

**Shyam Sunder and ors. Vs. Siya Ram and anr.**

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**Court :** Allahabad

**Decided On :** Jul-28-1972

**Reported in :** AIR1973All382

**Judge :** S.K. Khare and ;K.B. Srivastava, JJ.

**Acts :** Uttar Pradesh Consolidation of Holdings Act, 1954 - Sections 4, 5, 6, 7, 8, 9, 9(1), 9(2), 9A and 49; Uttar Pradesh Zamindari Abolition and Land Reforms Act - Sections 239B(3); [Constitution of India](#) - Articles 14 and 245; [Registration Act, 1908](#) - Sections 17(1)

**Appeal No. :** Special Appeal No. 137 of 1969

**Appellant :** Shyam Sunder and ors.

**Respondent :** Siya Ram and anr.

**Advocate for Def. :** S. Mirza, Adv. for Respondent No. 1

**Advocate for Pet/Ap. :** K.N. Misra, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

K.B. Srivastava, J.

1. This special appeal arises out of consolidation proceedings.

2. One Bhikham had two sons, Ram Ratan (father of the five appellants Shyam Sunder, Ram Shankar. Raja Ram, Sheo Ram and Sheo Govind) and Sia Ram, respondent No. 1. The name of Ram Ratan stood recorded in respect of Khatas Nos. 329 and 330, situate in village Bharwara, in the district of Lucknow. On his death, thenames of his five sons came to be recorded. When this village came under Consolidation operations, Sia Ram filed an objection under Section 9 (2), U.P. Consolidation of Holdings Act (hereinafter referred to as the Act) claiming co-tenancy rights to the extent of one-half in these two Khatas on the ground that the name of Ram Ratan came to be recorded originally because he was the elder brother and though his own name was not recorded, he stilt had his cotenancy rights intact because of his cultivatory possession. His objection was dismissed by the Consolidation Officer and his appeal against that was also dismissed by the Settlement Officer, Consolidation. He then preferred a revision which was allowed by the Deputy Director. Consolidation and it was ordered that his name should also be recorded along with the names of the five appellants, as a co-tenant in the two Khatas. The appellants then filed Writ Petition No, 633 of 1965 which was dismissed by a learned single Judge of this Court, giving rise to this special appeal.

3. The learned counsel for the appellants has challenged the constitutionality of the Act on various grounds, of which the following have been urged before us:--

(1) Sections 4 and 6 of the Act give arbitrary powers to the State Government to accord discriminatory treatment to tenure-holders in different villages by placing some villages under consolidation while excluding others, thus offending Article 14 of the Constitution.

(2) Sections 5, 7 and 8 of the Act provide a procedure for the correction and revision of Revenue records for villages under consolidation, which is vitally different from that applicable to villages not under consolidation, and there is thus discrimination which offends Article 14 of the Constitution.

(3) Sections 5, 9, 9-A and 49 of the Act confer arbitrary powers on the Consolidation authorities under which they can deprive a tenure-holder of his land or rights therein and the tenure-holder has been deprived of the protection of Courts available to other tenure-holders in village not under consolidation, thus creating discrimination which offends Article 14 of the Constitution.

4. We will now deal with these matters. The Act was passed, as the Preamble says, to provide for the consolidation of agricultural holdings for the development of agriculture. The object has also been succinctly stated in the Statement of Objects and Reasons. A clear picture of the background history leading to the enactment of the statute in question, also emerges from the discussion by their Lordships of the Supreme Court in *Attar Singh v. The State of Uttar Pradesh* : AIR1959SC564 .

5. Under Section 4 (1), the State Government may, where it is of opinion that a district or part thereof may be brought under Consolidation operations, make a declaration to that effect in the Gazette, whereupon it shall become lawful for any officer or authority empowered by the District Deputy Director of Consolidation to enter upon and survey, in connection with rectangulation or otherwise, and to take levels of any land in such area; to fix pillars in connection with rectangulation; and to do all acts necessary to ascertain, the suitability of the area for Consolidation operations. Under Section 4 (2) of the Act where the State Government decides to start Consolidation operations, either in an area covered by a declaration issued under Sub-section (1) or in any other area, it may issue a notification to this effect. Section 5 of the Act provides for the effect and consequences of a notification issued under Section 4 (2). These consequences remain in force till the notification is cancelled under Section 6 or the Consolidation operations are closed finally by a notification under Section 52. The consequences are that in an area under Consolidation operations, the duty of maintaining the Record-of-Rights and preparing the village Map, the Field Book and the Annual Register of each village shall be performed by the District Deputy Director of Consolidation. Again, so long as the area remains under Consolidation operations, no tenure-holder, except with the permission in writing of the Settlement Officer, Consolidation, previously obtained, shall either use his holding or any part thereof for purposes not connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming, or transfer by way of sale, gift or exchange any part of his holding. Finally, every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the Act, pending before any Court or authority, whether of the first instance or of appeal, reference or revision shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stand abated. Such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate Consolidation authority under and in accordance with the provisions of the Act and the Rules made thereunder.

Section 6 deals with cancellation of notifications issued under Section 4 and says that it shall be lawful for the State Government at any time to cancel the notification made under Section 4 in respect of the whole or any part of the area specified therein. Section 7 provides that the District Deputy Director of Consolidation, shall cause the village maps to be revised. Section 8, similarly, deals with the revision of the Field Book and the current Annual Register, and with the determination of valuation and shares in joint holding. Under Section 9 (1), the Assistant Consolidation Officer has to send to tenure holders concerned and other persons interested, notices containing relevant extracts from the current Annual Register and other records showing their rights

and liabilities, mistakes and disputes that had been discovered, shares of any tenure holders in joint holdings, valuation of plots, trees, wells and improvements. Under Section 9 (2) any person to whom a notice under Sub-section (1) has been sent, or any other person interested may file an objection in respect thereof disputing the correctness or nature of the entries in the records or in the extracts furnished to him or in the Statement of Principles or the need for partition.

Section 9-A gives the procedure for the disposal of cases relating to claims to land and partition of joint holdings. Section 49 places a bar upon the jurisdiction of Civil Courts. It enacts that the declaration and adjudication of rights of tenure-holders 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 the Act, shall be done in accordance with the provisions of the 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 matter for which a proceeding could or outfit to have been taken under the Act.

6. The argument advanced is that arbitrary powers have been conferred upon the State Government limb? Sections 4 and 6 inasmuch as it can discriminate between district and district, and village and village in the same district, in the matter of selection of areas to be brought under Consolidation operations. Likewise, it has unfettered power to de-notify the operations under Section 6 in one district and not in another, or in one village in the same district but not in another. A different procedure has been prescribed under Sections 5, 7 and 8 for the revision of village maps, Field Books, Annual Registers etc. than is prescribed in the Land Revenue, Act. The power to use or transfer one's property has been restricted to a large extent. The jurisdiction of existing Civil and Revenue Courts even in pending matters has been taken away under Section 5 (2) as all such proceedings shall stand abated. A person will be forced to seek his remedy before a different set of Courts or authorities than a person whose holding does not fall within the area under operation. The upshot of the argument is that two different procedures, two different sets of Courts, and different rights of appeal and revision are prescribed under the Act and thus while some citizens will be governed by one set of rules, procedural and jurisdictional, another class of citizens will be governed by wholly different sets of Rules, which fact creates an insidious discrimination in contravention of Article 14 of the Constitution.

7. The Act is a special Act. Its object is to provide for consolidation of agricultural holdings by cheap means and in a speedy manner. A Legislature has the power to create new Courts or tribunals and vest them with jurisdiction by divesting existing Courts of their jurisdictions. It has the power to legislate and provide for a different procedure for the disposal of cases. Article 14 of the Constitution forbids, class legislation. It does not forbid reasonable classification. To pass the test of permissible classification, two conditions must be fulfilled, namely, (1) that the classification is founded on intelligible differentia which distinguishes persons or things that are grouped together from those left out of the group and (2) that that differentia must have a rational relation to the objects sought to be achieved. The Legislature has classified areas under consolidation operations from areas which are not under such operations. All areas under consolidation operations will have to be governed by the same set of Rules. There is no discrimination inter se between person and person or individual and individual or transaction and transaction in respect of the areas which are under consolidation operations. The classification thus is founded on intelligible differentia. It has also a rational relation to the object sought to be achieved. The object is the consolidation of holdings in a cheap and speedy manner. Once other areas are also brought under consolidation operations, the same law and the same procedure will govern those areas also.

The paucity of staff and finance may compel a State not to bring the whole State, or a whole district, under consolidation operations simultaneously. The restriction on use and transfer of property is a reasonable one. There is no absolute bar. User has been restricted so that agriculture may develop. Likewise, transfer has been restricted to avoid complications in the allotment of compact Chaks. The constitutionality of the Act, as amended upto 1957, came up for consideration in Attar Singh's case (Supra) and its constitutionality was upheld by the Supreme Court. To our mind, the provisions of the Act that were challenged before us, are not hit by Article 14.

8. The learned counsel for the appellants then referred to the so-called unreasonableness of the provisions contained in Sections 9 (2) and 9-A of the Act. His contention is that Section 229-B (3), U.P.Zamindari Abolition and Land Reforms Act lays down that in a suit by a person claiming to be a Bhumidhar or Sirdar, the State Government and Gaon Sabha shall be impleaded as parties. Section 9 (2) or Section 9-A, however, have not made a similar provision for the joinder of the State Government and Gaon Sabha as necessary parties to an objection. This change in the procedure, it is contended, is wholly unreasonable inasmuch as in the absence of the State Government and the Gaon Sabha as parties, no finality can attach to the adjudication of an objection. It was argued that the ownership of land vests in the State or the Gaon Sabha and it is necessary that in a suit by the rival tenure-holders, the supreme proprietors of the land are impleaded as necessary parties. It is true that what is mandatory under Section 229-B is not so under Section 9 (2) or Section 9-A. The Legislature, however, has plenary powers to enact a law within its legislative field and in doing so, to provide a procedure different from a procedure obtaining under any other statute. The change in procedure, therefore, will not invalidate the special Act Besides, there appears to be no bar on a tenure-holder or claimant impleading the State or the Gaon Sabha in his objection filed under Section 9 (2) of the Act.

The argument of the learned Counsel is that only tenure-holders are entitled to file an objection under Section 9 (2) and since the State Government or the Gaon Sabha are not and cannot be tenure-holders, therefore, they cannot file an objection themselves. This argument does not appear to be well founded in law. Section 9 (1) (a) makes it obligatory for the Assistant Consolidation Officer to send or cause to be sent, to the tenure holders concerned and 'other persons interested' notices containing relevant extracts from the current Annual Register and such other records as may be prescribed. Such notices are obviously sent so that a tenure-holder or interested person may file an objection, if he so wishes. Section 9 (2) says that any person to whom a notice has been sent, or 'any other person interested' may file an objection disputing the correctness or nature of the entries in the records or in the extracts, or in the Statement of Principles or the need for partition. That being so, the provision makes it amply clear that the objection can be filed not only by a tenure-holder to whom a notice has been sent but also by 'any other person interested'. It does not mention that such interested person must also be a tenure holder. The language is wide enough to include a tenure-holder or any person other than a tenure holder. Gaon Sabha land or Nazaul land may happen to be recorded in the name of some person although that person may have no title thereto. In such a case Section 9 (2) does not prohibit or forbid the State Government or the Gaon Sabha from filing an objection claiming that land as against the person whose name is recorded in the village papers.

The argument of the learned counsel, however, is that the word 'person' cannot include the Gaon Sabha or the State Government. The word 'person' is defined by Clause (33) of U.P. General Clauses Act. According to this definition, 'person' shall include any company or association or body of individuals whether incorporated or not. In dealing with an inclusive definition it will be inappropriate to put a restrictive interpretation upon terms of wider connotation. Under Clause (g) of Section 2, U.P. Panchayat Raj Act, 'Gaon Sabha' means a 'Gaon Sabha' established under Section 3. Under Section 3, the State Government has to establish a Gaon Sabha by notification in the Official Gazette. Under Section 4, every Gaon Sabha shall, by the name notified in the Official Gazette, be a body corporate having perpetual succession and a common seal and shall have power to acquire by purchase, gift, or otherwise, to hold, administer, and transfer property, both move-able and immovable, and to enter into any contract, and shall, by the said name, sue or be sued. A Gaon Sabha is thus a juristic person incorporated by statute. It is, to our mind, covered by the word 'person' occurring in Sections 9 (1) (a), and 9 (2). The word 'person' is also wide enough to include the State Government, unless such inclusion would be repugnant to the context in which the word is used in Section 9 (1) (a) or Section 9 (2). The context does not exclude the State Government. The result thus is that a Gaon Sabha or a State Government can file an objection. A tenure-holder or any other person can also implead, either or both as a party to the objection if they have any interest in the subject-matter of the dispute. In a majority of cases, the dispute will relate to some land in which rival claimants are interested and not either the State Government or the Gaon Sabha and it is immaterial in such a case as to who wins and who loses. Either of them will be accountable only for the land revenue. We are, therefore, of the view that the omission of the Legislature to

insert a provision for impleading the State or the Gaon Sabha as a party, does not contravene any Article of the Constitution.

9. We shall now come to the merits of the appeal. The first attack of the learned counsel for the appellants is that the finding of the Deputy Director, Consolidation, as to title, is based on inadmissible evidence. It appears that the respondent Sia Ram had instituted a suit for partition under Section 176, U.P. Zamindari Abolition and Land Reforms Act, against the appellants in the Revenue Court. Annexure 2 is the copy of the plaint in that suit. It shows that Sia Ram had claimed a half share in the Khata recorded in the names of the appellants, situate in village Lonapur. Annexure 3 is the copy of the written statement filed by the appellants in that suit. Annexure 4 is the copy of the compromise filed by the parties on the basis of which, that suit was decided on July 23, 1959. The Khata of Lonapur was divided between them, and while certain specific plots were allotted exclusively to Sia Ram the remaining went to the lot of the appellants. Paragraph 1 of that compromise reads thus :-

'Yen ke muddalehim 1 laghayat 5 ne ..... aarazi waqe Bharwara menbhi tesleem kiya hai aur muddai ka hissa 1/2 tasleem kiya hai.'

The Bharwara plots, that is to say. the plots now in dispute, were not the subject-matter of litigation in that suit. The contention is that the compromise extinguished the title of the appellants as to half and operated to create, declare or assign the title of the respondent as to the other half in respect of the disputed plots of the value above Rs. 100/- and, therefore, the document was compulsorily registerable under Section 17(1)(b). Registration Act and having had not been registered, it cannot be admitted in evidence in proof of the recital, notwithstanding the proviso to Section 49 of that Act. The purport of Section 17(1)(b) is that non-testamentary instruments which purport or operate to create, declare assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of Rs. 100/- and upwards to or in immovable property. shall be compulsorily registrable. Under Section 49. no document required by Section 17 to be registered shall affect any immovable property comprised therein or be received as evidence of any transaction affecting such property, unless it has been registered.

The learned counsel for the appellants has placed reliance on four cases, namely Datto v. Baba Saheb, AIR 1934 Bom 194; Ram Dular v. Rai Karan Pandey, 1960 All WR (HC) 113; Ram Gati Chaubey v. Ram Adhar Chaubey : AIR1961All537 and Chandra Bhan Datt Ram Pandey v. Jagdish Datt, Ram Pandey, 1962 All LJ 404 for the proposition that the compromise is not admissible in evidence on the question of proof of title. In Datto's case (Supra) the document created or purported to create a permanent tenancy and although it fell within the mischief of Section 17. Registration Act, it was not registered. The Bombay High Court held that Section 49 applied and the document could not affect the immovable property comprised therein or be received as evidence of any transaction affecting such property, It is apparent to us that the point decided was that the document requiring registration would not create title or be received as evidence on the question of title, unless, it was registered. The point whether it could be received as evidence of admission of a party to a document or as a recognition of an antecedent title, did not arise for consideration in that case and it cannot be taken to be an authority on that point.

In Ram Dular's case (Supra) one R made a usufructuary mortgage in favour of one B in 1923. R sold the equity of redemption in favour of Ram Dular on May 26, 1927 for a sum of Rs. 500/- on the foot of a registered sale deed. Ram Dular then instituted a suit for redemption against B. B resisted the suit by setting up an unregistered sale deed dated February 12, 1927 for a sum of Rs. 50/- in respect of the same equity of redemption. In addition, he also pleaded that his permissive possession as a mortgagee had extinguished on his taking a sale and since the date of the sale he was in adverse possession as fullowner. The ratio of the decision is that where an immovable property is in possession of the usufructuary mortgagee and the mortgagor proposes to sell the equity of redemption to the mortgagee, the sale can be effected only by a registered instrument. Further, that an unregistered sale deed transferring equity of redemption of the value of less than Rs. 100/- to the mortgagee in possession is ineffective on account of the provisions of Section 54

of the Transfer of Property Act. It was also held that Section 49, Registration Act is applicable to all documents which are required to be registered either by Section 17, Registration Act or by any provision of the Transfer of Property Act. In consequence of these two findings, it was held that the unregistered sale deed was not admissible in evidence in proof of the transfer of the equity of redemption. Lastly, it was held that when the unregistered sale deed could not be admitted in evidence in proof of title, it could not yet be treated as a sale so as to convert the permissive possession as a mortgagee into adverse possession as a vendee. It is thus clear that this decision has also no relevancy to the point in controversy before us. The question whether an admission or recognition contained in such a deed can or cannot be relied upon, is beyond the purview of that decision.

In Ram Gati Chaube's case (Supra), the parties had entered into a compromise in a mutation case, on the basis of which some specific properties were given to the rival Parties as absolute owners and it was stipulated that they will have no title to or concern with the properties given to the other party. The S.D.O. passed a one word order 'approved', without incorporating the said terms in his order. The Full Bench formulated six questions but decided only the first two namely, whether the order of the mutation Court embodied the petition of compromise and whether the said compromise declared rights to immovable property worth more than Rs. 100/- and was inadmissible in evidence for want of registration. The Full Bench held that had the S.D.O.'s order explicitly recorded the entire compromise, no problem would have been posed. However, the order could be deemed to embody only those provisions which specify the properties to be mutated and it could not be deemed to refer to and embody those provisions of the compromise which declared the parties to be the absolute owners. The other questions about admissibility of the compromise comprised in questions Nos. 3 to 6 remained unanswered. That being so, this case also does not help the appellants.

In Chandra Bhan Datt Ram Pandey's case (Supra). Jamwanti Kaur was the limited owner of Zamindari properties in several villages. One C. and J were the collaterals of her deceased husband and they claimed succession in preference to Jamwanti Kaur. The parties entered into a compromise on 14-10-1936 by which they agreed to share the properties which they might be able to secure half and half. After entering into this compromise C and J instituted a suit in the Chief Court against Jamwanti Kaur. The parties entered into a fresh compromise and the suit was decreed in terms of that on 3-6-1938. According to this compromise C and J became entitled to inherit the properties on the death of Jamwanti in equal shares but village Dhanepur was to go exclusively to C. After this compromise decree. C and J entered into yet another compromise on 4-9-1943 by which the properties were agreed to be divided half and half with the stipulation that village Dhanepur was to go to C exclusively. Jamwanti Kaur died in 1947 and thereupon applications for mutation of names were made by both and a compromise was arrived at in the course of the mutation proceedings. That compromise narrated that (1) the dispute between them had been settled earlier by way of a family settlement and that both parties were jointly entitled to the entire properties in dispute, (2) the property had not till then been actually partitioned by metes and bounds and that the two parties would thereafter be the owners of the properties mentioned in lists A and B exclusively (3) the property mentioned in list A was to go to J and the property mentioned in list B to C and (4) though Dhanepur was in list B income from Tahbazari of Dhanepur will be shared by both the claimants half and half and that both of them would be entitled to manage the holding of the market and the collection of the Tahbazari. C utilized the Tahbazari exclusively for some years. J then instituted a suit for a half share in the Tahbazari dues. The suit was resisted on the ground that the compromise application was unregistered and the stipulation relating to the realization of the Tahbazari dues was a stipulation in respect of an immovable property of the value of above Rs. 100/- and required registration under Section 17(1)(b). Registration Act. The argument was sought to be met by the plea that though the document required registration the purpose for which it was being relied upon was a collateral purpose.

The decision of the Division Bench was that upon the terms of the compromise, it was clearly a partition deed which declared, assigned, limited or extinguished the rights, title and interest of the parties in the properties dealt with in it. It was further held that the mutation Court was concerned only with the question of

possession and not of title. It was also observed that the compromise decree was silent in respect of the stipulation about the collection of Tahbazari dues, and it cannot be said to have been incorporated in the order of the mutation Court and thus J could derive no advantage from the mutation order as it did not incorporate that term. J had to fall back upon the compromise application. It was observed that the right to manage a market and the right to realize Tahbazari dues are immovable property and the compromise petition required registration. The Division Bench finally observed that the compromise was not being utilized for a collateral purpose but for the enforcement of the stipulation and, therefore, it could not be admissible in evidence. In that case, the crucial question that came up for decision was whether J had a right to hold the market and share the Tahbazari dues. This matter was foreign to the nature of the mutation case which was concerned only with the recording of names of parties over specific properties. The unregistered compromise was being relied upon in proof of title of J and that is why it was held that not, being registered, it could not be received in evidence. The four cases relied upon by the learned counsel, in our view, are easily distinguishable.

10. On the other hand, the learned counsel for the respondent has placed reliance upon a large number of cases in support of his contention that notwithstanding non-registration, the compromise between the parties in the instant case can be relied upon as a piece of admission on the part of the appellants, or as a recognition of an antecedent title. The compromise, annexure 4, recites that the parties had come to terms. With regard to Lonapur properties it was recited what specific plots will be held by which party. With regard to the property now in dispute, it was mentioned that the appellants had admitted (Tasleem kiya hai) that the respondent had a half share. There was then a prayer that the mutation case be decided in accordance with the terms of the compromise and necessary entries be made in the village records. The order passed by the S.D.O. has, however, not been filed to show that the terms regarding the property now in dispute were not incorporated in the order. We are prepared to proceed on the assumption that the terms were not incorporated. The fact, however, remains that before the compromise was filed in the mutation Court, the parties had arrived at a settlement between themselves with regard to both the properties, one the subject-matter of dispute in that case, and the other not. In respect of the other, now in dispute, the appellants made a categorical admission that the respondent had a half share. It follows, therefore, that what they did was that the appellants recognized the existing title of the respondent and said that their share was half. A recognition of title or definition of a share on the basis of that recognition cannot be treated as creating, declaring, assigning, limiting or extinguishing, any right, title or interest in immovable property. Such a recognition may be oral or by a document, and if in a document, it would not require registration. *Hiren Bibi v. Sohan Bibi*, AIR 1914 PC 44; *Devi Dayal v. Wazir Chand*, (1921) 61 Ind Cas 328 (Lah) and *Sailesh Chandra Sarkar v. Bireswar Chatterjee* : AIR 1930 Cal 559 have taken the view that an unregistered document can be relied upon in proof of admission of title. In *Hiren Bibi's* case, the Privy Council observed that such a compromise can in no sense of the word be an alienation of property but a family settlement in which each party takes a share of the family property by virtue of the independent title which is, to that extent, and by way of compromise, admitted by the other parties.

In *Devi Daval's* case (Supra) there was a rent deed which stated that one particular property was owned by the members of the family in equal shares and in another particular property one of the executants had a 3/4th share while the rest had a 1/4th share. It was urged that the lease, being for a period of more than one year and not being registered, was not admissible in evidence under Section 49, Registration Act. The Lahore High Court held that as a lease or as a document to prove title, it was not admissible, but there was no reason why the admission contained therein cannot be taken in evidence. In *Sailesh Chandra's* case, a lease was created by a decree based on compromise, which compromise decree was not registered. In addition, it contained a recital that the disputed land did not pertain to the Jama of Rs. 91/-. The Calcutta High Court held that it could not be disputed in view of the decision of the Judicial Committee in *Rani Hemanta Kumari Devi v. Midnapur Zamindari Co.*, AIR 1919 PC 79 that the Sulehnama should have been registered in order to be effective as a lease but at the same time the statement in the Sulehnama, namely, that the lands did not pertain to the Jama of Rs. 91/- might be admitted as evidence as admission made by the parties to the same. As such admission, it would only be a piece of evidence and it would be open to the party who made the admission to show that it

was made in circumstances which did not make the admission binding on him. The decision in Ram Gopal v. Tulshi Ram : AIR1928All641 is clear that such a recital can be relied upon as a piece of evidence. In that case, a family settlement was arrived at in a mutation case by which the three parties agreed to mutation to the extent of 1/3rd each. The compromise was not registered. The Full Bench laid down five propositions and the fifth one reads thus:--

'If the terms were not reduced to the form of a document' registration was not necessary (even though the value is Rs. 100/- or upwards); and, while the writing cannot be used as a document of title, it can be used as piece of evidence for what it may be worth, e.g., as corroborative of other evidence or as an admission of the transaction or as showing or explaining conduct.'

It is clear, therefore, that the compromise can be taken into consideration as a piece of evidence. The next case relied upon is Bakhtawar v. Sunder Lal : AIR1926All173 . This deals with a compromise arrived at in a mutation case. The compromise recited that the parties had already composed their differences regarding the property and had come to an arrangement between themselves by which their names were to be entered in respect of specific property specified therein. It was held that there was no necessity to have the compromise registered, as it did not create, assign, limit, extinguish or declare any title. It contained merely recital of fact by which the Court was informed that, the parties had come to an arrangement. To sum up, therefore, we are of the view that the compromise could have been relied upon as an admission of antecedent title.

11. The next contention of the learned counsel is that there was practically no evidence on the basis of which the finding with regard to title could have been given. This contention does not appear to be well founded. The appellants had examined Shyam Sunder. Putti Lal and Dwarka whereas the respondent had examined himself and one Raghunath. The learned Deputy Director was entitled to believe one set of witnesses and not the other. This Court cannot undertake a reappraisal of the same evidence. The finding of the learned Deputy Director was criticized on the ground that there was no evidence to show that the original tenant was Bhikham, the common ancestor of the parties. The learned Deputy Director perhaps referred to Shyam Sunder's admission about it in his evidence. Annexure A, It is also argued that assuming that some plots were ancestral, however. Ram Ratan was ejected from those plots in 1340 Fasli and thereafter there was a resettlement by the Zamindar Jeewan Bux in favour of Ram Ratan and, therefore, Sia Ram had lost his title on account of that re-settlement under the Oudh Rent Act, which was then in force. We are not inclined to attach any significance to this argument. No documents were produced to prove the ejection or re-settlement. Reliance was placed merely on oral evidence. One Chandrapal Singh was said to be a witness of the re-settlement, but he was not examined and nor the Patta was exhibited. It is in these circumstances that the learned Deputy Director came to the finding that the Khata was ancestral. This is a pure finding of fact and cannot be disturbed.

12. Altogether, therefore, this appeal has no substance and is dismissed with costs.

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