

ibrahim Vs. the Deputy Director of Consolidation, Basti and ors.

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Court : Allahabad

Decided On : Aug-28-1972

Reported in : AIR1973All378

Judge : H.N. Seth, J.

Acts : [Limitation Act, 1963](#) - Sections 5; Uttar Pradesh Consolidation of Holdings Act, 1954 - Sections 9 and 11; [Evidence Act, 1872](#) - Sections 115

Appeal No. : Civil Misc. Writ No. 4565 of 1970

Appellant : ibrahim

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

Advocate for Def. : M.P. Singh, Standing Counsel

Advocate for Pet/Ap. : S.C. Khare and ;S.N. Sinha, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

H.N. Seth, J.

1. This is a petition under Article 226 of the Constitution. Petitioner Ibrahim prays for a writ in the nature of certiorari for quashing the order dated 3rd of September,

1970, passed by the Deputy Director of Consolidation.

2. The dispute between the parties concerns Plot No. 326 of village Bidiyani. In the year 1953 this plot was entered in the names of Ashik Ali, Haitul, Saifullah Taluqdar and Ibrahim. Ashik Ali and others and Haitul for himself and as guardian of Ibrahim executed a sale deed on 1st of August, 1953 in favour of respondent No. 4 Mahabir Prasad for a consideration of Rupees 7,000/-. On 24th January, 1965 an order was made directing mutation of the name of Mahavir Prasad. This order was given effect to in the Khatauni for the year 1362 F. The mother of Ibrahim as his guardian filed suit No. 752 of 1954 in the court of Munsif Khalilabad challenging the sale deed executed by Haitul transferring the the share of the minor in the property. Subsequently she withdrew the suit on 29th of May, 1967. One Asgar claiming to be maternal uncle of Ibrahim filed suit No. 356 of 1958 as the next friend of Ibrahim in the Court of Munsif Khalilabad, claiming cancellation of the said deed dated 3rd of August, 1953 executed in favour of Mahavir Prasad. He sought a declaration that Ibrahim was a co-bhumidhar with Mahavir Prasad.

While this suit was pending petitioner Ibrahim made an application dated 6th of December, 1965 seeking permission of the court to permit him to prosecute the suit himself as he had become major. This request was allowed by the court on 23rd of February, 1960, on which date Ibrahim moved another application stating that his grandfather Haitul had executed a sale deed dated 1st of August, 1953 as his guardian and had realised the sale proceeds in respect of his share in the property. One Sant Lal misled his mother into filing suit No. 752 of 1954, but on correct facts coming to her knowledge she withdrew the same. Again Sant Lal got the present suit filed through one Asgar which is not in his interest. As a matter of fact he was taking steps to recover his share of sale proceeds from his uncle Zaffullah, in suit No. 8 of 1962.

It was more advantageous for him to obtain his share in the sale proceeds rather than in getting the sale deed cancelled. He has become a major and does not want to fight a case with Mahabir Prasad who is willing to give up the costs of litigation. He, therefore prayed that the suit be dismissed and the parties be directed to bear their own costs. A certified copy of the application has been

produced before me, it shows that the application was signed by the petitioner Ibrahim, his counsel Chet Ram Pandey and the counsel for Mahabir Prasad. In view of this application, suit No. 326 of 1958 was dismissed on 23rd of February, 1966.

3. Later on suit No. 8 of 1962 filed by Ibrahim for recovery of his share of the sale proceeds from his uncle, was also dismissed. Ibrahim then applied for permission to file an appeal in forma pauperis which was also rejected. He then filed a revision against the order dismissing the application for permission to file an appeal in forma pauperis. At the time when this petition was filed, aforesaid revision application was pending before the High Court.

4. It appears that in the meantime a Notification under Section 4 of the Consolidation of Holdings Act had been issued on the 30th December, 1963 and in the basic year, the name of Mahavir Prasad was recorded on the plot in dispute. No steps were taken on behalf of Ibrahim for claiming co-bhumidhari rights over the plot in dispute till 25th of November, 1967 and 26th December, 1967 when he filed applications before the Consolidation Officer claiming to be its co-tenant along with Mahavir Prasad. He also filed an affidavit dated 26th of December, 1967 stating that he was a minor when the village came under consolidation. During this period Civil proceedings were going on and that he has become major only about four to six months back. Accordingly, aforesaid objection was being filed after decision in civil suit.

This affidavit, obviously was filed with a view to explain the inordinate delay in filing objection under Section 9 of the U. P. Consolidation of Holdings Act. Claim made by Ibrahim was contested by Mahavir Prasad who pleaded that the objection filed by Ibrahim was belated. He further claimed that even if the sale deed executed in his favour was held to be void, he had been in adverse possession over the plot in dispute ever since the year 1963 and as such he had acquired rights over Ibrahim's share in the plot in dispute as well.

5. In view of the fact that Ibrahim came of age recently, the Consolidation Officer held that he was entitled to the benefit of Section 5 of the Limitation Act. He came to the conclusion that the sale deed executed by Haitul, transferring Ibrahim's

share in the property was void and, therefore, he was entitled to be recorded as a co-Bhumidhar along with Mahavir Prasad. The Settlement Officer Consolidation by his order dated 25th March, 1969 directed the Consolidation Officer to remit his finding on the following three issues framed by him:

1. Whether the objection of Ibrahim before the Consolidation Authorities is liable to be rejected on the ground of limitation?

2. Whether the compromise dated 23rd February, 1966 is genuine and valid and if so, its effect? and

3. What is the date of birth of Ibrahim? exact or probable?

6. The Consolidation Officer came to the conclusion that although Ibrahim became major in the year 1965, he filed his objections before the Consolidation Court only in the year 1967. The objections were accordingly belated. But, as the plot in dispute had not been included in consolidation scheme, the claim related to a valuable right. Moreover, Ibrahim had a prima facie case and the sale deed executed on his behalf had been held to be void. In the circumstances, Ibrahim had no other option but to fight out this litigation and that in the circumstances it is a fit case in which the objections tiled by Ibrahim should be considered to be within limitation. On the question whether the compromise dated 23rd February, 1966 was valid or not, the Consolidation Officer reported that it did not appear to be genuine.

7. When the matter came up before the Settlement Officer Consolidation, it was urged on behalf of Mahavir Prasad that the Consolidation Officer was not justified in condoning 4 years delay in presenting the objections. The Settlement Officer held that the Act did not provide for an appeal against an order passed under Section 5 of the Limitation Act. It was, therefore not open to him to consider that question in appeal and to interfere with the order passed by the Consolidation Officer, condoning the delay in filing the objection. He also found the application dated 23rd of February, 1966 moved before the Munsif to be suspicious and did not rely upon it. On merits, he held that Haitul was not authorised to sell the share belonging to Ibrahim. In the result he upheld the order passed by the

Consolidation Officer holding Ibrahim to be a co-tenant with Mahavir Prasad.

8. Mahavir Prasad went up in revision before the Deputy Director of Consolidation and urged that in the circumstances of the case the Consolidation Officer had no jurisdiction to condone the delay and to entertain belated objections filed by Ibrahim. The Deputy Director held that although Notification under Section 4 of the U. P. Consolidation of Holdings Act was issued in 1963, Ibrahim being minor could not protect his rights. Circumstances of the case indicate that a number of self appointed guardians filed civil suits on his behalf and they even went up to the High Court for declaration of their right to act as Ibrahim's guardian. According to him the Settlement Officer was justified in observing that in case Mahavir Prasad had any grievance against the order of the Consolidation Officer condoning the delay in filing the objections he should have gone up in revision at that state and that it was not open to the appellate Court to deal with this controversy. Accordingly he also condoned the delay in filing the objections, by Ibrahim.

9. The Deputy Director however came to the conclusion that Ibrahim had become major in the year 1965. He was definitely major when on 23rd February, 1966 he filed the compromise in suit No. 326 of 1958 and got the same dismissed. Learned counsel for Ibrahim conceded before him that he was major on 23rd February 1966, There was nothing suspicious in the application dated 23rd of February 1966 moved by Ibrahim. It had been wrongly disbelieved by the Settlement Officer when Ibrahim filed this application on 23rd of February, 1966 the Civil Court had no option but to dismiss the suit and to pass a decree in accordance with the prayer made therein. That agreement is binding on the parties and so long as the decree passed on its basis is not set aside, it would operate as res judicata and the claim made by Ibrahim cannot be sustained. In the result the revision filed by Mahavir Prasad was allowed and the objection filed by Ibrahim was dismissed.

10. Ibrahim has now come up before this Court. It is urged that the Consolidation proceedings in the village started, in the year 1963. Accordingly suit No. 326 of 1958, abated as provided in Section 5 of the U. P. Consolidation of Holdings Act. The Munsif, therefore had no jurisdiction to pass any decree in the suit. The Deputy Director of Consolidation, therefore clearly erred in holding that the decree

dated 23rd February 1966 passed in that suit operated as res judicata. Moreover as held by the Supreme Court in the case of Pulvarthi Venkata Subba Rao v. Valluri Jagannadha Rao (AIR 1967 SC 591), a compromise decree cannot operate as res judicata. It is evident that the sale deed executed by Haitul transferring Ibrahim's share was invalid. The Deputy Director of Consolidation, therefore committed an apparent error in setting aside the order passed by the Consolidation Officer and in rejecting the claim of Ibrahim that he was a co-Bhumidhar of the plot in dispute,

11. Learned counsel appearing for Mahavir Prasad justified the order passed by the Deputy Director on the ground that even if the consolidation of holdings operation commenced in the village in the year 1963, the order and decree dated 23rd February 1966 is not nullity as before passing that order no one brought it to the notice of the court that the village had come under consolidation operation. In support of this argument he placed reliance on the case of Tribeni v. State of U. P. (1968 All LJ 570) in which it has been held that a decree passed in ignorance of notification under Section 4 of the U. P. Consolidation of Holdings Act is not nullity and it has to be looked into by the Consolidation authorities. Moreover the conduct of the petitioner in entering into an agreement with Mahavir Prasad and making him forgo his cost while getting suit dismissed, would operate as estoppel debarring him from reagitating the controversy before the Consolidation Officer.

Anyhow as the application dated 23rd of February 1966 moved by Ibrahim clearly shows that he was not interested in the land in dispute as the same was absolutely useless for his purposes he was interested only in recovering his share of sale proceeds obtained by Haitul. It appears that the present proceedings have been started as Ibrahim had a feeling that he was likely to loose both the property and his share in its sale proceeds. Learned counsel for Mahavir Prasad, accordingly made an offer before me that he is willing to pay 1/6th part of the sale proceeds to Ibrahim over again so that his grievance if any, may disappear. Learned counsel for Ibrahim declined to accept the offer made by learned counsel for Mahavir Prasad.

12. Learned counsel appearing for Mahavir Prasad further argued that Ibrahim had not made out any case for condoning the delay in filing the objection under Section 9 of the Consolidation of Holdings Act. The Consolidation Authorities accordingly had no jurisdiction to entertain those objections. The ultimate order passed by the Deputy Director of Consolidation, therefore does not deserve to be interfered with.

13. It is true that normally this Court, while exercising its power under Article 226 of the Constitution, does not interfere with an order condoning delay in making an application or filing an objection.

14. An objection under Section 9 of the Consolidation of Holdings Act, has to be filed within 21 days of the receipt of notice or publication of correct records under Sub-section (1) of that section. Section 53-B provides that provisions of Section 5 of the Indian Limitation Act, 1908 shall apply to the application, appeals, revisions and other proceedings taken under the Act or the Rules framed thereunder. Accordingly the Consolidation Officer could entertain the objection under Section 9 filed beyond time only if Ibrahim could satisfy him that he had sufficient cause for not filing it within the prescribed period. It is now well settled that even where a party is able to show that it had sufficient cause for not making the application within time still it is discretionary with the court whether to extend the period of limitation or not. This discretion has to be exercised not in arbitrary, vague or fanciful manner. It has to be exercised on certain well recognised judicial principles. The fundamental rule which has been universally accepted as rule guiding courts discretion in this respect is to see whether the party chiming indulgence has been reasonably diligent in prosecuting his application, and that he has acted in a bona fide manner.

It is therefore evident that while considering the question whether Ibrahim was entitled to the benefit of Section 5 of the Limitation Act, the Consolidation authority had to consider (1) whether there was sufficient cause for Ibrahim not to prefer the claim under Section 9 of the Consolidation of Holdings Act within the period of limitation prescribed therein and (2) whether Ibrahim was reasonably diligent in presenting his claim and that in the circumstances of the case his action was bona fide.

15. In order to claim the benefit of Section 5 of the Limitation Act, in respect of the objections filed by him, Ibrahim swore an affidavit dated 25th of December, 1957. All that he stated in this affidavit was that during the proceedings under the Consolidation of Holdings Act he was a minor. He became major only about four to six months back. As the subject-matter of controversy was sub judice in the Civil Court the objection was being filed after decision in the Civil Court. It appears that petitioner's case was that he could not file an objection under Section 9 of the Act within time by reason of his minority and as the matter in controversy was already pending decision before civil Courts. The Deputy Director has found that the petitioner became major in the year 1965. It is therefore obvious that his case that he acquired majority only four to six months before moving the application has not been accepted.

It may be that the petitioner was unable to file an objection under Section 9 of the Consolidation of Holdings Act in the year 1963, within the prescribed time as at that time he was a minor, but this fact alone was not sufficient to grant him the benefit of Section 5 of the Limitation Act. He had to further show that he had been reasonably diligent in preferring the claim and in prosecuting the same. He had also to satisfy the authorities concerned that this action in not preferring the claim earlier was bona fide. On the finding that the petitioner became a major in the year 1965, he had to explain as to why he filed the objection under Section 9 only in December, 1967, more than two years after his becoming major. Instead of giving a proper explanation for this, the petitioner made a wrong statement to the affidavit claiming that he became major only four to six months earlier. In the circumstances it is obvious that the petitioner did not place any material before the consolidation authorities to show that after attaining majority he had been diligent in filing the objections.

Petitioner's claim that he is entitled to the benefit of Section 5 of the Limitation Act as certain civil proceedings were pending and that the claim could properly be made only after those proceedings were over is also not sustainable.' He did not state the particulars of those civil proceedings in his affidavit. He also did not care to explain how because of the pendency of those civil proceeding he was either prevented or misled in not preferring the claim under Section 9 before December,

1967. Even the date on which those civil proceedings concluded was not mentioned. Further petitioners conduct in entering into an agreement with Mahavir Prasad and persuading him to forgo his cost in suit No. 326 of 1958, as disclosed by the application dated 23rd February, 1966 shows that he did not file these objections earlier as he had settled his difference with Mahavir Prasad. It was after about two years of this settlement that he filed the objection under Section 9 of the Consolidation of Holdings Act. Instead of explaining as to what led him to change his mind and file an objection under Section 9 of the Act after about two years, the petitioner came out with a wrong case that the application dated 23rd February, 1966 was not signed by him. This indicates that his conduct in filing the objection in December, 1967 was not bona fide.

16. It is rather surprising that the consolidation authorities have decided to condone the delay in making the objections under Section 9, without applying the well established principle for dealing with applications under Section 5 of the Limitation Act. So far as the Consolidation Officer is concerned, he expressed the view that the objections filed by the petitioner were belated. He recommended that the delay in filing the objection should be condoned merely because the petitioner had a prima facie case and as it has been held in the civil proceedings that the sale deed executed by Haitul was void. He did not go into the question whether the action of Ibrahim in prosecuting his objections under Section 9 was bona fide and whether he had been reasonably diligent in filing the same.

The Settlement Officer did not go into the question whether the delay in making objections deserve to be condoned or not as he thought that he could not look into this matter in appeal. There is thus no finding by the Settlement Officer Consolidation that the petitioner was diligent in preferring the objections or that his action is bona fide. In my opinion it is open to an appellate Court to entertain an objection about the bar of limitation in presenting objection under Section 9 and to decide whether the Consolidation Officer had applied his mind to the explanation for the delay and whether he had exercised his discretion in condoning the delay in an arbitrary manner or upon a ground which is not material. The Settlement Officer Consolidation is clearly in error when he states that while exercising appellate power it is not open for him to go into the question whether the delay had

been rightly condoned by the Consolidation Officer.

17. Similarly the Deputy Director of Consolidation seems to condone the delay merely on the ground that the petitioner was a minor when Notification under Section 4 of the Consolidation of Holdings Act was issued and that a number of civil suits were pending. He also did not apply his mind to the question whether the action of the petitioner in presenting the objections after about two years of sitting the matter with Mahavir could be said to be a bona fide, find diligent action. He wrongly thought that once the discretion had been exercised by the Consolidation Officer the same could not be interfered with by the appellate Court and the only course open to the objectors was to take up the matter in a revision.

Accordingly I find that there was no material on the record on the basis of which the delay in filing the objections under Section 9 of the Consolidation of Holdings Act could be condoned and that none of the Consolidation Authorities applied their minds to relevant aspects in this connection. In my opinion the ultimate order passed by the Deputy Director of Consolidation that the objection filed by the petitioner deserved to be rejected is fully justified as the petitioner did not offer any explanation for the inordinate delay in filing the same.

18. It is true that in AIR 1967 SC 591, it has been held that a decree obtained on a compromise does not operate as *res judicata* and the observations made by the Deputy Director of Consolidation to that effect are not correct. However, it has been held in *Sailendra Narayan Bhanja Deo v. The State of Orissa*, AIR 1956 SC 346 that a decree obtained by consent can operate as estoppel by conduct. In this case we find that the petitioner entered into an agreement with Mahavir Prasad and persuaded him to forgo the cost of the suit. Even if it be taken that the order passed by the Munsif dismissing the suit on 23rd February, 1966 does not amount to a decree there is no escape from the position that by making a representation that the petitioner was not interested in laying a claim to the property in dispute he persuaded Mahavir Prasad to change his position to his detriment namely to give up the claim for cost in that suit.

This conduct therefore clearly estops Ibrahim from subsequently claiming a right in the property. The Deputy Director of Consolidation therefore was right in holding

that the petitioner is not entitled to lay a claim to the plot in dispute at this stage. In this view of the matter it is not necessary for me to go into the question whether the order passed by the Munsif on 23rd of February, 1966, continues to be binding on the parties because of the abatement of the suit under the provisions of the Consolidation of Holdings Act. Considering the circumstances of the case, I am of opinion that this is not a fit case in which this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution in favour of the petitioner.

19. The petition, accordingly fails and is dismissed with costs.

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