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## GORAKH NATH DUBE

v.

HARI NARAIN SINGH &amp; ORS.

August 7, 1973

[K. K. MATHEW AND M. H. BEG, JJ.]

B

*Consolidation of Holdings Act S.5(2)—Plaintiff claiming that land in question belonged to Hindu Undivided Family—Claiming cancellation of sale deed in respect of land and possession of his half share—Appeal in suit pending in High Court when land in question came under consolidation operation—Appeal whether abates.*

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The plaintiff-appellant filed the present suit for the cancellation of a sale-deed dated 12-4-1932 to the extent of a half share claimed by him in certain plots of land and for the award of possession of the said half share. According to the plaintiff the vendor, who was his uncle had purchased the plots in question on behalf of the joint Hindu family which provided the funds for the purchase of the plots. The trial court dismissed the plaintiff's suit on 4-1-1960. The District Judge allowed the plaintiff's appeal and decreed the suit on 30-4-62. The defendants-respondents filed a second appeal to the High Court on 18-8-1962 which was admitted for hearing. During the pendency of the second appeal, a notification under s. 4 of the U.P. Consolidation of Holdings Act of 1954 was published in the Government Gazette on 22-10-1966 declaring that the village in which the plots in dispute were situated had come under consolidation operations. Consequently, the defendants-appellants filed an application under s.5 of the Act in the second appeal. The High Court by its judgment dated 5-5-1967 after dismissing the defendants' applications under s.5 of the Act dealt with the merits of the case and accepted the appeal of the defendants-appellants. The High Court took the view that section 5 did not apply to a case in which the possession could be granted only after cancellation of the sale-deed to the extent of half before awarding possession. In the plaintiff's appeal to this Court by special leave, the defendants-respondents raised a preliminary objection to the hearing of the appeal on merits on the ground that the High Court should have held that the plaintiff's suit before it had abated under s.5(2) of the Act.

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Allowing the appeal,

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**HELD:** A distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective. But, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it. In the present case the plaintiff's claim was that the sale of his half share by his uncle was invalid, inoperative, and void. Such a claim could be adjudicated upon by consolidation courts. Accordingly it must be declared that the suit of the plaintiff had abated under s.5 of the Act.

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[342C—F]

Since the High Court had dismissed the plaintiff's appeal it was not necessary for the defendants to appeal against the order of the High Court dismissing their application under ss. 4 & 5 of the Act, and the defendants were accordingly not precluded from raising the preliminary objection based on ss. 4 & 5 of the Act in this Court. [343D—E]

[Appropriate directions given]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1579 of 1967.

Appeal by special leave from the Judgment and Order dated 5th May, 1967 of the Allahabad High Court in Second Appeal No. 2753 of 1962.

*J. P. Goel and S. M. Jain*, for the appellant.

*Bishan Narain, Suresh Sethi, R. K. Maheshwari and B. P. Maheshwari*, for respondents 1-4.

The Judgment of the Court was delivered by

BEG, J. The Plaintiff-Appellant, Gorakh Nath Dube, before us by grant of special leave against the judgment and decree of the High Court of Allahabad allowing a Defendants' second appeal, had filed a suit for the cancellation of a sale deed, dated 12-4-1932, to the extent of a half share claimed by the Plaintiff in fixed rate tenancy plots on a payment of Rs. 250/-, or, whatever sum the plaintiff may be found liable to pay, and, after cancellation of the sale-deed to the extent of the plaintiff's share, for an award of possession of the plaintiff's share. There was no prayer for partition, and, by asking for possession of his share, the plaintiff could only be seeking joint possession after declaration of rights claimed. The plaintiff based his claim in the fixed rate tenancies on the ground that, although, the vendor Sukhpal Dube, his uncle, had, on 28-9-1912, ostensibly singly and separately purchased the plots, which were the subject matter of the impugned sale, yet, actually, this was an acquisition on behalf of the joint Hindu family which provided the funds for the purchase of the plots. The Trial Court had dismissed the plaintiff's suit on 4-1-1960. The learned District Judge of the Jaunpur had allowed the plaintiff's appeal and decreed the suit on 30-4-1962. The Defendants-Respondents before us then filed a second appeal in the High Court on 18-8-1962 which was admitted for hearing. During the pendency of the second appeal, a notification under Section 4 of the U.P. Consolidation of Holdings' Act of 1954 (hereinafter referred to as 'the Act') was published in the Government Gazette on 22-10-1966 declaring that village Kukuripur, in which the plots in dispute were situated, had come under consolidation operations. Consequently, the Defendants-Appellants filed an application under Section 5 of the Act in the second appeal. The High Court, by its judgment dated 5-5-1967, after dismissing the Defendant's application under Section 5 of the Act, dealt with the merits of the case and accepted the appeal of the Defendants-Respondents.

Learned Counsel for the Defendants-Respondents has taken a preliminary objection to the hearing of this appeal on merits by us on the ground that the High Court should have held that the plaintiff's suit before it had abated under the provisions of Section 5(2) of the Act which reads as follows :

**A** "5(2) Upon the said publication of the notification under sub-section (2) of Section 4 the following further consequences shall ensue in the area to which the notification relates, namely—

**B** (a) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending, stand abated :

**C** Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard :

**D** Provided further that on the issue of a notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part, as the case may be, shall stand vacated;

(b) such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of this Act and the rules made thereunder".

**E** The learned Judge who heard and disposed of the second appeal held that Section 5 did not apply to a case in which possession could be granted only after cancellation of a sale deed to the extent of half before awarding possession.

**F** *Ram Adhar Singh v. Ramroop Singh & Ors.*<sup>(1)</sup>, wa. relied upon by the Respondents before us. But, this was a case in which the question considered and decided by this Court was whether a suit for possession of agricultural land, under Section 209 of U.P. Zamindari & Land Reforms Act, would abate when Section 5 of the Act does not mention suits for possession. It was held there that the language of Section 5 of the Act, after its amendment, was wide enough to cover suits for possession involving declaration of rights and interests in land which can be the subject matter of decisions in consolidation proceedings. The whole object of this provision of the Act was to remove from the jurisdiction of ordinary civil and revenue courts, for the duration of consolidation operations, all disputes which could be decided in the course of consolidation proceedings before special courts governed by special procedure. Such adjudications by consolidation authorities were considered more suitable, just, and efficacious for speedy decisions which had to be taken in order to enable consolidation operations to be finalised within a reasonable time.

**H** There is no decision of this Court directly on the question whether a suit for cancellation of a sale deed, which was pending on the date of

(1) [1968] (2) S.C.R. p. 95.

the notification under Section 4 of the Act, abates under Section 5(2) of the Act. A decision of a Division Bench of the Allahabad High Court, in *Jagarnath Shukla v. Sita Ram Pande & Ors.*<sup>(1)</sup>, directly dealing with the question before us, was then cited before us. Here, we find a fairly comprehensive discussion of the relevant authorities of the Allahabad High Court the preponderating weight of which is cast in favour of the view that questions relating to the validity of sale deeds, gift deeds, and wills could be gone into in proceedings before the consolidation authorities, because such questions naturally and necessarily arose and had to be decided in the course of adjudications on rights or interests in land which are the subject matter of consolidation proceedings. We think that a distinction can be made between cases where a document is wholly or partially invalid so that it can be disregarded by any court or authority and one where it has to be actually set aside before it can cease to have legal effect. An alienation made in excess of power to transfer would be, to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessarily implied in the decision of a dispute involving conflicting claims to rights or interests in land which are the subject matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by the necessary implication of their statutory powers to adjudicate upon such rights and interests in land, to declare such documents effective or ineffective, but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it. In the case before us, the plaintiff's claim is that the sale of his half share by his uncle was invalid, inoperative, and void. Such a claim could be adjudicated upon by consolidation courts. We find ourselves in agreement with the view expressed by the Division Bench of the Allahabad High Court in *Jagarnath Shukla's* case (*Supra*), that it is the substance of the claim and not its form which is decisive.

Learned counsel for the Plaintiff-Appellant tried to urge before us, on the strength of a copy of a judgment of the Settlement Officer, Consolidation, Jaunpur, dated 24-1-1968, filed with an affidavit in opposition to Defendants-Respondents' application under Sections 4 & 5 of the Act made before us, that the Settlement Officer himself had held that consolidation authorities had no jurisdiction to decide the case now before us by special leave. After going through the order of the Settlement Officer, we find that he did not reach any such conclusion. All that the Settlement Officer did was to stay the appeal pending before him until the appeal by special leave pending before this Court is decided here. We may observe that this was a very correct and proper course for the Settlement Officer to adopt. He did not make any observations about the absence of his own jurisdiction. And, he could not properly make any observation about the existence or absence of the jurisdiction

(1) 1959 A. L.J. 768.

A of this Court to decide the merits of the case pending before us because this question was likely to arise before this Court and has been raised in the case before us now. It is obvious to us that the result of the order of the Settlement Officer is that, after the disposal of this appeal by special leave by us, the appeal pending before the Settlement Officer can be revived and an appropriate decision on merits on respective claims taken by him in view of Section 52, sub-sec. (2) of the Act,

B which provides, *inter-alia*, that, despite a notification under Section 52(1) of the Act, closing consolidation operations in a village, cases or proceedings pending under the Act on the date of the issue of notification under Section 52(1) will be decided as though consolidation operations had not terminated. The result is that the parties are not deprived of an appropriate forum for a decision on the merits of the case before us about which we deliberately refrain from making any observations.

C It may be mentioned here that Shri J. P. Goyal, appearing for the Plaintiff-Appellant, had also contended that the Defendants-Respondents were precluded from raising the preliminary objection as they had not appealed from the order of the High Court dismissing their application under Sections 4 & 5 of the Act. We find that the merits of the

D question raised by the application were dealt with in the body of the judgment allowing the second appeal and dismissing the plaintiff's suit which is under appeal before us. The Defendants-Respondents are only seeking to support the judgment of dismissal of the suit on another ground which was available. It is true that there is a very short separate order of the High Court also on the application of the Defendants-Respondents in the High Court under Sections 4 & 5 of the Act stating that the application is dismissed for the reasons given in the body of the judgment in the case. We, however, think that the Defendants-Respondents were justified in not appealing separately from it as there could be no *res-judicat* against them when the plaintiff's suit was dismissed by the High Court. It has been rightly contended, on behalf of the Defendants-Respondents, that, as they had secured their object, which was the dismissal of the suit, there was nothing left for them to

E appeal against.

F Upon the facts and circumstances mentioned above, we think that the preliminary objection of the Defendants-Respondents, in support of which they have filed a separate application in this Court also, under Sections 4 & 5 of the Act, has to be accepted for the reasons given above. But, we also think that there is some force in the objection on behalf of the Plaintiff-Appellant that, if we allow the decree of the High Court to stand, the disposal of the claims on merits by the consolidation authorities may be hampered. Accordingly, we allow this appeal and set aside the judgments and decrees of the High Court as well as of the two Courts below it, so that it is clear that there is no decision anywhere else on merits of the claims which must now be decided by consolidation courts. We also allow the Civil Miscellaneous Petition No. 2452 of 1970 of the Defendants-Respondents under Sections 4 & 5 of the Act,

G and, we declare that the suit of the Plaintiff-Appellant has abated. The parties will bear their own costs throughout.

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G.C.

*Appeal allowed.*