



2024 INSC 380

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.8743-8744/2014

PRASHANT SINGH & ORS. ETC.

APPELLANTS

VERSUS

MEENA & ORS. ETC.

RESPONDENTS

WITH

CIVIL APPEAL NO.8971/2014

&

CONTEMPT PETITION (C) NO.86/2024

IN

CIVIL APPEAL NOS.8743-8744/2014

J U D G M E N T

Surya Kant, J.

1. Application (IA No.115495/2021) for bringing on record the legal representatives of deceased appellant no.2 is allowed after condoning the delay, if any. Cause title be amended accordingly.

2. In these civil appeals the controversy revolves around the ownership rights over Khasra Nos.115, 151 and 152, situated within the Revenue Estate of village Mustafabad, District Haridwar, Uttaranchal (now Uttarakhand). It is broadly not in dispute that the subject land is an ancestral property originally owned by Angat, who died leaving behind three sons, namely, Ramji Lal, Khushi Ram and Pyara. Pyara died issue-less and his share devolved equally upon his other two brothers. Khushi Ram also seems to have died before 1950 leaving

behind his son Kalyan Singh, who succeeded his father's share in the subject property. The fact that Kalyan Singh was co-owner/co-sharer in the subject land is fortified from the entries in the revenue record, which the appellants have produced in these proceedings as well.

3. It seems that consolidation proceedings were initiated in village Mustafabad in late 50s or early 60s in accordance with the provisions of the U.P. Consolidation of Holdings Act, 1953 (in short, the "1953 Act"). Ramji Lal - one of the uncles of Kalyan Singh - approached the Consolidation Officer in the pending reference pertaining to their land under the erstwhile Section 9(3) of the 1953 Act (i.e., as it stood before the U.P. (Amendment) Act 8 of 1963), claiming that whereabouts of Kalyan Singh were unknown and hence his name may be expunged from the ownership entry of the revenue record. The Consolidation Officer passed an order dated 08.05.1960 on the basis of a report dated 17.03.1960 of the Assistant Consolidation Officer, which *inter alia* claimed that Kalyan Singh - co-tenure holder had not been heard for last 8 of 10 years, he did not arrive in the village and an affidavit to this effect was filed by his uncle Ramji Lal. Since all efforts to secure service on Kalyan Singh failed, the Consolidation Officer, "in the interest of correction of record", expunged the name of Kalyan Singh from the record and

declared his civil death. On this premise, Ramji Lal (later on his legal representatives) started claiming to be the sole owner(s) of the entire land holding of Angat.

4. Kalyan Singh then instituted Suit No.19/1985 on 12.03.1985 before the Assistant Collector, First Class, Haridwar for declaration of his half share in the suit property. The suit was decreed in his favor. Ramji Lal filed an appeal, which was dismissed on 06.08.1986. Ramji Lal then approached the Board of Revenue in a Second Appeal. That appeal was allowed in part on 31.07.1989 and the suit was remanded with a direction to adjudicate the dispute regarding Khasra No.115 afresh after forming an issue with respect to applicability of Section 34 of the Specific Relief Act, 1963. Kalyan Singh challenged the aforesaid order of the Board of Revenue before the High Court. His writ petition has been allowed by the High Court vide impugned judgment dated 16.01.2013.

5. We have heard learned senior counsel on behalf of the appellants as well as learned senior counsel who is representing the prospective vendees in whose favour Kalyan Singh had allegedly executed an agreement to sale and a mortgage deed. The other learned counsels representing the interested parties have also been heard and the material placed on record perused.

6. The sheet anchor of Mr. S.R. Singh, learned senior

counsel for the appellants, is Section 49 of the 1953 Act. It is urged that the order dated 08.05.1960 passed by the Competent Authority in exercise of its powers under that provision, having attained finality, Kalyan Singh lost his right, title or interest in the subject land. It is contended that not only the subsequent suit filed by Kalyan Singh was expressly precluded under the said provision, such a suit was hopelessly time barred. It is then argued that the High Court exceeded its jurisdiction in interfering with the order of remand passed by the Board of Revenue for determination of the legal issue as to maintainability of a simpliciter suit for declaration, without seeking consequential relief of possession filed by Kalyan Singh. The Board, it is asserted, rightly remanded the suit for determination of its maintainability keeping in mind Section 34 of the Specific Relief Act, 1963.

7. Contrarily, it is urged by learned senior counsel/other counsels for the respondents that neither Section 49 of the 1953 Act was attracted in the instant case nor the Consolidation Officer was competent to rob off Kalyan Singh of his ancestral right as a tenure holder on the subject land. Such a power, according to learned senior counsel for the respondents, is beyond the purview of Section 49 of the 1953 Act. As regard to Section 34 of the Specific Relief Act, 1963, it is urged

that since Kalyan Singh was co-owner in the subject land along with his uncle Ramji Lal or his successors, the possession of the subject land continued in favour of all the co-owners. Consequently, even if one of them was in actual physical possession, such possession was of permissible nature, for and on behalf of all the co-owners. It is thus maintained that, no consequential relief like a decree for possession was required to be sought by Kalyan Singh in his declaratory suit.

8. Section 49 of the 1953 Act reads as follows:

"49. Bar to Civil Court jurisdiction – Notwithstanding anything contained in any other law Courts for the time being in force, the declaration and adjudication of rights of tenure-holder in respect of land, lying in an area, for which a notification has been issued under sub-section (2) of Section 4, or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act:

Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951) in respect of any land, possession over which has been delivered or deemed to be delivered to a Gram Sabha under or in accordance with the provisions of this Act."

9. On a plain reading, we find that Section 49 of the 1953 Act contemplates bar to the jurisdiction of the

Civil or Revenue Court for the grant of declaration or adjudication of rights of tenure holders in respect of land lying in an area for which consolidation proceedings have commenced. Section 49 of the 1953 Act is a provision of transitory suspension of jurisdiction of Civil or Revenue Court only during the period when consolidation proceedings are pending. Notably, such suspension of jurisdiction of these Courts through the *non obstante* provision is only with respect to the declaration and adjudication of rights of tenure holders. In other words, unless a person is a pre-existing tenure holder, Section 49 does not come into operation.

10. The expression "tenure holder" has been defined in Section 3(11) of the 1953 Act and it reads as follows:

"(11) "Tenure-holder" means a bhumidhar with transferable rights or bhumidhar with non-transferable rights and includes—

(a) an asami,

*(b) a Government lessee or Government grantee,
or*

(c) a co-operative farming society satisfying such conditions as may be prescribed;"

11. It may be seen that a tenure holder means a bhumidhar with transferable or non-transferable rights. The question that arises further is as to what kind of rights of such tenure holders can be declared or adjudicated in exercise of powers under Section 49 of the 1953 Act? In this regard, the scheme of the statute becomes very material.

12. The object of the 1953 Act is to prevent fragmentation of the land holdings and consolidate them in such a fair and equitable manner that each tenure holder gets nearly equivalent land rights in the same revenue estate.¹ The duty of a Consolidation Officer under Section 49 of the 1953 Act is to prevent fragmentation and consolidate the different parcels of land of a tenure holder. Such a power can be exercised only in respect of those persons who are already the tenure holders of the land. Conversely, the power under Section 49 of the 1953 Act cannot be exercised to take away the vested title of a tenure holder. No such jurisdiction is conferred upon a Consolidation Officer or any other Authority under the 1953 Act.² The power to declare the ownership in an immovable property can be exercised only by a Civil Court save and except when such jurisdiction is barred expressly or by implication under a law. Section 49 of the 1953 Act does not and cannot be construed as a bar on the jurisdiction of the Civil Court to determine the ownership rights.³

13. Having held so, it is not difficult to explain that Kalyan Singh had acquired ancestral rights as a tenure holder. He was co-owner in the suit land much before the consolidation proceedings commenced. Hence, the only declaration and adjudication of rights of Ramji Lal or

¹ *Attar Singh v. State of U.P.*, 1959 Supp (1) SCR 928, para 3.

² *Amar Nath v. Kewla Devi*, (2014) 11 SCC 273, para 17.

³ *Karbalai Begum v. Mohd. Sayeed*, (1980) 4 SCC 396, para 12-13.

Kalyan Singh that a Consolidation Officer could undertake under Section 49 of the 1953 Act was to avoid the fragmentation of their respective land holdings and consolidate or redistribute the parcels of land among them. As analyzed above, the provision does not enable the Consolidation Officer to grant ownership to Ramji Lal in respect of a property, which, before the consolidation proceedings, never vested in him. *Vice versa*, the Consolidation Officer could not take away the ownership rights of Kalyan Singh which he had already inherited much before the commencement of the consolidation proceedings.

14. That being so, the order dated 08.05.1960 passed by the Consolidation Officer has rightly been held to be null and void and without any jurisdiction. It was passed usurping a power fraudulently, which never ever vested in a Consolidation Officer. The said order is thus liable to be ignored for all intents and purposes. Having held that, it is not necessary for us to go into the question of fraud played upon Kalyan Singh in securing that order with or without collusion of the Consolidation Officer. All that is required to be held is that the order dated 08.05.1960 had no binding force or any adverse effect on the rights of Kalyan Singh.

15. In all fairness, learned senior counsel for the appellants has placed reliance on a decision of this

Court in Sita Ram vs. Chhota Bhondey & Ors.,⁴ for contending that during the pendency of consolidation proceedings, the Authority under the Act assumes the jurisdiction of the Civil Court to determine all types of rights including the dispute regarding title over the land. In our considered opinion that is not the *ratio decidendi* of the decision in Sita Ram (supra). That was a case where the dispute related to *sirdari* holdings which were subject matter of the proceedings under the 1953 Act. These proceedings attained finality when the writ petition challenging the order of the Deputy Director of Consolidation was dismissed *in limine* and that order was further upheld by this Court under Article 133 of the Constitution of India. Thereafter, the unsuccessful party filed a Civil Suit seeking a declaration that the order passed by the Deputy Director of Consolidation (which had been upheld by the High Court and this Court) was without jurisdiction. The said suit was contested with an objection that it was barred by Section 49 of the 1953 Act. In this backdrop, this Court very aptly held that the subsequent civil suit was barred under Section 49 of the 1953 Act. The facts will speak for themselves as to how Section 49 of the 1953 Act was construed by this Court in the light of the events noticed above.

16. However, that is not the factual situation here. We may hasten to add that in the present case, Kalyan Singh

⁴ 1991 Supp (1) SCC 556.

filed the suit for declaration questioning the deletion of his name from the revenue record as a co-owner. As held earlier in paragraph 14 of this order, the order dated 08.05.1960 of the Consolidation Officer in the instant case was totally without jurisdiction and not being an order within the framework of the 1953 Act, and it could not bind the rights of Kalyan Singh.

17. As regard to the contention that the High Court ought not have interfered with the Board's Order remanding the case to the Trial Court to examine the legal issue of applicability of Section 34 of the Specific Relief Act, 1963, the same just deserves to be noticed and rejected. We say so for the reason that once Kalyan Singh is held to be co-owner in the subject property, the exclusive possession of the land, if any, with Ramji Lal, was joint in nature and it was for and on behalf of all the co-owners. Kalyan Singh was already deemed to be in joint possession of the subject land in the eyes of law, hence he was not required to seek a decree of possession *qua* his share in the suit land.

18. For the reasons afore-stated, we do not find any merit in these appeals, which are accordingly dismissed.

Contempt Petition (C) No.86/2024

19. In view of the fact that the appeals have been decided on merits and Kalyan Singh's legal heir can now

seek consequential rights in the suit land, we do not deem it necessary to entertain these contempt proceedings and leave the parties to work out their remedies.

20. The contempt petition is, accordingly, dismissed.

.....J.
(SURYA KANT)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

New Delhi;
April 25, 2024

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).8743-8744/2014

PRASHANT SINGH & ORS. ETC.

Appellant(s)

VERSUS

MEENA & ORS. ETC.

Respondent(s)

(IA No. 26634/2023 - APPLICATION FOR PERMISSION, IA No. 7812/2023 - APPLICATION FOR PERMISSION, IA No. 63778/2022 - APPLICATION FOR SETTLEMENT, IA No. 115495/2021 - APPLICATION FOR SUBSTITUTION, IA No. 163683/2023 - EXEMPTION FROM FILING O.T., IA No. 34483/2023 - EXEMPTION FROM FILING O.T., IA No. 184197/2023 - EXEMPTION FROM FILING O.T., IA No. 115498/2021 - EXEMPTION FROM FILING O.T., IA No.163678/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 184192/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

C.A. No. 8971/2014 (X)

CONMT.PET.(C) No.86/2024 in C.A. No.8743-8744/2014 (X)
(FOR ADMISSION)

Date : 25-04-2024 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Appellant(s)

Mr. S.R. Singh, Sr. Adv.
Mr. Sushant Kumar Yadav, Adv.
Mr. Ajay Yadav, Adv.
Mr. Prateek Yadav, Adv.
Mr. Gaurav Lomes, Adv.
Mr. Prithvi Yadav, Adv.
Mr. Anurag Singh, Adv.
Mr. Dhroov Kumar Singh, Adv.
Mr. Sanjiv Tandan, Adv.
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Mr. Tanmaya Agarwal, AOR

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Mrs. Aditi Agarwal, Adv.

Mr. Vinayak Mohan, Adv.

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Mr. Rohit Amit Sthalekar, AOR

Mr. Mohith Sivakumar, Adv.

Mr. Dushyant Sharma, Adv.

Mr. Purnendu Bajpai, Adv.

Mr. Shashank Singh, Adv.

Mr. Ankur Prakash, AOR

Mohd. Saquib Siddiqui, Adv.

Mr. Amod Kumar Bidhuri, Adv.

Ms. Srishti Kasana, Adv.

Ms. Priyanka Singh, Adv.

Mr. Yudhister Bharadwaj, Adv.

Ms. Jyoti Sharma, Adv.

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

1. Application (IA No.115495/2021) for bringing on record the legal representatives of deceased appellant no.2 is allowed after condoning the delay, if any. Cause title be amended accordingly.
2. The appeals as well as contempt petition are dismissed in terms of the signed reportable judgment.

(ARJUN BISHT)

ASTT. REGISTRAR-cum-PS

(signed reportable judgment is placed on the file)

(MALEKAR NAGARAJ)

COURT MASTER (NSH)