

NON REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4457 OF 2005

SHRI JAGDAMBA PRASAD (DEAD) THR. LRS. & ORS. APPELLANTS

VS.

KRIPA SHANKAR (DEAD) THR. LRS. & ORS. ... RESPONDENTS

J U D G M E N T

V.GOPALA GOWDA, J.

This appeal is filed by the appellants questioning the correctness of the judgment and final Order dated 2.9.2003 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ No. 4688

of 1974, urging various facts and legal contentions in justification of their claim.

Necessary relevant facts are stated hereunder to appreciate the case of the appellants and also to find out whether the appellants are entitled for the relief as prayed in this appeal.

2. The appellants filed objections before the Consolidation Officer for the deletion of the name of one Bhukhali (father of the respondents) since the appellants allege that this name has been fictitiously mentioned in the revenue records pertaining to Khata no. 63 of Village Badhaiya, Pargana Kewai. The plot Nos. 552, 570 and 574 in the present case, are registered in the names of the landowners Mahadev, Shambhu Nath and Bhukhali respectively. Mahadev and Shambhu Nath belong to the same family whereas Bhukhali was the resident of another village.

3. Objections were initially filed by the appellants whose father was 1/3rd share holder of the land which

was recorded in the name of Bhukhali-the father of the respondents. Mahadev and Shambhu Nath, the other share holders of the land conceded to the rights of the appellants. Rajpati- the son of Bhukhali, was also made a party to the proceedings but neither he filed any objection nor he claimed his rights over the land in question before the Consolidation Officer.

4. Objections were however, filed by the Respondent nos. 1 and 2 who are the son and daughter of Bhukhali and are his legal heirs who are the beneficiaries of the 'Will' executed by Bhukhali in their favour. However, the said 'Will' was never produced by the Respondent nos. 1 and 2 at any stage before the authorities/court.

5. The Consolidation Officer vide order dated 13.7.1971 accepted the objections of the appellants and deleted the name of Bhukhali from the revenue records by declaring that the entry of his name in the records was forged since Respondent nos. 1 and 2

failed to produce the alleged 'Will' executed by Bhukhali in their favour. The respondents failed to produce any other document to prove their title on the land in question.

6. Aggrieved by the Order of the Consolidation Officer, Respondent nos. 1 and 2 filed an appeal before the Assistant Settlement Officer. The same was dismissed vide Order dated 28.1.1972. Rajpati, son of Bhukhali, who was made party to the proceedings, also filed a belated appeal after about one year of passing of the Order dated 13.7.1971 on the ground that he had no knowledge about the said Order. The said appeal of Rajpati was dismissed by a separate Order dated 11.12.1972.

7. Respondent nos. 1 and 2 thereafter, filed a Revision Petition before the Revisional Authority i.e. the Deputy Director of Consolidation, Allahabad against the Order of the Assistant Settlement Officer dated 28.1.1972. However, the Respondent nos. 1 and 2

produced certified copies of documents executed in 1934 pertaining to auction sale of the land in question before the Revisional Court. The auction sale is in favour of Bhukhali which shows that the share of the appellants' father was purchased by Bhukhali in the year 1934. The Revisional Authority, by placing reliance on this document of auction sale, vide order dated 30.4.1974 reversed the Order of the Consolidation Officer and allowed the revision petition of the Respondent nos. 1 and 2 stating that the entering of Bhukhali's name in revenue records of the land in question had been registered as a co-owner even after the abolition of zamindari. Therefore, through this Order, the Court upheld the claim of the respondents that Bhukhali had purchased the share of appellants' father in an auction sale.

However, the appeal of Rajpati was dismissed by the Revisional Authority on the ground that he had not preferred any objections before the Consolidation

Officer claiming his title as a legal heir of Bhukhali over the land in question.

8. Even at this stage, no Will or other documents were produced by Respondent nos. 1 and 2 to substantiate their plea that Bhukhali had given the land in question to them through Will or otherwise.

9. The appellants, being aggrieved by the Order of the Revisional Authority dated 30.4.1974, filed a Writ Petition No. 4688 of 1974 before the High Court of Judicature at Allahabad on the ground that the Revisional Authority could not have accepted the secondary evidence at the stage of revision and reversed the concurrent findings of the Appellate Authority.

10. The learned Single Judge of the High Court dismissed the Writ Petition filed by the appellants on the ground that the appellants have not been able to prove the ownership and title over the land on expunction of the name of Bhukhali from the revenue

records. The learned Single Judge further observed that the rights of Bhukhali in respect of the land in question cannot be negatived on the basis of the documents pertaining to Auction Sale of 1934 produced by respondents Nos. 1 and 2 before the Revisional Authority in favour of Bhukhali.

It was further observed by the learned Single Judge that Rajpati, the son of Bhukhali is still alive and even if the Will on the basis of which Respondent nos. 1 and 2 are claiming their right is not accepted, the rights of Bhukhali, which accrued to him on the basis of the auction sale, have to pass on Rajpati who is the natural legal heir and in no case, rights of Bhukhali can pass on to the respondent Nos. 1 and 2.

11. It is contended by Ms. Sangeeta Bharti, the learned counsel for the appellants that the learned Revisional Authority failed to take into consideration that the appellants were in continuous possession over the land in question even prior to 1934. It is further

contended that the Revisional Authority exceeded its jurisdiction under Section 48 of the U.P. Consolidation of Holdings Act, 1953 (in short 'The Act') in entertaining additional documents for the first time without any explanation as to why these documents were not produced by them earlier in the proceedings. Further, the certified copies produced by the respondent Nos. 1 and 2 are only secondary evidence and have to be proved before they could be considered by the Revisional Authority, particularly, when the concerned documents were not produced before the Original and Appellate Authorities.

12. The learned counsel on behalf of the respondents, on the other hand, contends that the Revisional Authority rightly placed reliance upon the document of auction sale and came to the conclusion that the title of the land vests on Bhukhali and therefore the same are conferred upon his legal representatives. Hence, the finding of fact recorded by the Revisional

Authority has been rightly concurred by the High Court in the impugned judgment.

13. Based on the rival factual and legal contentions raised by the parties, the following points would arise for our consideration :

1. Whether the Revisional Authority exceeded its jurisdiction under Section 48 of the Uttar Pradesh Consolidation of Holdings Act, 1953 in entertaining additional document at revision stage?

2. Whether the High Court was correct in concurring with the findings of the Revisional Authority?

3. What order the appellants are entitled to?

Answer to Point No. 1

14. Section 48 of the Act is *pari materia* to Section 115 of the Code of Civil Procedure, 1908. It is pertinent to mention at this point the decision of

this Court given in the case of ***Sher Singh v. Joint Director of Consolidation & Ors.***¹ The relevant paragraphs read as under:

"4. The principal question that falls for our determination in this case is whether in passing the impugned order, the Joint Director of Consolidation, exceeded the limits of the jurisdiction conferred on him under Section 48 of the 1953 Act. For a proper decision of this question, it is necessary to advert to Section 48 of the 1953 Act as it stood on the relevant date before its amendment by Act VIII of 1963:

"Section 48 of the U.P. Consolidation of Holdings Act.— The Director of Consolidation may call for the record of any case if the Officer (other than the Arbitrator) by whom the case was decided appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit."

¹ (1978) 3 SCC 172

5. As the above section is *pari materia* with Section 115 of the Code of Civil Procedure, it will be profitable to ascertain the scope of the revisional jurisdiction of the High Court. It is now well-settled that the revisional jurisdiction of the High Court is confined to cases of illegal or irregular exercise or non-exercise or illegal assumption of the jurisdiction by the subordinate courts. If a subordinate court is found to possess the jurisdiction to decide a matter, it cannot be said to exercise it illegally or with material irregularity even if it decides the matter wrongly. In other words, it is not open to the High Court while exercising its jurisdiction under Section 115 of the Code of Civil Procedure to correct errors of fact howsoever gross or even errors of law unless the errors have relation to the jurisdiction of the court to try the dispute itself."

(Emphasis laid by this Court)

15. According to the legal principle laid down by this Court in the case mentioned above, the power of the Revisional Authority under Section 48 of the Act only extends to ascertaining whether the subordinate courts have exceeded their jurisdiction in coming to the conclusion. Therefore, if the Original and Appellate

Authorities are within their jurisdiction, the Revisional Authority cannot exceed its jurisdiction to come to a contrary conclusion by admitting new facts either in the form of documents or otherwise, to come to the conclusion. Therefore, we answer point no. 1 in favour of the appellants by holding that the Revisional Authority exceeded its jurisdiction under Section 48 of the Act by admitting documents at revision stage and altering the decision of the subordinate courts.

Answer to Point No. 2

16. Having said that the Revisional Authority exceeded its jurisdiction under Section 48 of the Act, we have to hold that the High Court erred in concurring with the findings of the Revisional Authority by failing to observe that the Revisional Authority has exceeded its jurisdiction conferred upon it under the Act. The High Court further erred by recording its reason by interpreting the facts of the case. The appellants had

moved the High Court by way of a Writ Petition. Therefore, it is pertinent for us to mention the findings of this Court in the case of **Tata Cellular v. Union of India**² which has been reiterated in the case of **Heinz India Private Ltd. & Anr. v. State of Uttar Pradesh & Ors.**³ This Court, in **Tata Cellular** case made the following observation:

"77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject

² (1994) 6 SCC 651

³ (2012) 5 SCC 443

to control by judicial review can be classified as under :

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety."

Therefore, the High Court has failed to observe that the Revisional Authority exceeded its jurisdiction under Section 48 of the Act and it has further erred in concurring with the decision of the Revisional Authority on factual grounds which is beyond the jurisdiction of it.

Answer to Point No. 3

17. Having answered point nos. 1 and 2 in favour of the appellants, it is now pertinent to mention as to what relief the appellants are entitled to.

On the basis of the factual and legal material evidence produced on record, we uphold the decision of the Appellate Authority rendered by the Assistant

Settlement Officer and set aside the Orders of both the Revisional Authority and the High Court. The appeal is allowed accordingly, but without costs.

.....J.
[GYAN SUDHA MISRA]

.....J.
[V. GOPALA GOWDA]

New Delhi,
April 4, 2014

JUDGMENT