2024 INSC 882

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3311 of 2017

SHAMBHU CHAUHAN … APPELLANT(S)

Versus

RAM KIRPAL ALIAS CHIRKUT & ORS. … RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

1. The present appeal has been preferred against the judgment and order dated 25th November, 2011 passed by the High Court of Judicature at Allahabad in Civil Misc. W.P. No. 13286 of 1981, whereby the judgment and order dated 28th August, 1976 passed by the Settlement Officer, Consolidation at Deoria, and order dated 01st October, 1981 passed by the Deputy Director of Consolidation at Deoria were set aside. The Settlement Officer, Deoria Sadar, in turn, had set aside the findings returned by the

Consolidation Officer against the Appellant at Deoria in Suit Nos.6273 and 6264 by order dated 18th October 1975.

2. The facts giving rise to the present appeal are that Khata Nos.38 and 193 (referred to as "disputed land") are situated in village Muda Dih, Tappa Deoria, Pargana Salempur Majhauli, district Deoria. Sehati and Bandhoo sons of Neoor were brothers. Bandhoo had one son namely Agloo, who was married to Aftee. Aftee died in the year 1959. After the death of Aftee, the disputed land came to be recorded in the name of Sehati in pursuance of a mutation order dated 15th December, 1959. The disputed land continued to be recorded in the names of Jhagru and Bhusal sons of Sehati and Ram Kirpal alias Chirkut (Respondent Herein) as Bhumidhar and Sirdar. In the year 1973, vide notification dated 12th July, 1973, the disputed land was notified for consolidation operations. Smt. Gulabi filed objections under section 9 of the U.P. Consolidation of Holding Act, 1953[1] before the Consolidation Officer, claiming herself to be the daughter of Aftee and co-tenancy over the disputed land.

3. The sole issue that arises for consideration is, as to whether the High Court, in terms of the impugned judgment, rightly upheld the order dated 18th October, 1975 passed by the Consolidation Officer under the provisions of the Consolidation of Holdings Act, 1953, which initially stood quashed by

[1] Hereinafter referred as the "Act"

the Assistant Settlement Officer, Consolidation vide order dated 28th August, 1976, as affirmed by the Deputy Director of Consolidation vide order dated 01st October, 1981.

4. The Consolidation Officer framed the following issues:

    1. Whether the plaintiff Gulabi is the daughter of Algu and successor or Aafti?
    2. Whether Gulabi plaintiff on khata no.38 is in possession as bhumidar?
    3. Whether Gulabi, the plaintiff is the lone sirdar recoded on gata no.422, 451, 687, 717, 1080 of khata No.193?
    4. Whether Gulabi the plaintiff is sirdar on gata no.394, 420, 453, 494, 518, 524, 707 and 1085 of khata no.193?
    5. What are the shares of the parties?
    6. Whether Jhagru and others defendants are the lone bhumidar and sirdars of khata no.38 and 193?
    7. Whether ownership of the plaintiff has ceased to exist and defendant has become Sirdar under section 210?

5. After affording adequate opportunity to the parties to establish their claim and discharge the burden of proving the issues, the Consolidation officer dismissed the objections filed by Smt. Gulabi and held that the disputed land for the last 16 years was in the possession of the respondents. Also,

she was unable to prove herself to be the daughter of Algoo and, consequently, the successor of Aftee.

6. The findings of fact concerning the relationship of paternity stood reversed both by the Appellate and Revisional Authorities. However, perusal of the said orders dated 28th August, 1976 and 01st October, 1981 only reveal the authorities not to have appreciated the material in its entirety, resulting in conclusions of fact crossing the threshold of perversity. A connected question then would be - whether the Revisional Authority can enter into the finding of facts, in other words, could the Revisional Authority have come to the conclusion of no interference being required in the finding of the Appellate Authority, after having examined in detail independently the evidence in record?

7. Section 48 of the Act deals with the revisional power of the Director of Consolidation Officer. The provision reads as follows:

> "48. *Revision and Reference*.— (1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than an interlocutory order passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit"

8. While considering Section 48 of the Act, this Court in ***Ram Dular v. Dy. Director of Consolidation, Jaunpur and Ors***[2], observed that :

> "3. … It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact-finding authority by appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the rest (*sic* root) of the matter, had been committed in recording the order or finding. …"
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> (Emphasis Supplied)

9. This Court relied on the above-said observation while considering the scope of the powers of the Deputy Director under section 48 of the Act, in ***Seshmani & Anr. v. Deputy Director of Consolidation***; ***District Basti, U.P. & Ors.***[3]; ***Gaya Din & Others v. Hanuman Prasad & Ors.***[4]; and ***Ram Avadh & Ors. v. Ram Das & Ors.***[5].

10. Following the findings in ***Ram Dular*** (supra), in our considered view, the Deputy Director of Consolidation, being a Revisional Authority, had jurisdiction to interfere with the finding on facts of the subordinate authority only when the said findings are perverse or not supported by any evidence on record or contrary to law.

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[2] 1994 Supp (2) SCC 198
[3] (2000) 2 SCC 523
[4] (2001) 1 SCC 501
[5] (2008) 8 SCC 58

11. In the present case, the Consolidation Officer passed an order dated 18th October, 1975, after considering the evidence on record. The perusal of the same enumerated that the findings of the Consolidation Officer are not perverse and are very well supported by the evidence. As such, interference therewith by the Revisional Authority was an error in law, which error stood corrected by the High Court in terms of the impugned judgment. We may note that the burden to discharge the onus of paternity would lie upon Smt. Gulabi in terms of Section 101 of the Indian Evidence Act, 1872.

12. During the course of submission to justify interference with the findings of fact returned by the Appellate and the Revisional Authority, we are taken through the evidence of Smt. Gulabi. We notice the same to be in two forms, i.e., (i) ocular; and (ii) documentary. The ocular version, in our considered view, correctly stands rejected by the Consolidation Officer as also the High Court, for the witnesses, namely, Jhagru and Pujan, are found not to be inspiring confidence and their testimonies unbelievable.

13. P.W. – 2, Jhagru, categorically stated in his deposition, "I do not know the name of Smt. Gulabi's mother. Algoo is not the name of Smt. Gulabi's father." A perusal of his testimony indicates that the witness had no knowledge whatsoever about the parentage of Gulabi. However, in the same breath, he testifies that Gulabi is the daughter of Sita. Further contradicting himself, he denies knowing Gulabi or whether Sita has a daughter.

14. Coming to the documentary evidence, the High Court observed that,

> "Only documentary evidence which has been relied upon by the two courts below is a copy of birth register. A bare perusal of the said document would show that on the face of it, this document does not inspire any confidence. Against the entry daughter figure -1 is mentioned and against the entry son figure-1 is mentioned and total has also been mentioned as figure one. It is interesting to note the remark of the officer who issued the said certified copy. It is dated 17th January, 1978. He has noticed the discrepancy and remarked that in the original register, against the name of Algeo, one daughter has been shown.
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> > **Note: Uprokt asal register mein alag Nonia ke samne lssai Hindustani mein ladki aur mejean kool khane mein ladke ka hai.**
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> This document is the sheet anchor of Smt. Gulabi's case and in the absence of any corroborative evidence, such as evidence of relatives of the family or of close friends, is not sufficient to hold that she is daughter of Aftee. The attending facts and circumstances of the case also do not support the case of Smt. Gulabi. On the own showing of Smt. Gulabi, she is residing in the adjoining house as per voter list but she never claimed cotenancy at any point of time, after death of Smt. Aftee. The courts below have proceeded on wrong footing that the burden was upon the petitioners to prove that Smt. Gulabi is daughter of Sita which they failed to prove and therefore, it was held by them that Smt. Gulabi is daughter of Aftee. Taking the evidence of Smt. Gulabi on its face value as correct, it is not sufficient to establish her relationship as daughter of Smt. Aftee. The evidence being insignificant would not shift the burden on shoulders of the petitioners. There appears to be no reason as to why Smt. Gulabi did not examine any of her relatives in support of her case. The evidentiary value of voter-list of the year 1966 and 1973 is also of inconsequential nature. The voter-list is prepared on the statement and particulars furnished by such person. It is in the nature of self serving evidence. It is not safe to place much reliance upon it, in such matters. However, our legal system has always emphasis on value, weight and quality rather than quantity, multiplicity or plurality of witness. Nothing has come on record to connect Smt. Gulabi with the said birth entry."

15. On close examination, we find no error in the conclusion arrived at. However, on independent analysis, we find that Smt. Gulabi rests her claim only on the birth register, which itself has not been proven in accordance with law, for none who had either maintained the record or made entries

therein stands examined. That apart, the document itself does not inspire confidence for, as has been observed by the High Court, entries made therein are factually incorrect.

16. The High Court, by its judgment, impugned herein, while allowing the writ petition rightly and exercising the jurisdiction under Article 226 of the Constitution, observed that the Courts below committed an error of law in accepting the inadmissible evidence produced by petitioner therein.

17. It is the well-settled position of law by this Court that while exercising the jurisdiction under Article 226 of the Constitution of India, the High Court cannot exercise such jurisdiction to reappreciate the entire evidence or finding of fact unless the concerned authority below acted beyond its jurisdiction or such findings suffer from error apparent on the face of the record or such finding beset with surmises or conjectures.

18. This Court made the said observation in the various decisions such as ***Mikunda Bore v. Bangshidhar Buragohain & Ors.***[6]; ***State of West Bengal v. Atul Krishna Shaw & Anr.***[7]; ***Dharamraj and Ors v. Chhitan & Ors.***[8]; and ***Krishnanand and Ors. v. Deputy Director of Consolidation & Ors.***[9]

[6] (1980) 4 SCC 336
[7] 1991 Supp (1) SCC 414
[8] (2006) 12 SCC 349
[9] (2015) 1 SCC 553

19. It is undisputed that from 1959 to 1973, no effort was made to challenge the mutation order. While no limitation to challenge the same stands prescribed. The 14-year time gap is entirely unexplained. In other words, it may be said that the belated challenge is afflicted by delay and laches. To appreciate its effect, we may take note of a few pronouncements in this regard. In ***Tukaram Kana Joshi & Ors. v. Maharashtra Industrial Development Corporation & Ors.***[10], this Court observed that :-

> "12. … Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. …
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> 13. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the courts to exercise their powers under Article 226, nor is it that there can never be a case where the courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. "
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> (Emphasis supplied)

20. In regard to the exercise of *suo motu* power, this Court in ***State of H.P. & Ors. v. Rajkumar Brijender Singh and Ors.***[11], held that -

[10] (2013) 1 SCC 353
[11] (2004) 10 SCC 585

> "6. … No fixed period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power of suo motu action could be exercised. …"

21. The Appellate and Revision Authority, in our considered view, returned the findings of fact which were perverse, based on an incomplete and erroneous appreciation of evidence, which rightly stands corrected by the High Court. We find no reason to interfere with the impugned judgment. The appeal is dismissed in the aforesaid terms.

Pending Application(s) if any, shall stand disposed of.

……..J.
(C.T. RAVIKUMAR)

…….J.
(SANJAY KAROL)

New Delhi;
November 21, 2024.