REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATGE JURISDICTION

CIVIL APPEAL NO.1078 OF 2009
(Arising out of SLP (C) No.14015 of 2006)

Madan Mohan Mishra … Appellant

Versus

Chandrika Pandey (Dead) by LRs. … Respondents

J U D G M E N T

S.B. Sinha, J.

1. Leave granted.

2. Whether jurisdiction of the Civil Court is barred in respect of grant of a relief for setting aside a deed of gift in terms of Section 49 of the U.P. Consolidation of Holdings Act, 1953 (for short, 'the 1953 Act') is in question in this appeal. It arises out of a judgment and order dated 26.5.2005 passed in CMWP No.1920 of 1999 passed by a learned Single Judge of the High Court of Judicature at Allahabad.

3. The basic fact of the matter is not in dispute.

One Ram Baran Tewari was the owner of the property. He died on 12.7.1927 leaving behind two sons, Devki Nandan and Lalta Tewari as also a daughter Bishundai. Lalta Tewari died on 4.3.1927 leaving behind his widow, Bhagwanta Kunwar. Bhagwanta Kunwar died on 10.8.1949. Devki Nandan died on 3.12.1952 leaving behind a daughter Parma Devi. Murli Dhar Mishra, Madan Mohan Mishra and Akhilesh Mishra are her sons. Bishundai died leaving behind her daughter Ghoora Devi. Respondent Chandrika Pandey is her husband.

4. Bhagwanta Kunwar filed a suit for partition in the year 1949 in terms of the provisions of U.P. Tenancy Act claiming half share in the properties of the said Ram Baran Tiwari. The said suit was decreed by a judgment and order dated 17.7.1954.

5. Questioning the legality or validity of the said decree, Madan Mohan Mishra, appellant herein, filed a suit for cancellation of the said decree. During the pendency of the said suit, Bhagwanta Kunwar executed a deed of gift in favour of the respondent herein whereafter the plaint was amended, inter alia, claiming for a decree for setting aside the said deed of gift.

Indisputably, in the year 1972-73, consolidation proceedings started in the village in terms of Section 5 of the 1953 Act. The suit was, in view thereof, held to have abated. It is stated that the said order has attained finality. It is furthermore stated that no objection was filed by the appellant herein in the said consolidation proceedings. Akhilesh Mishra is stated to have filed an objection before the Consolidation Officer which was rejected on 31.7.1979. An appeal preferred thereagainst was dismissed on 5.8.1983. A Revision Petition was filed thereagainst which was dismissed on 11.4.2002. It is stated that the writ petition has been filed thereagainst before the Allahabad High Court which is said to have been pending.

6. Madan Mohan Mishra again filed a suit for a decree for injunction and in the alternative for recovery of possession in the year 1994 which was marked as suit No.510 of 1994. The learned Trial Judge held the said suit to be barred under Section 49 of the 1953 Act. However, on an appeal preferred thereagainst, the First Appellate Court reversed the said judgment and order dated 14.12.1998.

By reason of the impugned judgment, the High Court has allowed the writ petition filed by the respondents herein.

7. Mr. S.P. Singh, learned senior counsel appearing on behalf of the appellant, would contend that keeping in view the fact that the purported

deed of gift executed by Bhagwant Kunwar not only consisted of agricultural properties but also homestead properties, a suit for setting aside the said deed as invalid is not barred under the provisions of the 1953 Act.

8. Our attention in this behalf has been drawn to the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950 and, in particular, the interpretation of the term 'land' as contained in Section 3(14) thereof as also Section 143 to contend that by no stretch of imagination, non-agricultural land could be brought within the purview of the provisions of the said Act which was enacted only to consolidate the agricultural holdings. The learned counsel would contend that jurisdiction of a Civil Court for passing a decree for cancellation of a deed of gift is not barred as the same is void and not voidable. It was furthermore urged that the jurisdiction of a Civil Court in such matters should be upheld in order to avoid multiplicity of proceedings. It was submitted that the High Court should have determined the issue and should not have allowed the writ petition by a cryptic order.

9. Mr. S.R. Singh, learned senior counsel appearing on behalf of the respondent, on the other hand, would contend that the orders dated 17.7.1973 passed in Civil Suit No.550 of 1969 having attained finality, the impugned judgment warrants no interference.

10. Appellant before us was plaintiff in both the suits. In the list of dates, Bhagwant Kunwar, wife of Lalta Tiwari is said to have expired on 10.10.1949 which is not correct as she was impleaded as a party in suit No.550 of 1969 as the first defendant. She, thus, must have expired after 1969. The said suit was in respect of certain 'Araji' properties which are agricultural in nature. In paragraph 6 of the plaint, it has been accepted that a final decree dated 17.7.1954 was passed in the aforementioned suit No.12 of 1949 in respect of the 'Araji' mentioned in Item No.(3) which was allotted in her favour and Item No.(b) was allotted in the share of the plaintiff and the defendant No.3.

One of the grounds taken in the plaint was that the first defendant therein obtained final decree in respect of good and fertile lands in more than what could be allotted in her share. Such a statement was evidently made as the lands in suit were agricultural lands.

11. The reliefs prayed for in the said suit are as under :

> "a. That this Hon'ble Court may be pleased to pass a decree of declaration declaring that the decree dated 6.6.51 and 17.7.54 passed in the Suit No.12 under Section 49/59 of Act No.17 of 1939; Most. Bhagwanta Versus Murlidhar & Ors. passed by the Court of J.O. Sahab, Ghosi, District Azamgarh, and the Hibbanama dated 9.1.70 executed by Most. Bhagwanta Kunwar in

favour of Chandrika Pandey, Defendant No.2 and in against of the plaintiff and the defendant No.1 is null and void.

b. If due to any legal reason due to the defendants it is proved in the court that the plaintiff and the defendant No.3 has been dispossessed from the Araji Property mentioned in Item No. (a) then this Hon'ble Court may be pleased to pass a decree of possession over the Araji property mentioned in item (a) in favour of the plaintiff and the defendant No.3 and against the defendants 1st party.

c. Cost of the litigation may be granted in favour of the defendants 1st party."

The Schedule appended to the said suit as also in averments made in the plaint do not suggest that the same contained any homestead or non-agricultural property.

12. The order dated 17.7.1973 directing abatement of the said suit has attained finality. Appellant did not question the correctness or otherwise of the said order. He also did not file any objection in the consolidation proceedings contending that the same involved non-agricultural lands. It is in the aforementioned premise, we may consider the nature of the suit filed by the plaintiff in the year 1994 being suit No.510 of 1994, paragraph 2 whereof reads as under :

> "That the plaintiff is the owner in possession of the Plot Nos.15/1.260, 16/289, 82/600, 140/745, 274/67, 488/117, 489/68, 423,55, 439/489, 323/122, 14/30, 46/31, 148/325, 260/54, 491/115, 835/398 as co-khatedar and successor since prior to the zamindari abolition and are cultivating the land."

13. It is not in dispute that the term 'co-khatedar' means 'co-tenure holder'. It is not only that for the first time in the plaint an averment was made that deed of gift, inter alia, contained some house properties, further averments made in the said plaint revealed that the name of the respondent herein had been entered in the records of the consolidation proceedings in respect of Plot No.153/08, 185/148, 504, 1.360, 611/304.

The reliefs prayed for therein are as under :

> "(a) That this Hon'ble Court may graciously be pleased to pass a decree of permanent injunction in favour of the plaintiff and against the defendant pertaining to the suit property. The defendant may be ordered to not transfer the Araji No.153/87, 185/148, 504, 1.360, 611/304 which is in possession of the plaintiff."

We have noticed hereinbefore that the Araji lands are agricultural lands.

14. Suit No.510/94 covers the same property which was the subject matter of Suit No.550 of 1969. As noticed hereinbefore, the said suit has abated by an order dated 17.7.1973. Another suit by the appellant, therefore, would not only be barred by res judicata but also under Order II Rule 2 of the Code of Civil Procedure. Furthermore, appellant had not filed any objection in the consolidation proceedings, which again go to show that it was accepted that the lands in question were agricultural lands.

15. Section 49 of the Act reads as under:

> "**49. Bar to Civil Court jurisdiction**— Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land by the lying in an area, for which a notification has been issued under Sub-section (2) or Section 4, or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act :
>
> Provided that nothing in this section shall preclude that Assistant Collector from initiating proceedings under Section 122-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in respect of any land, possession over which has been delivered or deemed to be

> delivered to a Gaon Sabha under or in accordance with the provisions of this Act."

16. Jurisdiction of the Civil Court not only in respect of the matters which are specified therein but also the matters which could and ought to have been the subject matter of the proceedings under the said Act is barred.

The words of the said section are absolutely clear and unambiguous.

We have, however, no doubt in our mind that the distinction between the void and voidable document as has been noticed by this Court in Gorakh Nath Dube v. Hari Narain Singh & Ors. [(1973) 2 SCC 535] cannot be lost sight of. {See Prem Singh & Ors. v. Birbal & Ors. [(2006) 5 SCC 353]}. But for the purpose of attracting the said distinction, clear averments were required to be made in the plaint. We have noticed hereinbefore the averments made in the suit.

19. Mr. S.P. Singh, relied upon a decision of this Court in Smt. Dularia Devi v. Janardan Singh & Ors. [AIR 1990 SC 1173], wherein this Court held that when a representation has been made in regard to the character of a document, the deed would be totally void. We are not concerned with such a question before us.

In Audhar & Ors. v. Chandrapati & Ors. [(2003) 11 SCC 458], a Division Bench of this Court upon noticing Section 49 of the 1953 Act, opined that Section 49 of the 1953 confers exclusive jurisdiction under the Act and the jurisdiction of the Civil Court is barred, stating :

> "The Authorities under the Consolidation Act of 1953 could justifiably conclude their proceedings under that Act despite pendency of second appeal against the order of the first appellate court declaring the proceedings in the civil suit to have abated.
>
> We find that the main issue on fact is concluded against the appellants. The lands in the *khatas* in question are found to be tenancy lands of the classes "*bhumidhari*" and "*Sirdari*". They are not *sir* or *khudkasht* lands. Under the special mode of succession provided under the tenancy law widow Akashi inherited absolute title to 1/4th share of her husband and she could execute a valid gift deed in favour of her daughters.
>
> The present legal position as it stands during pendency of the second appeal before the High Court is that the civil court's decree declaring the gift deed as invalid has not attained finality because during pendency of proceedings under the Consolidation Act of 1953 had commenced and the jurisdiction of the civil court stood ousted. We, therefore, find no merit in any of the contentions advanced on behalf of the appellants."

Yet again in Narender Singh & Ors. v. Jai Bhagwan & Ors. [(2005) 9 SCC 157], this Court, upon noticing GND (supra), stated the law, thus :

"The learned counsel for the respondents is right in his reply that the lands being exclusively recorded in the name of the father, the sons who claim joint ownership in the lands could and ought to have approached the authorities under the Act for getting them jointly recorded in the revenue papers. Such proceedings for recording them as joint owners having not been initiated under the Act of 1953, the High Court was right in invoking bar against such plea in the suit in accordance with Section 49 of the Act. We find that the contention advanced and accepted by the High Court gets full support from the following observations of this Court in the case of *Sita Ram*[5] :

> '13. In the instant case Respondent 1 was claiming an interest in the land lying in the area covered by notification issued under Section 4(2) on the basis that he is the son of Chhota, brother of Nanha and that the lands were recorded in the name of Nanha in a representative capacity on behalf of himself and his other brothers. This claim which fell within the ambit of Section 5(2) had to be adjudicated by the consolidation authorities. Since it was a matter falling within the scope of adjudicatory functions assigned to the consolidation authorities under the Act the jurisdiction of the civil court to entertain the suit in respect of the said matter was expressly barred by Section 49 of the Act and the suit of the appellant was rightly dismissed on that ground.'

The argument that revenue entry in the name of the father should have been treated as in representative capacity for the sons is misleading. Whether the father was *karta* and manager of the family and as such could be recorded in representative capacity for all co-owners in the family was also a question of title which fell

> within exclusive jurisdiction of the authorities under the Act."

The jurisdiction of the Civil Court, therefore, is clearly barred as it is evident that subject matter of both the suits is agricultural lands only. It is not, therefore, necessary for us to go into the question with regard to the effect of a prayer made in a suit for setting aside the deed of gift in terms of Section 31 of the Specific Relief Act, 1963 or otherwise.

20. In view of the aforementioned findings, it is not necessary for us to enter into other contentions raised by Mr. S.N. Singh.

21. The appeal is dismissed with costs. Counsel's fee assessed at Rs.10,000/- (Rupees ten thousand only).

...……J.
[S.B. Sinha]

...……J.
[Dr. Mukundakam Sharma]

New Delhi;
February 17, 2009