

CASE NO.:
Appeal (crl.) 312 of 2008

PETITIONER:
GYATRI & ORS

RESPONDENT:
RANJIT SINGH & ORS

DATE OF JUDGMENT: 13/02/2008

BENCH:
A.K.MATHUR & AFTAB ALAM

JUDGMENT:
JUDGMENT

O R D E R
CRIMINAL APPEAL NO.312 OF 2008
(Arising out of SLP(Crl.)No.3584 of 2006)

We have heard learned counsel for the parties.
Leave granted.

This appeal by special leave is directed against the judgment and order dated 26.5.2006 passed by the learned Single Judge of the High Court of Judicature at Allahabad in Criminal Writ Petition No.2634 of 2006 whereby the learned Single Judge has allowed the writ petition and set aside the impugned order passed by the Revisional Court and remanded the matter back to the Revisional Court for deciding afresh on the basis of direction given by the Court. The brief facts which are necessary for the disposal of this appeal are that a Writ Petition was filed by the petitioner (Respondents herein) before

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the Allahabad High Court praying to quash the order dated 21.2.2006 passed in Criminal Revision No.166 of 2004, Smt. gyatri and others versus Ranjit Singh and others by the Additional Sessions Judge, Court No.3, Banda whereby the revision was allowed and the impugned order passed by the Court below was set aside. One Krishna Gopal Mishra and Mata Prasad were recorded bhumidhar of the plot in dispute No.1232, area 3 bigha and plot No.1233, area 4 bigha 17 biswas situated in village Attarra Buzurg, Pargana and Tehsil Atarra, District Banda. Thereafter, a forged power of attorney was got executed in favour of Awadh Kishore allegedly executed by Krishna Gopal Mishra and Mata Prasad. On the ground of forged power of attorney, Krishna Gopal Mishra lodged the F.I.R. under Sections 467, 468, 420, 504 and 506 of the Indian Penal Code (IPC), P.S. Kotwali, District Banda. The holder of the power of attorney Awadh Kishore is the real brother-in-law of Rajesh Kumar, Respondent No.9 and a sale deed was executed by him in favour of Raj Bahadur, Rajendra Kumar, Rajesh Kumar and Vijay Kumar all sons of Ram Pratap. On 17th June, 1993, a registered sale deed had been

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executed by Krishna Gopal Mishra himself in favour of the respondents Ranjit Singh and Raj Karan Mishra, who came in possession over the property in dispute. Therefore, share of Krishna Gopal Mishra was firstly transferred by the holder of the power of attorney and same was again transferred by the owner of the property of Krishna Gopal Mishra. Therefore, dispute arose between both the vendees of the sale deeds. An application was moved on 13th June, 2003 on behalf of the respondents in the Court of S.D.M. upon which the report was called from the concerned police station. Similarly, report was also summoned from the Tehsildar at

the instance of the respondents and police submitted the challan under Sections 107/116 and 145 of the Criminal Procedure Code (Cr.P.C.) Tehsildar also submitted a report with regard to the mutation. Rajendra Kumar Sharma started constructing shops on the disputed land with the help of his companions because they themselves wanted to raise construction upon the land. Therefore, a breach of peace between both the parties arose. The S.D.M. concerned passed a preliminary order under Section 145(1) Cr.P.C. as well as the attachment order under Section 146(1) Cr.P.C.

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After appearance, an application on behalf of the appellants was moved which was rejected vide order dated 12th July, 2004 by S.D.M. Aggrieved by this, the legal representative of Raj Bahadur Sharma, Rajendra Kumar Sharma, Smt. Manju Sharma, Vikas and Vivek filed Criminal Revision No.166 of 2004 before the Additional Sessions Judge. Learned Additional Sessions Judge by Order dated 21st February, 2006 quashed the order of the S.D.M. Similarly, the order of attachment and supurdaginama regarding disputed land was also quashed and directed that the possession be given to the revisionist upon the disputed land. Thereafter, Ranjit and others filed a writ petition before the High Court. The High Court after considering the writ petition came to the conclusion that the learned Additional Sessions Judge has gone wrong in quashing the proceedings under Section 145 as well as the order of attachment and supurdaginama. Aggrieved against this order the present appeal was filed before this Court. Learned counsel for the appellant submitted that in fact the matter relating to rights of the parties with regard to this dispute was disposed of on 31st January, 2003

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by the Assistant Consolidation Officer and decreed the suit of the appellant before us. Against that order, an appeal has been filed by the respondents before the Settlement Officer (Consolidation) under the U.P. Consolidation of Holdings Act, 1953. No stay order was granted in the stay petition filed along with the appeal by the respondents herein. Learned counsel has submitted that as the rights of the parties have already been decided by the Assistant Consolidation Officer under the U.P. Consolidation Act, 1953 and appeal is pending and no stay order has been granted, therefore, in view of this position, the continuation of the order passed under Section 145 and 146 cannot survive and the view taken by the Additional Sessions Judge is correct. As against that, learned counsel for the respondents submitted that the Assistant Consolidation Officer does not decide the rights of the parties. It only decides with regard to the revenue entries. In this connection, our attention was invited to Section 9 of the U.P. Consolidation of Holdings Act, 1953. We have perused Section 9 of the Act and find that Section 9 only show the relevant extracts from the

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current annual register and other records showing their rights and liabilities in relation to the land and specific shares of the individual tenure-holders in joint holdings for the purpose of effecting partitions to ensure proper consolidation, valuation of the plots and the valuation of trees, wells and other improvements for calculating compensation. Therefore, this prima facie reflect the rights of the parties. Learned counsel for the respondents submits that it does not decide the rights of the parties and it is not a civil proceeding. We have perused Section 9 of the Act and we find that as per Section 9, the rights of the parties relating to the land are determined by the Consolidation Officer after hearing the parties and that decides the rights of holding of this land under this Act. Both parties were heard by the Assistant Consolidation Officer and he has passed the order in favour of the appellant (herein). An appeal has already

been filed by the respondents herein therefore continuation of these proceedings under Section 145 cannot survive now. This Court in the case of Amresh Tiwari versus Lalta Prasad Dubey and another reported in 2000 (4) SCC 440 has taken the view that continuation of these proceedings under

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the preliminary order will not be maintainable when the civil suit in respect of same property is pending. Similarly, in the case of Ram Sumer Puri Mahant versus State of U.P. & Ors. reported in 1985 (1) SCC 427 similar view has been taken that the initiation of proceedings during the pendency of civil litigation involving the question of possession of the same property is not justified. Therefore, when the proceedings have already been taken under the U.P. Consolidation of Holdings Act, 1953 and the order has already been passed by the Assistant Consolidation Officer on 31st March, 2003 which was brought to the notice of S.D.M. Therefore, these two parallel proceedings cannot be continued.

However, any observation made by us will not prejudice the appeal filed by the respondents herein under U.P. Consolidation of Holdings Act, however so far as these proceedings are concerned, they cannot survive as regular proceedings have already been initiated under the Consolidation Act. Hence, we allow this appeal, set aside the order of the High

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Court and leave the parties to prosecute their remedy before the consolidation authorities.

No order as to costs.