

Bihari Vs. the State of U.P. and ors.

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Court : Allahabad

Decided On : Feb-16-1973

Reported in : AIR1973All507

Judge : G.C. Mathur and ;N.D. Ojha, JJ.

Acts : Uttar Pradesh Consolidation of Holdings Act, 1954 - Sections 48

Appeal No. : Special Appeal No. 4 of 1969

Appellant : Bihari

Respondent : The State of U.P. and ors.

Advocate for Def. : S.S. Tiwari, Adv.

Advocate for Pet/Ap. : R.S. Chawahan, Adv.

Disposition : Appeal allowed

Judgement :

N.D. Ojha, J.

1. This special appeal has been filed against the judgment of a learned single Judge dismissing a writ petition filed by the appellant. The dispute giving rise to this special appeal is in regard to certain plots of land situate in village Munderwa Tahsil and District Basti. The aforesaid village was brought under consolidation

operation and the name of the appellant stood recorded in the basic year. Rupai respondent No. 6 filed an objection that of the plots in dispute he was a co-tenant along with Badal, that Badal died issueless and consequently he alone was entitled to be recorded over the said plots. The case of the appellant on the other hand was that of the plots in dispute Badal was exclusive tenant and he being the adopted son of Badal inherited the plots in dispute exclusively on the death of Badal and that Rupai respondent had no concern with these plots. The Consolidation Officer dismissed the objection of Rupai. On appeal however the Settlement Officer Consolidation directed the name of Rupai to be recorded along with the name of the appellant. Two revisions were filed against the order of the Settlement Officer Consolidation, one by the appellant and the other by Rupai. During the pendency of these revisions the appellant filed certain documents along with an application with the prayer that those documents be admitted as additional evidence. The said application was however dismissed by the Deputy Director, Consolidation on July 27, 1963 and both the revisions were also dismissed. The appellant thereupon filed a writ petition in this Court which as already pointed out above was dismissed by a learned single Judge. The present Special Appeal has been filed against the aforesaid judgment.

2. The main contention of the appellant before us was that the documents which were sought to be filed before the Deputy Director Consolidation as additional evidence were very material for a correct and proper decision of the case and the Deputy Director, Consolidation committed a manifest error of law and in fact refused to exercise jurisdiction vested in him in rejecting the said application. A certified copy of the order dated July 27, 1963 passed by the Deputy Director, Consolidation dismissing the application for additional evidence was filed in the writ petition and from its perusal it appears that the said application was dismissed on two grounds:--

1. That the admission of the documents at such a late stage will materially change the case of the parties; and
2. That in Section 48 of the Consolidation of Holdings Act there was no provision for entertaining fresh evidence at the revisional stage.

The learned Counsel for Rupai respondent urged that the Deputy Director, Consolidation was right in dismissing the application for additional evidence and that both the grounds given by him for dismissing it were justified. He raised certain other technical objections which we shall deal later. In so far as the first ground mentioned by the Deputy Director, Consolidation for dismissing the application aforesaid is concerned we are of the opinion that the Deputy Director, Consolidation committed a manifest error of law in taking the view that by filing the documents the appellant wanted to materially change his case. As already pointed out above the consistent case of the appellant throughout was that of the plots in dispute Badal was the exclusive tenant and he being the adopted son of Badal inherited these plots and his name was rightly recorded in the village papers. Copies of the documents sought to be filed as additional evidence before the Deputy Director Consolidation have been filed along with the writ petition. We have perused these documents. Two of such documents are a compromise application in a suit and the decree passed on its basis. The other document is copy of an application made by Rupai respondent himself as guardian of the appellant who was then minor for mutating his name over the plots in dispute. The earlier two documents were sought to be filed to show that on partition effected by compromise the plots in dispute were allotted exclusively in the share of Jasai father of Badal. The said compromise was filed in a suit under Section 37 of the Agra Tenancy Act, 1926 for partition of holdings between Jasai father of Badal on the one hand and Ghure father of respondent Rupai on the other. The third document namely the application for mutation contains averments that the plots in dispute belonged to Badal, that the appellant was adopted son of Badal and was thus entitled to be mutated over these plots. These documents were apparently filed as evidence of the fact that of the plots in dispute Badal was exclusive tenant and the appellant being his adopted son rightly inherited these plots exclusively. This has been the case of the appellant from the inception and if in order to prove this case he wanted to file the documents aforesaid it cannot be said by any stretch of imagination that by filing these documents the appellant wanted to set up a new case at the revisional stage. The first ground on which these documents were rejected therefore clearly is not sustainable.

3. Now we propose to deal with the second ground on which the aforesaid application was dismissed namely additional evidence could not be admitted at the revisional stage. Learned Counsel for Rupai respondent on the authority of *State of Kerala v. K. M. C. Abdullah* : [1965]1SCR601 , urged that before the Deputy Director, Consolidation could accept additional evidence he had first to consider the case without such evidence and to independently come to a finding that the requirements of Section 48 of the Consolidation of Holdings Act were made out and it was only if he was satisfied that grounds for interference under Section 48 were made out that he could direct further inquiry by accepting additional evidence. We have perused that judgment with care but are unable to subscribe to the view enunciated by the learned counsel for the respondent. In the aforesaid case their Lordships were considering the scope of Section 12 of the Madras General Sales Tax Act (Act IX of 1939). Sub-clause (2) of Section 12 provided that the Deputy Commissioner may call for and examine the record of any order passed or proceeding recorded under the provisions of that Act by any officer subordinate to him for the purpose of satisfying himself as to the legality or the propriety of such order or as to the irregularity of such proceeding and may pass such order with respect thereto as he thinks fit. It was held that power to pass such order as the revisional authority thinks fit may in some cases include power to make or direct such further inquiry as the Deputy Commissioner may find necessary for rectifying the illegality or impropriety of the order or irregularity in the proceeding and that it was not right baldly to propound that in passing an order in the exercise of his revisional jurisdiction the Deputy Commissioner must in all cases be restricted to the record maintained by the Officer subordinate to him and can never make inquiry outside that record. It was further held that it could not be said that a provision which confers upon the appellate or revising authority power to make such enquiry as such appellate or revising authority considers necessary in itself amounts to enlarging the revisional or appellate jurisdiction. What is the true import of the aforesaid decision is to be found from a subsequent decision of the Supreme Court itself namely *Swastic Oil Mills Ltd. v. H. B. Munshi* : [1968]2SCR492 , wherein it was held:

'Whenever a power is conferred on an authority to revise an order the authority is entitled to examine the correctness, legality and propriety of the order and to pass

such suitable order as the authority may think fit in the circumstances of the particular case before it. When exercising such powers, there is no reason why the authority should not be entitled to hold an enquiry or direct an enquiry to be held and for that purpose, admit additional material.' Referring to the aforesaid case it was further held:'In fact in Section 12 (2) of the Madras General Sales Tax Act the Deputy Commissioner when exercising his powers, was to call for the record of the order or proceeding before passing any order which he thought fit, so that there was an expression used which could have been interpreted as limiting his powers to the examination of the record only without holding any further enquiry, and, yet, this Court held that the Deputy Commissioner could not be restricted to the record and was empowered to make an enquiry outside that record.'

4. The question in regard to the jurisdiction of a revising authority to accept additional evidence again came up for consideration before the Supreme Court in *Arbind Kumar Singh v. Nand Kishore Prasad* : [1968]3SCR322 . In the said case the scope of the powers contained in Section 64-A of the Motor Vehicles Act, 1939 as amended by Bihar Act XVII of 1950 came up for consideration. It was held:

'The expression 'pass such orders as it thinks fit' is not restricted to the passing of orders which are final in character. If for the purpose of doing complete justice between the parties the authority who hears the revision petition is satisfied that it is necessary to call for additional evidence, he may call for such evidence. There is no bar in the Act or the rules against an appellate or revising authority taking into consideration additional evidence brought on the record, if the authority requires additional evidence to be brought on the record or allows it to be brought on the record to do complete justice between the parties.'

5. The provisions of Section 48 of the U. P. Consolidation of Holdings Act are in pari materia with the various provisions which came up for consideration before the Supreme Court in the aforementioned cases. Interpreting the provisions of Section 48 itself this Court has held that the Deputy Director, Consolidation has jurisdiction to entertain additional evidence. See *Manbhawati Devi v. Deputy Director, Consolidation*, 1969 All LJ 730; *Mst Mahri v. Deputy Director Consolidation*, 1969 RD 260 HC (AH); *Baij Nath Singh v. Deputy Director*,

Consolidation, 1969 RD 397 HC (All); Mir-chi v. Deputy Director, Consolidation, 1971 RD 201 HC (All).

6. We are, therefore, of the opinion that the Deputy Director, Consolidation had power to admit additional evidence. He refused to exercise the jurisdiction vested in him on the erroneous view that he had no jurisdiction to entertain additional evidence.

7. Learned counsel for Rupai respondent then urged that in fact by filing the compromise application and decree passed on its basis in the suit for partition of holdings under Section 37 of the Agra Tenancy Act the appellant was trying to set up the plea of res judicata and since that plea had not been raised by him at any earlier stage of the proceedings additional evidence could not be entertained to substantiate such a plea. In support of this he relied upon Ram Kinker Rai v. Tufani Ahir : AIR1931 All35 . It is true that additional evidence can be taken only in support of a point which has already been raised but in our opinion the aforesaid case is not applicable to the facts of the instant case. Here as already observed above it has been the consistent case of the appellant that of the plots in dispute Badal was the exclusive tenant and that he being the adopted son of Badal his name was rightly recorded in the village papers. It is in support of this case that the appellant sought to file additional evidence and he was not trying either to set up a new case or prove any new case by producing additional evidence.

8. Learned counsel for Rupai in the end wanted to challenge the veracity of the additional evidence sought to be adduced. We are, however, not prepared to go into that question at this stage for that would be a matter for decision by the Deputy Director, Consolidation after he has accepted the documents sought to be filed by the appellant as additional evidence. We have no doubt that after the additional evidence is accepted Rupai respondent would be afforded an opportunity to lead such evidence in rebuttal as he likes and the evidentiary value of the documents would then be considered.

9. The Deputy Director, Consolidation dismissed the application for adducing additional evidence on a misconception of the legal position. On account of this he decided the revision without considering the documents which were sought to be

filed by the appellant. We are of the opinion that the orders of the Deputy Director, Consolidation are liable to be quashed.

10. In the result the appeal is allowed, the judgment of the learned Single Judge is set aside and the orders of the Deputy Director, Consolidation dismissing the application for additional evidence as also the revisions are quashed. He will now dispose of the application for additional evidence and thereafter the revisions in accordance with law and the observations made above.

11. In the circumstances of the case there will be no order as to costs.

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