

ManuddIn Vs. the Deputy Director of Consolidation, Pratapgarh and ors.

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Court : Allahabad

Decided On : Mar-18-1976

Reported in : AIR1976All508

Judge : R.M. Sahai, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96 - Order 1, Rule 3; Tenancy Law; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1961 - Sections 176

Appeal No. : Writ Petn. No. 166 of 1972

Appellant : Manuddin

Respondent : The Deputy Director of Consolidation, Pratapgarh and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Bashir Ahmad, Adv. and ;G.P. Dixit, S.C.

Judgement :

ORDER

R.M. Sahai, J.

1. The fate of the petition hinges on a compromise entered between the two brothers opposite party No. 5 Barkat Ali and husband of opposite party No. 7,

Amjad Ali since deceased. On 25th October, 1966 Amjad Ali deposited the requisite amount for acquisition of Bhumidhari Sanad and on the same day he executed a registered sale deed in favour of the petitioner. The application for grant of Sanad was contested by opposite party No. 5 on the ground that he was in possession and was co-sirdar of the land in dispute and a suit under Section 180, U. P. Tenancy Act was filed by Amjad Ali and it was dismissed. The Assistant Collector however found that in 1959 a suit for partition under Section 176 of the U. P. Zamindari Abolition and Land Reforms Act I of 1961 was filed by Amjad Ali against opposite party No. 5 which was decreed and a preliminary decree was prepared. He therefore passed an order dated 13-10-1967 granting Sanad. The effect of this order was that Amjad Ali became Bhumidhar from the date of deposit of ten times of rent and the petitioner consequently became co-bhumidhar along with Barkat Ali. The opposite party No. 5 preferred an appeal against the order dated 13th October, 1967, without impleading the petitioner as party and the following order was passed in a compromise arrived at between the two brothers:--

'Amjad AH gave an application that Sanad be prepared in his favour for 1/2 share. His application was allowed. Barkat Ali filed this appeal. In the appeal both the parties have filed compromise. The compromise was verified. As in the compromise the respondent had given his entire share to the appellant. So I myself read over the compromise to both the appellant and respondent and they verified and the respondent admitted that now he does not require the Sanad as he has given his share to the appellant. This appeal is therefore to be decided in terms of the compromise.

ORDER

The appeal is allowed. The judgment and decree of the trial court are hereby set aside and the application for obtaining Sanad Bhumidhari is rejected. The compromise shall form part of the decree.'

The petitioner gave an application to get the compromise set aside but it was rejected on 3-12-1969 against which the petitioner filed an appeal in the Board of Revenue. During the pendency of the appeal Notification under Section 4 of the Consolidation of Holdings Act was issued. The petitioner who was running from

court to court to get his grievance vindicated filed an objection before the Consolidation Officer claiming to be co-tenant with opposite party No. 5 which was rejected by the Consolidation Officer on the ground that as his predecessor in interest Amjad Ali had compromised with opposite party No. 5 it was binding on him and Barkat became sole sirdar. The order was confirmed in appeal and revision.

2. The basis for non-suiting the petitioner who entered into a bona fide transaction is subsequent action of vendor who suddenly became more attached with his brother with whom he had been fighting tooth and nail and gave a statement that he does not want Bhumidhari Sanad now. Having realised the full value of land his morality gave way in favour of the brotherly affection. Compromise to have a legal sanctity must be a lawful adjustment between the parties. Necessary party is a person who has any interest in the subject-matter involved. Amjad Ali having transferred his share by a sale deed which has never been challenged ceased to have any interest. He had neither any right nor title left which he could validly pass on to his brother. His statement that he does not want the Sanad as he has given his share to his brother was an attempt in futility. He was trying to give something which he no more had. Moreover no order could be passed by the Additional Commissioner to the prejudice of the petitioner. He was the only necessary party in the appeal. The opposite party and the predecessor in interest of the petitioner entered into a transaction behind his back. It has not been stated anywhere that opposite party No. 5 had no knowledge that the land in dispute had been transferred by his brother in favour of the petitioner. The compromise was therefore neither equitable nor lawful. It did not bind the petitioner and the consolidation court in accepting the compromise have committed a manifest error of law.

3. For the reasons stated above the orders passed by the Deputy Director Consolidation, the Settlement Officer Consolidation and the Consolidation Officer are quashed. The petitioner shall be entitled to his costs.