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**Smt. Phool Kali Vs. Ist Additional District Judge and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/469555](http://sooperkanoon.com/469555)**

**Court : Allahabad**

**Decided On : Jan-24-1984**

**Reported in : AIR1984All390**

**Judge : K.S. Varma, J.**

**Acts : Uttar Pradesh Consolidation of Holdings Act, 1954 - Sections 11, 12(1), 12(2), 12(3) and 12(4); Uttar Pradesh Consolidation of Holdings Rules, 1954 - Rule 34(2); [Arbitration Act, 1940](#) - Sections 30**

**Appeal No. : Writ Petn. No. 999 of 1973**

**Appellant : Smt. Phool Kali**

**Respondent : ist Additional District Judge and ors.**

**Advocate for Def. : Abid Ali, Adv.**

**Advocate for Pet/Ap. : R.K. Srivastava, ;Pradeep Kant and ;Umeshwar Prasad, Advs.**

**Disposition : Petition dismissed**

**Judgement :**

**ORDER**

**K.V. Varma, J.**

1. This petition is directed against an order passed by the 1st Additional District Judge, Faizabad dated 14-2-1975 whereby the Court has decided an appeal under Section 39 of the Arbitration Act The Consolidation Officer made a reference to the Civil Judge under Section 12 of the U. P. Consolidation of Holdings Act who referred the matter to an arbitrator for giving an award. The award given by the arbitrator is Annexure 1 to the Writ Petition. Annexure 2 is the order whereby the award has been set aside. Aggrieved by the order Annexure 2 an appeal was preferred to the District Judge which came up for hearing before the 1st Additional District Judge who allowed the appeal, set aside the order of the Civil Judge quashing the award and directed that the award dated 2-8-1972 shall be made rule of Court. Against the appellate order Annexure 3 the present writ petition has been filed.

2. The facts of the case are that one Ram Raj Singh was recorded as original tenant over plots Nos. 86/2, 86/3 and 86/4 in the basic year. Lalta and Chandra Bhal filed objections under Section 12 of the U. P. Consolidation of Holdings Act hereinafter referred to as Act). After the death of Chandra Bhal, in his place, name of Smt. Phool Kali was substituted. Their case is that the trees were planted by their ancestors and they were grove holders and also bhumidhars. Another objection was filed by Nazir Husain. He is dead and in his place his heirs have been brought on record. In the objection Nazir Husain alleged that Ram Raj Singh, Sheetal Singh Mahabir Singh had mortgaged the property with their ancestors and a suit for foreclosure had been decreed and they have been in possession. In proceedings under Section 145 Cr. P. C. their possession was found.

3. On the above facts, a question of title was involved. Since a question of title was involved the Consolidation Officer made a reference to the Civil Court to render an award on the question of title. On 2-8-1972 the arbitrator gave an award in which he found that Nazir Husain and Saghir Husain objectors were bhumidhars of the plots in dispute and Smt. Phool Kali and Lalta were not bhumidhars. After the award was rendered Smt. Phool Kali and Lalta filed objections under Section 30 of the Arbitration Act and challenged the award. The objections to the award were registered as regular suit

4. The objections relevant for the purpose of this case which were raised before the Civil Judge are that the reference to arbitration was invalid as the provisions of Rule 34(2) of the rules framed under the Act which requires consultation with the Land Management Committee was not observed. The contention of the objector was that under the said rule Assistant Consolidation Officer had to obtain the views of the Land Management Committee and then submit it to the Consolidation Officer and since this requirement was not fulfilled the reference was bad. The other point raised was that the material evidence was not considered by the arbitrator and while considering the evidence he has not taken into consideration the affidavit filed by the plaintiff which states :--

'ENSE LALTA WA CHANDRA BHAN KI VIVADGRAST BHUMI SE KOI SAMBHANDH HAMARA NAHIN PAYA JATA.'

The learned Civil Judge set aside the award. In an appeal filed by the contesting respondents the order was set aside. In regard to the first point that the reference was invalid, reliance was placed by the learned counsel on Union of India v. Om Prakash, AIR 1976 SC 1745. By reference to this decision it was contended that the words 'or is otherwise invalid' in Clause (c) of Section 30 are wide enough to cover all forms of invalidity including invalidity of the reference. The learned court below was not right in holding that the award could not be set aside on the ground of invalid reference. In view of the principles enunciated by the Supreme Court in the aforementioned case if the reference is invalid the award can be set aside.

5. The next question that arises is whether the reference was at all invalid. Learned counsel for the petitioner contended that compliance of Rule 34 was necessary and its non-observance vitiates the entire proceedings. In my opinion it is not possible to accept this contention. A perusal of Section 12 of the Act which was in force at the relevant time required that any person interested in disputing the correctness or nature of an entry in the statement published under Section 11 of the Act or pointing out any omission therefrom was required to file objections before the Assistant Consolidation Officer. The Assistant Consolidation Officer after hearing the parties on objections filed together with the views of the Land Management Committee submits his report on those objections to the

Consolidation Officer, who shall except as provided under Sub-section (4) of the Section 12 dispose of the objections in the manner prescribed. Section 12 Sub-section (4) of the Act provides that where the objection filed under Sub-section (4) involves a question of title and such question has not already been determined by a competent court, the Consolidation Officer shall refer the question for determination to the Civil Court having jurisdiction who shall thereupon refer it to the arbitrator. A close analysis of Section 12(1), (2), (3) and (4) indicates that if the question involved relates to the correctness or nature of entry in the statement published under Section 11 of the Act then the Assistant Consolidation Officer is required to consult the Land Management Committee but the consultation of Land Management Committee under Rule 34 framed under the Act is not necessary if the question of title is involved in the case. Section 12(2) specifically provides that the Assistant Consolidation Officer shall obtain the views of the Land Management Committee and submits his report on those objections to the Consolidation Officer who shall, 'except as provided in Sub-section (4), dispose of the objections in the manner prescribed' These words clearly indicate that the views of the Land Management Committee are to be obtained in those cases in which question of title is not involved but if the question of title is involved then formality of consulting Land Management Committee is not necessary'. In a case decided by this Court reported in (1959 All LJ 209). *Tajamul Husain v. Assistant Consolidation Officer, Jalalabad* it has held that compliance of Rule 34 is mandatory. This decision does not indicate that question of title was involved; the only question was with regard to correctness or nature of entry in the statement published under Section 11 of the Act. In the instant case the question of title is involved and the consultation of Land Management Committee is not necessary as this requirement is not to be observed when the question of title is involved in the case. It is thus clear that reliance placed by the learned counsel for the petitioner in *Tajammul Husain v. Assistant Consolidation Officer, Jalalabad, 1959 All LJ 209 (supra)* is completely misplaced. Although the argument of the learned counsel for the petitioner, that in case the reference is invalid the award is liable to be set aside, is correct but it is not possible to agree with the learned counsel for the petitioner when it is contended that non-compliance of Land Management Committee under Rule 34 vitiates the reference. Since in the instant case a question of title is involved

reference to Land Management Committee was not necessary.

6. The next contention urged by the learned counsel for the petitioner is that the arbitrator has misconducted himself in not considering material evidence on record before him. In support of this submission reliance has been placed by the learned counsel for the petitioner on K.P. Poullose v. State of Kerala, AIR 1975 SC 1259. A perusal of this decision indicates that misconduct under Section 30(a) of the Arbitration Act comprises of legal misconduct which is complete if the Arbitrator on the fact of the award arrives at an inconsistent conclusion even on his own finding or arrives at a decision by ignoring very material documents which throw abundant light on the controversy to Kelp a just and fair decision.

7. In the present case, the learned counsel for the petitioner has contended that an affidavit paper No. 54/18 had not been incorporated in the award. The award has been set aside by the Civil Judge on the ground that the said affidavit was not considered. In my opinion this objection cannot furnish a ground for setting aside an award. It is not in dispute that there was other evidence on record which was taken into consideration by the arbitrator to determine whether petitioner was grove holder or not A perusal of the judgment rendered by the appellate Court indicates that some original files were summoned and the question was examined by the appellate Court in some detail The contents of the affidavit were also examined in the light of information gathered from a perusal of the original record It was observed by the appellate Court that the plots in dispute were entered in the name of proprietor as Riyasat Khajarahat and there appears to be no entry in the remarks column. The learned Judge has also observed that the remarks column was not decipherable even with the help of expert having knowledge of Muriya in which the entry was made in the original Khasra. From these documents the appellate Court has come to a finding that this affidavit is of no assistance to the petitioner as it appears that the arbitrator did take into consideration this affidavit but did not place any reliance on it as it was unworthy of reliance. In the instant case, it is clear from a perusal of the order of the appellate Court that an attempt was made by the arbitrator to ascertain whether affidavit referred to above is relevant or not. I agree with the learned Additional District Judge when he indicates reasons why the arbitrator does not appear to have made any reference

to that document in the award The appellate Court has rightly come to a finding that the affidavit is of no assistance after a perusal of original record On the grounds stated above, I am of the view that non-reference of affidavit referred to above does not affect the validity of the award The evidence furnished by the affidavit does not throw any tight on the title of the petitioner and the appellate Court was within its rights in not referring to the said document as his decision was based upon other relevant evidence produced before him. The evidence furnished by the affidavit in question, in the circumstances of the case, cannot be characterised as a material document which has been ignored from consideration by the arbitrator.

8. For the reasons stated above, I am of the view that there is no merit in this petition which is accordingly dismissed. In the circumstances of the case, I direct that the costs of this Court shall be borne by the parties.

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