

A

SUGAN CHAND

v.

THE DY. DIRECTOR OF CONSOLIDATION, DEHRADUN/
SAHARANPUR, U.P. AND ORS.

B

DECEMBER 2, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

C

U.P. Consolidation of Holdings Act, 1953 : Section 5—Notification of consolidation—Effect on findings recorded in earlier suit—Held: the findings recorded in earlier suit are not wiped out—Consolidation authorities should rely upon the findings recorded by Civil Court unless contrary evidence is produced.

D

In a suit filed under Section 229-B of the U.P. Zamindari Abolition Act, 1951 the Trial Court and the first Appellate Court recorded a finding as to possession in favour of the appellant. During the pendency of second appeal a notification regarding consolidation was published under the U.P. Consolidation of Holdings Act, 1953 as a result of which the second appeal stood abated. However, in its proceedings the Consolidation Officer found the findings of the appellant's possession against him but on appeal the appellate authority held against the respondent and in favour of the appellant. In the revision filed by the respondent, the Commissioner without advertent to the findings recorded by the Civil Court held that the appellant has not proved his possession. The order of the Commissioner was affirmed by the High Court against which an appeal was filed in this Court.

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Allowing the appeal, this Court

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HELD: In view of the law laid down by this Court in *Ram Prasad (dead) by Lrs. and Ors. v. Assistant Director of Consolidation and Ors.*, and in the absence of any consideration of the effect of the findings recorded by the civil courts, the order of the Commissioner is *ex facie* illegal. It is accordingly set aside. The Commissioner is directed to go into the evidence *vis-a-vis* the evidence and the findings recorded in the civil suit and the appeals and to record his own findings and decide the matter according to law. [293 C]

H

Ram Prasad (dead) by Lrs and Ors. v. Assistant Director of Consolidation and Ors., [1994] Supl. 2 S.C.C. 228, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No 9643 of 1994. A

From the Judgement and Order dated 16-3-1994 of the Allahabad High Court in C. Misc. W. P. No. 2372 of 1994.

D. K. Garg for the Appellant

V. N. Ganpule, R. C. Gubrele, Ms. Punam Kumari and Ashok Kr. Singh for the Respondents. B

The following order of the Court was delivered:

Substitution allowed.

Leave granted. C

Heard the learned counsel for the parties. The *inter se* claim is for Plot Nos. 23, 67 and 78 in village Halwana Ahathal, In the suit filed by the appellant in the Court of S.D.O., Saharanpur, suit No. 1/ 1971-72 under Section 229-B of U. P. Zamindari Abolition Act (Act 1 of 1951), the trial Court recorded the finding in favour of the appellant thus : D

"Issues Nos. 1, 2, 3 and 4 are interconnected and may be taken up simultaneously. Issue No.5 relates to Smt. Nicho. Her heirship is not very relevant to these proceedings as claim of defendant Shugan Chand is that he has acquired rights on the land in suit by operation of law, even if his possession was adverse. I find that plot nos.67 and 78 of the land in suit are entered-as Sirdari of defendant Shugan Chand alone since before the abolition of Zamindari, names of plaintiffs or their ancestors do not find place on these plots. The possession of plaintiffs is also not entered anywhere on these numbers. Defendant Shugan Chand therefore rightly entered as sole sirdar over these plots and the plaintiffs have no concern over it." E F

In Appeal No. 274/1972, the Additional Commissioner held thus: G

"I am therefore of opinion that Shugan has been rightly held to be sole sirdars of these plots, by the learned lower court. As regards the remaining plots namely Plot No.16/2, 70, 71, 15, 76 are concerned these plots are recorded in the name of Jabal Singh, Harendra, Smt. Nichho as bhumidhars. In the H

A Khatauni of 1362 F by order of the S.D.O. dated 20.11.54 the
name of Shugan Chand together with Jabal Singh and
B Harendra has been ordered to recorded as contenance and
holder, samidar entries exists in subsequent khasras and
khataunies. The main contention of the learned counsel of the
appellant is that these entries are wrong as Shugan was not
the heir of Smt. Nichho, as his father Atar Singh had
predeceased Smt. Nichho and therefore, Shugan could not be
the contenance holder in the land in dispute. It is not seriously
disputed that Shugan could not inherit from Smt. Nichho as
his father Atar Singh had predeceased Smt. Nichho. By order
C of S.D.O. dated 20-11-54 his name along with Jabal Singh
was recorded as contenance holder. It appears that no
objection was filed by Jabal Singh at that time and therefore
Shugan continued to be in the possession of the land in suit
as the cotenure holder. The defdt. has filed C.H.F. 9-Kh for
this will (Paper No 34A) wherein he has been recorded as
cotenure holder over the other land of Smt. Nichho.

D It is, therefore, evident that Shugan has continued in
possession over the land in suit in his own rights in the
knowledge of the plttf/appellant. The present suit appears to
have been filed by the plttfs. When they come to know that
according to law Shugan could not be heir of Smt. Nichho as
E held in 1970 RD at page 2 Ram Nath vs. Smt. Raj Kumar."

While Second appeal filed by the respondent was pending, notification
under Section 5 of the U. P. Consolidation Act was published. As a
consequence the second appeal stood abated. In the proceeding initiated
F before the Consolidation Authority, initially the Consolidation Officer
found the findings of the appellant's possession against him, but on appeal
the appellate authority reversed and held against the respondent and in
favour of the appellant. In the revision filed by the respondent, the
Commissioner without adverting to the findings recorded by the Civil Court
held that the appellant has not proved his possession. Consequently allowed
G the revision in the impugned order dt. January 7, 1994 which was affirmed
in the writ petition filed by the appellant in W.P. No. 2372/1994 dated
March 16, 1994. Thus this appeal by special leave.

The controversy as to the effect of the issue of notification under
section 5 and s.s 3 thereof and the findings recorded in the earlier suit was
H considered by this Court in *Ram Prasad (dead) by Lrs. and Ors vs.*

Assistant Director of Consolidation and Ors., [1994] Suppl 2 SCC 228. In paragraph 8 it was held that though the suit stood abated, yet the evidence recorded in the suit or appeal and the finding recorded by Civil Courts do not get wiped out; are entitled to be considered and that, therefore, it being the relevant evidence the authorities under the Consolidation Act, unless contrary evidence is produced, are entitled to rely upon the findings recorded by the civil courts in support of its conclusions. A B

In view of the law laid down by this Court and in the absence of any consideration of the effect of the findings recorded by the civil courts, the order of the Commissioner is *ex facie* illegal. It is accordingly set aside. The Commissioner is directed to go into the evidence *vis-a-vis* the evidence and the findings recorded in the civil suit and the appeals and to record his own findings and decide the matter according to law. C

The appeal is accordingly allowed. No Costs.

T.N.A.

Appeal allowed.