

KRISHNANAND (D) THROUGH. LRS. A

v.

DEPUTY DIRECTOR OF CONSOLIDATION & ORS.
(Civil Appeal No. 9932 of 2014)

OCTOBER 28, 2014 B

[SUDHANSU JYOTI MUKHOPADHAYA AND
S.A. BOBDE, JJ.]

Constitution of India, 1950 – Article 226 – Writ jurisdiction – Scope of – Held: Jurisdiction u/Article 226 cannot be exercised for reappraisal of evidence unless the order impugned was passed by the authority without jurisdiction or in excess of his jurisdiction, or finding was patently perverse – In the present case, High Court in exercise of its writ jurisdiction was not right in reversing concurrent finding of fact arrived at by three authorities – Uttar Pradesh Consolidation of Holdings Act, 1953. C D

Allowing the appeal, the Court

HELD: 1. Jurisdiction under Article 226 of the Constitution cannot be exercised for re-appreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. [Para 10] [1007-G, H; 1008-A] E F

2. The High Court ought not to have entered into re-appreciation of evidence and reversed the findings of fact arrived at by the three authorities below, especially since, the authorities had neither exceeded their jurisdiction nor acted perversely. The High Court has no where stated that it was of the view that there is any perversity, much G

A less the High Court failed to demonstrate any such circumstances. [Para 11] [1008-C, D]

B *Babubhai Muljibhai Patel Vs. Nandlal Khodidas Barot and Ors.* 1975 (2) SCR 71; (1974) 2 SCC 706; *National Thermal Power Corporation Ltd. Vs. Mahesh Dutta and Ors.* 2009 (10) SCR 1084 : (2009) 8 SCC 339 – distinguished.

Case Law Reference:

C 1975 (2) SCR 71 Distinguished Para 6
2009 (10) SCR 1084 Distinguished Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9932 of 2014.

D From the Judgment & Order dated 06.05.2013 in WP No. 5289 of 1983 of the High Court of Judicature at Allahabad, Lucknow Bench.

Ashwani Kumar, Iti Sharma for the Appellants.

E Pradeep Kant, Ardhendumauli Kumar Prasad, Vikas, Bansal, Divyanshu Sahay, Rakesh K. Sharma for the Respondents.

The Judgment of the Court was delivered by

F S. A. BOBDE, J. 1. Leave granted.

G 2. The appellants have challenged the Judgment of the Allahabad High Court, Bench at Lucknow, by which the High Court has set aside concurrent orders passed by the Consolidation Officer, Sultanpur, dated 03.02.1982; Assistant Settlement Officer, Consolidation, Sultanpur dated 21.05.1982; and Deputy Director of Consolidation, Sultanpur dated, 17.08.1983.

H 3. The brief facts giving rise to this appeal may be stated as below:

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This dispute relates to Khata No. 201 bearing two *Gatas*. Initially, the land was recorded in the name of Krishna Nand and Shiv Ram, sons of Ram Adhar. The relationship between the parties is as follows:

| | | | |
|---------------------|---------------------|------------------------|----------------------|
| BACHCHU | | | |
| SON | | SON | |
| RAM ADHAR | | RAM SAMUJH | |
| SON | | SON | SOLE DAUGHTER |
| KRISHNA NAND | SHIV RAM | SMT. KAMLA DEVI | |

Ram Adhar and Ram Samujh were real brothers, being sons of Bachchu. Ram Adhar was elder to Ram Samujh. Kamla Devi, Ram Samujh's daughter, claimed that although Ram Adhar acted in a representative capacity, the suit-property had been purchased jointly by her father and Ram Adhar in 1938 from the Hasanpu'r Estate in District Sultanpur. To stake her claim, she relied upon letters and post cards between her father and his brother. Ram Samujh passed away on 03.03.1976, leaving behind Kamla Devi, his sole heir. Ram Adhar and Ram Samujh had partitioned the suit property in the year 1941. Furthermore, Kamla Devi contended before the HC that the suit property was purchased in the name of her Uncle, Ram Adhar in 1938, simply because he was the head of the family. After his death in 1964, Ram Adhar's sons, Krishna Nand and Shiv Ram got the suit-property mutated in their name, in spite of the fact that Kamla Devi remained in possession of her share. In 1973, the village where the suit property is located, was notified pursuant to a consolidation operation. Kamla Devi's husband, who was at the time looking after Ram Samujh's share of the suit-property, filed objections before the Assistant Consolidation Officer, claiming co-tenancy over the said property. The matter upon being referred to the Consolidation

A Officer, Shiv Ram s/o Ram Adhar and Kamla Devi's father, Ram
 Samujh entered into a compromise, with both admitting half-
 share to each. Pursuant to this, the Consolidation Officer
 decided the case and accordingly the *chak* was carved out.
 Subsequently, Krishna Nand, i.e. Shiv Ram's brother, filed his
 B objection under Section 9(2) of the UP Consolidation of
 Holdings Act, 1953 for the cancellation of the above mentioned
 compromise, which was rejected. Aggrieved, Krishna Nand
 preferred an Appeal before the Appellate Authority – The
 Assistant Settlement Officer of Consolidation at Sultanpur, who
 C allowed the Appeal and quashed the Order passed by the
 Consolidation Officer and remitted the matter to him, with
 directions to decide the matter afresh on merits. Accordingly,
 the Consolidation Officer reconsidered the matter, and
 dismissed Kamla Devi's claim over the suit property and
 declared her a trespasser. Aggrieved, she preferred an Appeal
 D before the Settlement Officer of Consolidation, who dismissed
 her claim. Thereafter she filed a Revision before the Deputy
 Director of Consolidation, which was also dismissed.
 Aggrieved, she filed a writ-petition before the High Court, which
 was allowed vide the impugned order dated 06.05.2013.
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4. We have heard learned counsel for the parties and
 perused the record.

F 5. A plain reading of the impugned order shows that the
 High Court had committed an error in re-appreciating the
 evidence by setting aside the findings of fact, which is normally
 impermissible in the exercise of its jurisdiction under Article 226
 of the Constitution of India. The learned counsel for the
 respondent however relied on two decisions of this Court, which
 on a close scrutiny do not help the case of the respondents.
 G The said decisions are considered herein below.

H 6. In *Babubhai Muljibhai Patel Vs. Nandlal Khodidas
 Barot and Ors.* : (1974) 2 SCC 706, this Court observed that
 the High Court is not deprived of its jurisdiction to entertain a
 petition under Article 226 of the Constitution, merely because

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in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition. If, however, on consideration of the nature of the controversy, the High Court decides, that it should go into a disputed question of fact and the discretion of the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.

7. It may be noted that *Patel's* case (supra) was a case where the High Court went into certain disputed facts regarding whether the no confidence motion, in question, has been merely passed, inter alia, it had been contended by the President of the Meeting that the no confidence motion had failed for want of two-thirds majority of the total number of councillors. He had accordingly filed an affidavit. The High Court had come to the conclusion that the Collector had no jurisdiction to make such inquiry and that the Order of the Collector was void on the ground that it had been made in violation of the principles of natural justice. In fact there was not even a semblance of natural justice. The High Court proceeded to consider the material on record including the evidence of deponents who had been cross-examined, and came to the conclusion that 17 councillors had voted for the no confidence motion against the appellant in the meeting held on May 6, 1973. In these circumstances, the exercise of the jurisdiction by the High Court was justified on the ground that the entire concept of a democratic institution would thus have been set at naught, if the appellant would have continued as President of the Municipality even though he had ceased to enjoy the support of a requisite number of

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A councillors. This Court observed that the purpose underlying the
 petition would have been completely defeated in case
 respondent no. 1 had been relegated to the ordinary remedy
 of a suit and that such remedy was neither adequate nor
 efficacious. Thus the circumstances of the case were entirely
 B different from the present case.

8. Similarly, we do not find that the circumstances existing
 in the other case relied on by the learned counsel for the
 respondents are relevant to the present case. In National
 C Thermal Power Corporation Ltd. Vs. Mahesh Dutta and
Ors. : (2009) 8 SCC 339, the dispute was as to the taking of
 possession of acquired land in case of urgency under
 Section 17 of the Land Acquisition Act and this Court observed
 whether actual physical possession had been taken in
 D compliance of the provisions of Section 17 of the Act or not
 would depend upon the facts and circumstances of each case.
 This Court also observed that depending upon the fact situation
 obtaining in each case; the High Court had the power to
 determine whether possession of the acquired land was actually
 taken over or not. Eventually, this Court held that a presumption
 E existed in view of Section 114 of the Evidence Act, 1872,
 having regard to the issue of certificate and that, therefore, the
 High Court was right in holding that possession has actually
 been taken. This Court upheld the power of the High Court to
 enter into a disputed question of fact depending upon the
 F circumstances of the case. There is no doubt that depending
 upon the circumstances of the case, the High Court could
 determine a question of fact. It must necessarily do so in the
 nature of the case referred to above.

G 9. Considering the present case, we find that the
 Consolidation Officer, Sultanpur by the order dated 03.02.1982;
 the Assistant Settlement Officer, Consolidation, Sultanpur by
 order dated 21.05.1982; and Deputy Director of Consolidation,
 Sultanpur by order dated 17.08.1983 had taken a certain view.
 H The Consolidation Officer, Sultanpur had passed the final order

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dismissing the respondent's objection and treated her as a trespasser in view of the revenue record available. The respondent filed an appeal before the Assistant Settlement Officer, Consolidation, Sultanpur, who dismissed the said appeal. The respondent then preferred a revision before the Deputy Director of Consolidation, Sultanpur, which too was dismissed. Thus, three authorities had come to the conclusion that the respondent is a trespasser. However, the High Court in the Writ Petition filed by the respondent re-appreciated the entire evidence on record as if it was hearing an appeal and came to the following conclusion:

"However, I am of the view that they have failed to appreciate that the receipts of money order establish the money transaction happened between Ram Samujh and Ram Adhar. The entry of clause 9 shows the possession of Ram Samujh over the land in dispute, may not be as owner of the land. Statements of the witnesses prove that the property was acquired through the money sent by Ram Samujh when their family was joint and since Ram Adhar was living at home, it was recorded in his sole name. Possession of both the parties was recorded over half of the each share.

Thus, from the aforesaid facts, the possession of both the parties over the land in dispute to the extent of respective share is well proved. The acquisition of land by the joint fund of family having been living in the joint family is also established."

10. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for re-appreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has

A acted in excess of its jurisdiction or the finding is patently
perverse. In the present case, though the High Court reversed
the concurrent findings of the authorities below and came to the
opposite conclusion on matter of facts, the High Court did not
do so on the ground that the authorities below acted in excess
B of their jurisdiction or without jurisdiction or that the finding is
vitiating by perversity.

11. We are of the view that the High Court ought not to
have entered into re-appreciation of evidence and reversed the
findings of fact arrived at by the three authorities below,
C especially since, the authorities had neither exceeded their
jurisdiction nor acted perversely. The High Court has no where
stated that it was of the view that there is any perversity, much
less the High Court failed to demonstrate any such
D circumstances.

12. In the circumstances, we are of the view that the appeal
deserves to be allowed and is accordingly allowed. The
impugned order of the High Court is thus set aside.

Kalpana K. Tripathy

Appeal allowed.