Prescribed Authority (Annexure-2) and the order dated 28.10.2002 passed by the Additional Commissioner/Appellate Authority (Annexure-1) are hereby quashed.

42. The writ petition succeeds and is **allowed**.

(Irshad Ali,J.)

December 17, 2025

Gautam