

RAM DULAR

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v.

DY. DIRECTOR OF CONSOLIDATION, JAUNPUR AND ORS.

FEBRUARY 8, 1994

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

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U.P. Consolidation of Holdings Act, 1953: Section 48—Revision—Scope of power—Director can satisfy himself as to legality or propriety of order—But cannot assume jurisdiction of original authority as a fact finding authority by appreciating facts de novo.

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The appellant claimed share of his ancestral property on the ground that his great grand-father has ancestral property and as a successor-in-interest through his grand father he has been in joint possession and enjoyment of certain properties as co-khatedar with respondents. The Consolidation Officer considered the family genealogy and on the basis of the revenue receipts for 15 years found that the appellant was a co-khatedar but the entries in 1306 Fasli were fabricated. On appeal the Settlement Officer held that appellant was entitled to half share of the property but he could not have made claim as co-sharer in respect of the self acquired property. The Deputy Director of Consolidation allowed the revision and set aside the orders of both the Tribunals; he merely recorded the genealogy of the respondents and their ancestry, omitting the branch of the appellant. The High Court refused to correct the mistake on the plea that it is a finding of fact and the Deputy Director had corrected the mistake committed by the authorities in exercise of power under Section 48 of the U.P. Consolidation of Holdings Act, 1953.

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In appeal to this Court on the question whether the Director of Consolidation was legally justified in upsetting the findings recorded by the Consolidation Officer and Settlement Officer:

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Allowing the appeal, the Court

HELD: 1. The Deputy Director has committed manifest error of law by reversing the orders of the Consolidation Officer and Settlement Officer. [739-H, 740-A]

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A 2.1. While exercising the revisional power under section 48 of the
 U.P. Consolidation of Holdings Act, 1953 the Director has power to satisfy
 himself as to the legality of the proceedings or as to the correctness of the
 proceedings or correctness, legality or propriety of any order other than
 interlocutory order passed by the authorities under the Act. But in so
 B doing he cannot assume to himself the jurisdiction of the original authority
 as a fact finding authority by appreciating for itself of those facts *de novo*.
 It has to consider whether the legally admissible evidence had not been
 considered by the authorities in recording a finding of fact or law or the
 conclusion reached by it is based on no evidence, any patent illegality or
 C impropriety had been committed or there was any procedural irregularity,
 which goes to the rest of the matter, had been committed in recording the
 order or finding. [738-E, 739-A-C]

D 2.2. The Consolidation Officer recorded the genuineness of the
 entries for the year 1308 Fasli which was not even disputed by the respon-
 dents. There is no alternative genealogy filed by the respondents. In the
 entries for 1308 Fasli the name of appellant's grand-father was found to
 be mutated. This vital aspect was omitted to be taken into consideration
 by the Deputy Director who on the other hand concluded that for the year
 1308 Fasli also the name of appellant's grant-father was fabricated. It is
 an obvious error committed by the Deputy Director. [739-E-G]

E CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1131 of
 1979.

F From the Judgment and Order dated 8.8.1977 of the Allahabad High
 Court in Civil Misc. W. Nos. 1987 & 1989 of 1976.

Shanti Bhushan, E.C. Agrawala, Anant V. Pali, Mahesh Agrawala
 and Atul Sharma for the Appellant.

J.M. Khanna for the Respondents.

G The following Order of the Court was delivered :

H 1. This appeal by special leave arises from the order dated August
 8, 1977 of the High Court of Allahabad in Civil Misc. Writ No. 1987 of
 1976 whereby the High Court has confirmed the order of the Dy. Director
 of Consolidation dated September 4, 1976 rendered in batch of revisions.

The family genealogy has been considered extensively by the Consolidation Officer, Settlement Officer and Dy. Director. From the geoncalogy it is seen that one Dewan was the common ancestor. He had two sons by names, Nihut and Mata Palat. Nihut had son by name Angan. Angan had two sons - Jokhu and Sampat. Jokhu and a son by name Ram Sumer. Ram Sumer has two sons - Sita Ram and Shri Ram, the respondents in this case and Ram Dular, the appellatant is the son of Bachha, who was the son of Sampath. We are concerned in this appeal as regards Khatas Nos. 196 and 99 in village Puharpur. It is the case of the appellatant that Angan, his great grand-father had ancestral property and as a successor in interest through his grand father, he has been in joint possession and enjoyment of certain Gata Nos. in the said Khatas numbers fallen towards his half share as co-khatadar along with Sita Ram and Shri Ram, while his cousins are entitled to the other half share therein. In the consolidation proceedings, the Consolidation Officer had found that the appellatant had proved to be co-khatadar in respect of both the Khatas though he found that entries in 1306 Fasli were fabricated. Then, 1308 Fasli entries were also found to be correct, where the name of Sampath was mentioned. On behalf of the plaintiff our attention was drawn to the observation that "Fasli 1308 has been produced and the defendants have not challenged it as a forged document." On that basis and on the basis of production of revenue receipts from 1365 Fasli onwards for 15 years, it was found that appellatant was a co-khatadar. It was also observed that when the appellatant was present in the Court when Shri Ram was examined on behalf of the respondents Sri Ram even refused to recognise him in the Court and expressed his ignorance about the ancestry of the appellatant. The Tribunals, however, noticed his admission that there are six houses in the area in which the parties are residing. The appellatant had been residing adjacent to the house of Shri Ram and Sita Ram at Purwa, yet he refused to recognise him in the Court. It also found that the genealogical table given by the appellatant was correct and no contra family genealogy was given by the respondents before the Consolidation Officer, Settlement Officer and Deputy Director.

2. Three sets of the people made common cause, namely, the parties herein and the legal representatives from the side of Mata Palat. Since their claims have become final, we need not refer to their geonology and

A ancestry in these proceedings. The Settlement Officer on appeal found that Ram Sumer had his self acquired property and that therefore to that extent the appellant could not have made a claim as co-sharer. However, in respect of ancestral proeprtv acquired by Angan, the Settlement Officer also found that the appellant is entitled to half share in Khata Nos. 99 & 196, except Gata Nos. 32, 34, 94 478, 495, 496 & 532/1. On revision the Dy. Director held that the fabricated revenue records for 1306 & 1308 Fasli cannot be relied on. He held that the entries in the revenue records for 1307 Fasli only the name of Jokhu was found. So the appellant cannot be said to be the legal representative from the branch of Sampat. As a result the entire ancestral property would pass on to Jokhu's legal representatives, namely, Sita Ram and Shri Ram. Thus he allowed the revision and set aside the order of both the tribunals. The High Court, as stated earlier, refused to go into the question on its view that it is a finding of fact and Deputy Director had corrected the mistake committed by the authorities in exercise of power under Section 48 of the U.P. Consolidation of Holdings Act, 1953, for short 'the Act'.

3. The question, therefore, is whether the Deputy Director of Consolidations was legally justified in upsetting the findings recorded by the Consolidtion Officer and the Settlement Officer. It is true that the finding whether Jokhu and Sampat are sons of Angan is a finding of fact and that the authorities are entitled to consider that question. But while exercising the revisional power under s. 48, what requires to be seen is, whether the Deputy Director has considered the question in its proper perspective or had ignored any material evidence on record in coming to the said conclusion. Section 48 reads thus:

"48 - REVISION AND REFERENCE: (1) The Director of Cosolidation may call for and examine the record of any case decided or proceedings taken by the subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings or as to the correctness, legality or propriety of any order other that interlocutory orđr passed by such authority in the case of proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case of proceedings as he thinks fit."

It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact finding authority by appreciating for itself of those facts *de novo*. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the rest of the matter, had been committed in recording the order or finding. In this case it is seen that admittedly all the parties have been residing in the same locality. It had been found by the Consolidation Officer that the appellant was in possession of the lands and he had produced revenue receipts for continuously 15 years from 1365 Fasli onwards and that finding was not disturbed by the Deputy Director. It is true that the record for the Fasli 1306 was found fabricated and the name of the Sampat was not mutated and Jokhu alone was mutated in the revenue records for 1307 Fasli. The Consolidation Officer recorded the genuineness of the entries for the year 1308 Fasli which was not even disputed by the respondents. In the entries for 1308 Fasli the name of Sampath was found as son of Angan and was mutated. This vital aspect was omitted to be taken into consideration by the Deputy Director. The Deputy Director on the other hand concluded that for the year 1308 Fasli also the name of Sampat was fabricated. It is an obvious error committed by the Deputy Director and the High Court refused to correct it on the plea that it is only a finding of fact. Once, from the entries it is seen that Sampat was also mentioned as son of Angan and the appellant had been continuously in possession for 15 years it would clearly indicate that he has been in joint possession in respect of land in the aforesaid Khata Nos. along with the respondents. As seen, there is no alternative genealogy filed by the respondents. The Deputy Director merely recorded the genealogy of the respondents and their ancestry, omitting the branch of the appellant. Thereby he practically omitted to consider the genealogy which was even undisputed by the respondents. Under these circumstances the Deputy Director has committed manifest error of law by reversing the

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A orders of the Consolidation Officer and Settlement Officer. Accordingly the appeal is allowed, the order of the Settlement Officer is confirmed to the extent of half share in the ancestral property acquired by Angan as affirmed by the Settlement Officer on appeal. But in the circumstances, parties are directed to bear their own costs.

T.N.A.

Appeal allowed.