

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 4880 OF 2008

BADRI PRASAD AND OTHERS

Appellant (s)

VERSUS

STATE OF U.P AND OTHERS

Respondent(s)

O R D E R

This appeal is directed against the order of the learned Single Judge of the Allahabad High Court whereby he dismissed the writ petition filed by the appellants against order dated 31.1.2006 passed by Deputy Director of Consolidation affirming the order passed by the Consolidation Officer in the matter arising out of the proceedings held under the Uttar Pradesh Consolidation of Holdings Act.

Jeet Lal and Chhotey Lal, whose legal representatives are respondent Nos.2 to 5, filed a petition before the Consolidation Officer for recording their names as Bhumidars in place of Hashim Hussain and Fakir Hussain on the ground that they were in actual physical possession for more than 50 years. The appellants also applied for recording their names by claiming that they had purchased the land vide sale deed dated 23.5.1967.

The Consolidation Officer allowed the petition of Jeet Lal and Chhotey Lal by observing that they had perfected their title by adverse possession. On appeal, Settlement Officer,

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Consolidation reversed the order of the Consolidation Officer and directed that the names of Ram Suchit son of Thakurdin over 1/5th share, Rameshwar and Munnilal sons of Pudi over 2/5th share, Onkar Nath son of Bhagauti over 1/5th share and Tulsiram son of Shivpal be recorded in respect of plot No.667 of Khata No.323.

Jeet Lal and Chhotey Lal challenged the appellate order by filing revision, which was allowed by the Deputy Director of Consolidation. The analysis of the documents produced by the

parties and the conclusion recorded by the Deputy Director,

Consolidation are extracted below:

"Copy of the Khatauni of 1374 Fasli has been filed on the record in which the name of Abdul Hai S/o Gauhar Ali is mentioned and in his place the names of his heirs and LRs. Hashim Hussain and other recorded tenure holder have been mentioned. In

copy of Khatauni 173-75 Fasli that disputed land i.e. Plot No.667 area 3-0-0 is recorded in the name of Abdul Hai and there is order for mutating the name of his heir. Besides this, the names of Jeet Lal and Chhotey Lal are also mentioned in column 9. In Khatauni 1375 Fasli, the names of Hashim Hussain S/o Abdul Hai is mentioned in Col. No.4 and Shikmi Col. No.5, the names of Jeet Lal and Chhotey Lal are recorded. Likewise in copies of Khatuani 1376-78 Fasli Part I, 1374, 183-85, Fasli Part II, 1386-91 Fasli, 1388-92 Fasli, the names of Jeet Lal and Chhotey Lal are recorded over the land in question, w.e.f., 1374 Fasli in 173-75 Fasli, by the order dated 14.3.1967 passed by the Supervisor Kanungo,

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the names of Jeet Lal and Chhotey Lal are found recorded in column 9. In another Khatauni of 1376-78 Fasli in which there is an order dated 18.9.1969/16.10.1969 passed by the Sub-Divisional Officer in case No. 802/1991 is mentioned according to which having expunged the names of Hashim Hussain and others, the names of Ram Suchit and others have been directed to be recorded as Bhumidhars. In copies of Khasra of 12 years from 1374-86 Fasli, out of which the names of Jeet Lal and others have been recorded as Shikmi Tenure holder over the land in dispute in 1376, 1377, 1378, 1381 Fasli. As the tenure holder the name of Hashim Hussain is mentioned upto 1375 Fasli. In 1378, the name of Ram Suchit and others are mentioned in copies of Khasra of 12 years, 1375-76, the names of Jeet Lal and others are found mentioned in Column of Shikmi over the disputed land from 1376 to 1378 Fasli and 1382 to 1386 Fasli. In 1385 Fasli in Co.2, the name of Hasim Hussain is mentioned and names of Jeet Lal and others are recorded in column of Shikmi. Likewise,

copies of Khasra 1384, 1385, 1386 Fasli are on record and in 1384 Fasli, the names of Jeet Lal and others are recorded over the land in question from 1374 Fasli. In oral evidence, Jeet Lal has got his statement recorded. Against this, on behalf of Ram Suchit and others, Onkar Nath has been examined as witness who is himself one of the purchaser of the disputed land. He has stated in his statement that he has obtained a sale deed with regard to the disputed land having an area of 5-0-0 and the said sale deed was executed in favour of Onkar Nath, Tusi Ram, Ram Suchit, Rameshwar and Munni Lal for

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consideration an amount of 2500/-. In cross-examination, he has stated that he does not know that the possession of Jeet Lal has come down over

the land in dispute or not. He has also stated that he has no knowledge of the witnesses of the sale deed. He has also accepted in his statement that Jeet Lal who used to cultivate the land of having an area 3-0-0 on behalf of Ram Suchit and others. The statement of Abdul Rehman has been recorded who has stated in his statement that he does not know Hashim Hussain and again said that he used to live in Pakistan. How much plot in disputed land, he does not know. In cross examination, he has accepted that Hamid and Fakir used to live here and Nasir used to live in Pakistan. He has not seen Nasir for a very long period. In this way, recorded tenure holder Onkar Nath and witness Abdul Rehman have no real knowledge about the actual possession over the disputed land. Therefore, their statements cannot be believed. Besides this, vendor of Onkar Nath has deposited 10 times rent or not, in this regard also, he has no knowledge about any case and he cannot also tell that how many brothers are Hashim Hussain. In this way, from the statement of both these witnesses namely Onkar Nath and Abdul Rehman, the possession and title of the Revisionist got strengthened and the factum of possession and title of the respondents are not proved.

On the basis of above evidence, this fact is proved that at the time of execution of sale deed, the disputed land was Sirdari land and for obtaining Bhumidhari Sanad, the suit was executed later on but Bhumidhari Sanad could not be

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obtained. Besides this, from the evidence available on record, it is proved that Jeet Lal and others remained in possession over the disputed land and recorded tenure holder Hashim Hussain and others never remained in possession and the possession of Jeet Lal and others is coming down. 1374 Fasli which is not in accordance with the law and they on the basis of adverse possession, have perfected the title over the land in dispute. The Consolidation Officer has not committed any illegality in recognizing their title. So far as the right and title of Ram Suchit and others are concerned, since sale deed was executed with regard to Sirdari land, Bhumidhari Sanad could not be obtained, therefore, the sale deed which was relating to Sirdari land, no right can be accrued in favour of Ram Suchit and others on that basis. Besides this, it is fully proved from the evidence that the possession and title of recorded tenure holder Hashim Hussain and others could not be proved. Therefore, on the basis of their sale deed, no right and title could accrue in favour of Ram Suchit. Hence, the Settlement Officer Consolidation has committed a legal error in conferring title in favour of Ram Suchit and others on the basis of sale deed. His order is not liable to be maintained. The Consolidation Officer has clearly considered oral as well as documentary evidence has drawn the conclusion to which I am entirely agree and there is no need to interfere with the same. According to above, this Revision is liable to be allowed."

The learned Single Judge dismissed the writ petition by

observing that the order of the Deputy Director, Consolidation is based on correct appreciation of facts and the relevant documents.

Notice of the special leave petition was issued on 4.7.2006 and an order of status quo was passed. After the notice was served upon the respondents, the Court granted leave and directed that interim order shall continue till the disposal of the appeal.

During the pendency of the appeal, counsel representing the appellants died. Therefore, notice was issued to them to make alternative arrangement. On 11.11.2010, the Registrar noted that the appellants have not made alternative arrangement and no fresh vakalatnama has been filed. Thereafter, the case was listed before the Chamber Judge on 13.12.2010. He directed that the matter be listed in January, 2011. On 7.1.2011, the Chamber Judge directed listing of the case before the Court.

On 7.2.2011, some advocate appeared on behalf of the appellants (he did not give the appearance slip despite repeated requests made by the Court Masters) and made a request that he would be filing vakalatnama within seven days. His request was accepted and the case was adjourned for today.

In the first round, the case was passed over at the request of some advocate appeared on behalf of the appellants. In the second round, Shri T.N. Singh, learned counsel appeared and sought adjournment by stating that he has filed vakalatnama

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today. However, keeping in view the manner in which the case has been conducted on behalf of the appellants, we declined his request and asked him to argue the case. However, the learned counsel expressed his inability to make submissions in support of the appeal.

We have carefully perused the record of the case and are convinced that the impugned order does not suffer from any legal

