

CASE NO.:
Appeal (civil) 6360 of 1999

PETITIONER:
Narender Singh & Ors.

RESPONDENT:
Jai Bhagwan & Ors.

DATE OF JUDGMENT: 09/12/2004

BENCH:
D.M. Dharmadhikari & H.K. Sema

JUDGMENT:
J U D G M E N T

Dharmadhikari J.

Aggrieved by the grant of decree of specific relief of execution of Contract of Sale of the agricultural lands in suit by the first appellate court which has been confirmed by the High Court of Allahabad in Second Appeal, the legal representatives of the deceased defendant have preferred this appeal.

The suit for Specific Relief of agreement of sale was resisted by the original defendant mainly on the ground that he alone was not competent to enter into agreement of sale of the entire land in which his sons (now on record as legal representatives) had shares.

The trial court rejected the claim of Specific Performance of the Sale Agreement and granted only a decree for refund of the price paid as advance.

The First Appellate Court reversed the judgment of the trial court and granted decree for Specific Performance. The High Court has confirmed the said decree. The defendant's plea of joint ownership of the plaintiff and his sons was held to be barred in civil court by the provisions of Section 49 of the UP Consolidation of Holdings Act 1953 (hereafter referred to as the "Act of 1953" for short). Such plea, the High Court held, could and ought to have raised before revenue authorities under the said Act which has exclusive jurisdiction in the matter.

The learned Senior Counsel appearing for Legal Representatives of defendant has argued that entry of the lands in revenue record exclusively in the name of the deceased defendant could not preclude the present appellants (who are sons and legal representatives of the defendant) from taking a plea that the lands were jointly owned by the members of the joint family. It is contended that revenue entry in the name of father was in representative capacity for entire body of joint family and bar of Section 49 of the Act of 1953 was not attracted. The Civil Court was fully competent to examine the question of title of the co-owners in the suit land. Strong reliance is placed on *Kailash Rai vs. Jai Ram* [1973 (1) SCC 527]; *Gorakh Nath Dube vs Har Narain Singh* [1973 (2) SCC 535]; *Suba Singh vs Mahendra Singh* [1974 (1) SCC 418] and; *Dularia Devi vs. Janardan Singh* [1990 Supp.SCC 216].

Assailing the reasoning of the First Appellate Court and the High Court, it is argued that the plea of co-ownership in respect of the land in suit could not have been raised in proceedings under the Act of 1953 as there was no cause of action or occasion for the same. In the Consolidation proceedings an inter-se dispute between the father and

the sons never arose. It was not a subject matter which fell within the exclusive jurisdiction of the consolidation authorities under the Act of 1953.

Learned counsel appearing for the respondent-plaintiff supported the judgment of the First Appellate Court and the High Court. It is submitted that the legal question raised on behalf of the appellant has been rightly answered against them on the decision of this Court in *Sita Ram vs. Chhota Bhondey* [1991 Supl.(1) SCC 556].

It is not in dispute that the suit lands were recorded exclusively in the name of the deceased defendant who was the father. The sons, even after becoming major and fully aware of the execution of the agreement of sale, did not make any attempt to get their names jointly recorded in the Revenue papers by appropriate proceedings under Section 49 of the Act of 1953. The present appellants have been brought on record of the suit only as legal representatives after death of the original defendant. Section 49 of the 1953 Act bars jurisdiction of Civil Court to adjudicate upon dispute of rights and title relating to lands included in Consolidation Proceedings. The jurisdiction to decide dispute of rights and title of the lands in Consolidation Proceedings has been conferred by the Act exclusively on the authorities under the said Act.

Section 49 of the Act of 1953 reads thus :-

"49. Bar to Civil Court jurisdiction. \026 Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land by the lying in an area, for which a notification has been issued [under sub-section (2) or 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 that Assistant Collector from initiating proceedings under section 122-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in respect of any land, possession over which has been delivered or deemed to be delivered to a Gaon Sabha under or in accordance with the provisions of this Act.

[Emphasis supplied]

The learned counsel for the respondents is right in his reply that the lands being exclusively recorded in the name of the father, the sons who claim joint ownership in the lands could and ought to have approached the authorities under the Act for getting them jointly recorded in the Revenue Papers. Such proceedings for recording them as joint owners having not been initiated under the Act of 1953, the High Court was right in invoking bar against such plea in the suit in accordance with Section 49 of the Act. We find that the contention advanced and accepted by the High Court gets full support from the following observations of this Court in the case of *Sri Ram* (supra) :-

"In the instant case respondent 1 was claiming an interest in the land lying in the area covered by notification issued under Section 4(2) on the basis that he is the son of Chhota, brother of Nanha and that the lands were recorded in the name of Nanha in a representative capacity on behalf of himself and his

other brothers. This claim which fell within the ambit of Section 5(2) had to be adjudicated by the consolidation authorities. Since it was a matter falling within the scope of adjudicatory functions assigned to the consolidation authorities under the Act the jurisdiction of the civil court to entertain the suit in respect of the said matter was expressly barred by Section 49 of the Act and the suit of the appellant was rightly dismissed on that ground."

The argument that revenue entry in the name of father should have been treated as in representative capacity for sons is misleading. Whether the father was Karta and Manager of the family and as such could be recorded in representative capacity for all co-owners in the family was also a question of title which fell within exclusive jurisdiction of the authorities under the Act.

Apart from the bar under section 49 of the Act of 1953, there is no equity in favour of defendant and his Legal Representatives. The jurisdiction exercised under Specific Relief Act is both legal and equitable. The father entered into an agreement of sale when the sons were major. In his oral evidence, plaintiff states that one of the sons took part in the negotiations of sale. In this appeal, learned counsel appearing submits that the sons were not parties to the suit in trial court and the statement of plaintiff against them cannot be accepted without availability of any opportunity to lead evidence in rebuttal.

It is difficult to believe that the sons had no knowledge of the execution of the sale agreement by their father. Even after institution of suit, no attempt was made by the sons to approach the authorities under the Act of 1953 for getting their names recorded on the lands as joint owners. In such circumstances, they cannot be heard to say that the father was not competent to execute the agreement of sale and it is not binding on them.

Consequently, we find no merit in this appeal which is dismissed with costs.