

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7489 OF 2004

ABHIRAJ & ORS. Appellant (s)

VERSUS

MATIWAR S/O LATE SH.RUPAI(D)THRLRS & ORS Respondent(s)
(With office report)

Date: 03/05/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Appellant(s) Mr.D.K.Singh,Adv.
Mr.Rajendra Prasad,Adv.
Mr. Abhishek Atrey,Adv.

For Respondent(s) Mr.Pramod K.Yadav,Adv.
for Mr. Rameshwar Prasad Goyal ,Adv

Mr.S.K.Dwivedi,Adv.
Mr, Sanjay Visen,Adv.
Mr.Manoj Dwivedi,Adv,
Mr.V.P.Singh,Adv,
Mr.G.V.Rao,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.
There will be no order as to costs.

[Sukadev Sarangi] [Savita Sainani]
A.R.-cum-P.S. Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7489 OF 2004

Abhiraj & Ors. .. Appellants.

Versus

Matiwar S/o Late Sh. Rupai (D) Thr. LRs & Ors. .. Respondents

O R D E R

Heard both sides.

The High Court relying on Section 48 of the U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as 'the Act') arrived the following conclusion, "the Deputy Director of Consolidation, who has illegally reappraised and reversed the finding on the question of parentage of the petitioner as wholly illegal and without jurisdiction. ...". After saying so set aside the order of Deputy Director- Revisional Authority.

Section 48 of the Act enables the revisional authority to call for and examine the record of any case decided 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 after affording an opportunity of being heard to the parties concerned. The High Court by adverting to the above provision i.e. Section 48 of the Act and on going through the order passed by the revisional authority i.e. the Deputy Director of Consolidation concluded that the revisional authority was not expected to go into the factual aspect and disturb the order passed by the appellate authority i.e, the Assistant Settlement Officer (Consolidation).

It is brought to our notice that Explanation (3) to Section 48 of the Act has been incorporated by way of amendment by Act 3 of 2002 with effect from 10.11.1980, which reads as under:

" Explanation (3).- The power under this section to examine the correctness, legality or propriety of any order includes the power to examine any finding, whether of fact or law, recorded by any subordinate authority, and also includes the power to re-

appreciate any oral or documentary evidence."

It is not in dispute that the revisional authority - the Deputy Director of Consolidation has passed an order on 9.9.1985 i.e. well after the insertion of Explanation(3) which was brought in
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on 10.11.1980. Explanation (3) gives ample power to the revisional authority including the power to reappreciate oral and documentary evidence. Though the High Court had adverted to Section 48, nowhere it considered the effect of Explanation (3) inserted by Act 3 of 2002.

In view of this infirmity, without going into the merits of the claim of both parties, we set aside the impugned order of the High Court and remit it to the High Court for fresh disposal for consideration of issue in question with reference to Exlanation (3) referred to above. We direct the High Court to restore the writ petition on its file and dispose of the same on merits within a period of six months from the date of receipt of a copy of this order, afresh after affording opportunity to the parties concerned. The appeal is allowed. There will be no order as to costs.

.....J
(P.Sathasivam)

.....J
(Dr.B.S.Chauhan)

New Delhi,
May 3, 2011.