

PETITIONER:
SHABBIR (D) BY LRS. & ORS.

Vs.

RESPONDENT:
ABDUL SATTAR AND ORS.

DATE OF JUDGMENT: 13/09/2000

BENCH:
Syed Shah Mohammed Quadri, J. & S.N. Variava, J.

JUDGMENT:

S. N. VARIAVA, J.

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This Appeal is against an Order dated 21st December 1981 passed in Writ Petition No. 10508 of 1980 by the High Court of Allahabad.

Briefly stated the facts are as follows: Smt. Munni and Smt. Nanni were joint owners of the land in question. On the death of Smt. Munni, after some dispute, her share devolved on Nathua. Nathua had three sons, namely, Shabbir, Kalua and Abdul Gafur. In respect of the land in question consolidation proceedings, under the U.P. Consolidation of Holdings Act, 1953, were in progress.

Smt. Nanni had no issues. She had, however, appointed four Mukhtarams (Power of Attorney holders). On 20th January, 1961, these four Mukhtarams executed a sale deed of her share in favour of Abdul Gafur, Abdul Aziz, Abdul Majid and Abdul Sattar (hereinafter referred to as the purchasers). On 13th July, 1961 post facto permission was granted for such sale. On the basis of this sale deed the A.C.O. passed an order dated 28th August, 1961, directing mutation to be made in the name of the purchasers.

When Smt. Nanni learned about the sale deed and the mutation of her share in the name of the purchasers, she filed objections under Section 5 of the U.P. Consolidation of Holdings Act, 1953. On 21st June, 1963 her objections were rejected by the A.C.O. However, the revision filed by her was allowed by S.O.C. on 29th July, 1963. The S.O.C. directed deletion of the change in mutation, inter alia, on the ground that the sale deed was invalid as no prior permission had been taken under Section 5(1)(c)(ii) of the U.P. Consolidation of Holdings Act, 1953. The revision filed by these four persons was rejected by the Deputy Director on 9th October, 1963. Deputy Director also held that the sale deed was invalid as no prior permission had been taken under Section 5(1)(c)(ii) of the U.P. Consolidation of Holdings Act, 1953. The purchasers then filed Writ Petition No. 323 of 1964, challenging the order dated 9th October, 1963 of the Deputy Director. During the pendency of the Writ Petition Smt. Nanni died. On 6th May, 1969, a statement was made, before the High Court, that Smt. Nanni had died and that the Petitioners (therein) claiming to be the heirs of Smt. Nanni had made an application for mutation in their favour on that basis. On this statement it was held that the Writ Petition had become

infructuous. The same was accordingly dismissed.

Shabbir (the first Appellant herein) then filed a case under Section 229(B) of the U.P. Zamindari Abolition and Land Reforms Act, 1950. He claimed that on the death of Nanni, he along with his brothers Kalua and Abdul Gafur had inherited Nanni's share in the said land. He applied for mutation of this land in the names of three brothers. The purchasers i.e. Abdul Gafur, Abdul Aziz, Abdul Majid and Abdul Sattar again made a claim to the land on the basis of the sale deed dated 20th January, 1961.

The case was decreed in favour of the Appellant on 21st September, 1973. However, an Appeal filed by the purchasers was allowed by the Commissioner on 5th February, 1974. The Appellant, therefore, filed a Second Appeal before the Board of Revenue. The Board of Revenue, allowed the Second Appeal on 8th October, 1980. The Board of Revenue held that the order dated 9th October, 1963 passed by the Deputy Director in earlier proceedings between Nanni and the purchasers had become final. It was again held that the sale deed dated 20th January, 1961 was invalid for want of prior permission under Section 5(1)(c)(ii) of the U.P. Consolidation of Holdings Act, 1953.

The purchasers then filed Writ Petition No. 10508 of 1980. This was allowed by the impugned judgment dated 21st December, 1981. Relying on a Full Bench decision in the case of Smt. Ram and others vs. Gram Samaj, Jehwa and others, reported in AIR 1974 Allahabad 106, it has been held that under Section 5(1)(c)(ii) prior permission is required only if a part of the holding is being transferred by sale, gift or exchange. It is held that if the whole of the holding is being transferred then no permission is required. It is held that the sale was of the entire share of Nanni and therefore it was not a Sale of the part of the holding. It is also held that the order dated 9th October, 1963 was passed in a proceeding for correction of records and, therefore, that order would not be final and binding in a proceeding where the rights or interests of the parties were being decided. Mr. Mehrotra informs us that this Full Bench decision has been overruled by a Bench of seven Judges in the case of Mata Badal Pandey vs. Board of Revenue & Ors. reported in 1976 A.L.R. 392. However, this subsequent authority was not shown to this Court. As the subsequent authority is not shown to this Court, for purposes of this Order, we will proceed on the basis that the learned Judge was bound by Ram Rati's case. In our view even on the basis that no permission would be required for transfer of the whole of the holding, the order of the High Court is not sustainable. The purpose of providing for prior permission is that during pendency of the consolidation proceedings complications should not arise. Complication would arise if parts of the holdings were transferred. Then there would be two or more tenure holders and separate lands would have to be allotted to each one. In this case the land was in joint names of Smt. Munni and Smt. Nanni. Admittedly what had been sold was only the share of Smt. Nanni. This was an undivided share in the land. Thus what was sold was a 1/2 share in the holding. Thus there was no transfer of the whole of the holding. There was a transfer of a part of the holding. This could not be done without prior permission under Section 5(1)(c)(ii) of the U.P. Consolidation of Holdings Act, 1953. If that be so then the sale without prior permission was invalid and no rights accrued to the purchasers. We are also unable to agree with the finding given by the High Court that the order dated 9th October, 1960, did not become final. Undoubtedly, those proceedings were under Section 5 for correction of records. But even in those

proceedings the question of title was gone into. Without going into the question of title it could not be decided in whose name the mutation was to be made. After going into the question of title it had been held that the sale deed was invalid as no permission had been taken under Section 5(1)(c)(ii) of the U.P. Consolidation of Holdings Act, 1953. The writ petition challenging this finding was allowed to be got dismissed as infructuous. Once that was done it was no longer open to the purchasers to again place reliance on the sale deed. On that ground also the writ petition could not have been allowed. Faced with this situation Sh. Bagga sought to submit that the earlier proceedings were Revenue proceedings and findings in such proceedings are not binding. We have not permitted Mr. Bagga to take up this contention as in the Writ Petition filed by the Respondents no such ground is taken. For the above reasons the impugned Judgment cannot be sustained. Accordingly the appeal is allowed. The impugned judgment dated 21st December, 1981 is set aside. The order of the Board of Revenue dated 8th October, 1980 is restored. There will, however, be no order as to costs.