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**Court : Allahabad**

**Decided On : Apr-26-2006**

**Reported in : 2006(3)AWC2870**

**Judge : Rajes Kumar, J.**

**Acts : Uttar Pradesh Consolidation of Holdings Act - Sections 4, 4(2), 5, 5(2), 10, 11, 12 and 49; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 122B**

**Appeal No. : Civil Misc. Writ Petition No. 31778 of 2002**

**Appellant : Nand Kishore and ors.**

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

**Advocate for Def. : N.K. Mishra and ; Ashok Kumar Pandey, Advs. and S.C.**

**Advocate for Pet/Ap. : Sankatha Rai, ; Vinod Kumar Rai and Vijay Kumar Rai, Advs.**

**Disposition : Petition allowed**

**Judgement :**

**Rajes Kumar, J.**

1. By means of the present writ petition, petitioner has prayed for quashing of the order dated 16.02.2002 passed by Additional District Judge, Hapur, district Ghaziabad in Civil Revision No. 8 of 2000, Nand Kishore and Ors. v. Dharamveer and Ors. and also to quash the order dated 16.02.2000 passed by Civil Judge (Junior Division), Hapur, district Ghaziabad in suit No. 192 of 1997, Dharamveer v. Nand Kishore.

2. Brief facts of the case are as follows:

3. Dharamveer Singh, respondent No. 3 filed suit No. 192 of 1997, Dharamveer Singh v. Nand Kishore and Ors. in the court of Civil Judge, (Junior Division), Hapur, district Ghaziabad on 29.05.1997 for the relief namely 'A decree be passed to cancel the will dated 06.09.1978, registered on 08.09.1978 executed by late Kripa Ram in favour of defendants No. 1 to 5 in collusion with the defendants No. 6 to 7.' The subject matter of dispute was of bhumadhari land, originally belongs to one Ram Vilas. Ram Vilas had four sons, namely, Samay Ram, Kripa Ram, Anoop Singh and Jagdhar. Samay Ram had four sons, namely, Nand Kishore, Ratan Lal, Bachan Singh and Bateshwar, Nand Kishore had three sons, namely, Satya Prakash, Framed Kumar and Devendra Kumar. Anoop Singh had one son, namely, Dharamveer. Kripa Ram and Jagdhar died issueless. Jagdhar died on 28.07.1950 leaving behind his widow, Smt. Chandaro Devi. Smt. Chandaro Devi had transferred her agricultural land as well as house etc. in favour of Nand Kishore and other, defendants No. 1 and 3 to 5 through sale deed. Kripa Ram had executed a registered will dated 06.09.1978 in favour of defendants No. 1 to 5, which was registered on 08.09.1978. Thereafter, the defendants No. 1 to 5 became the sole bhumidhar of the land in dispute. Satya Prakash and Ors. being legatees of Kripa Ram, filed an application under Section 12 of U.P. Consolidation of Holdings Act (hereinafter referred to as 'Act') before the Consolidation Officer on the basis of the aforesaid will dated 06.09.1978. Application was allowed on 24.01.1980 by the Consolidation Officer after consideration of evidence on record and the name of the defendants No. 1 to 5 was mutated by order of the Consolidation Officer. Anoop Singh, father of Dharamveer filed appeal No. 202 against the aforesaid order of the Consolidation Officer dated 24.01.1980 before Settlement Officer, Consolidation under Section 11 of the Act. The aforesaid

appeal was dismissed on 26.06.1981. Anoop Singh, father of the Dharamveer filed revision No. 12 of 1985 before the Deputy Director, Consolidation against the aforesaid order of the Settlement Officer, Consolidation dated 26.06.1981. During the pendency of the aforesaid revision, Anoop Singh died and the plaintiff, Dharamveer was substituted. The aforesaid revision was dismissed on 31.10.1985. In the aforesaid proceedings, plaintiff, Dharamveer claimed that Samay Singh and Anoop Singh had got 3A share in the property of Ram Vilas. He claimed that the will dated 06.09.1978 executed by Kripa Ram was obtained by fraud. Both the aforesaid claims were adjudicated and were rejected in appeal and revision.

4. Order dated 31.10.1985 passed in revision claimed to have become final. In suit No. 192 of 1997 out of which present writ petition arises, petitioner filed written statement and inter-alia alleged that the suit was barred by Section 49 of the Act, apart from other legal and (actual pleas. Civil Judge, (Junior Division), Hapur framed issue No. 7 in this regard, who vide order dated 16.02.2000 decided the issue against the petitioner. It has been held that the suit has been filed for the cancellation of the sale deed dated 06.09.1978, which could be claimed only in a suit and thus held that the proceeding is not barred by Section 49 of the Act. The order of the Civil Judge (Junior Division), Hapur has been upheld in revision vide order dated 16.02.2002 passed by Additional District Judge, Hapur, which is impugned in the present writ petition.

5. Heard learned Counsel for the parties.

6. Learned Counsel for the petitioner submitted that the right of the petitioner and the plaintiff have been adjudicated in the consolidation proceedings. The claim of the plaintiff-respondent that the will was obtained by fraud has also been adjudicated and the claim has been rejected without any substance. Thus, once the bhumidhari rights over the land has been adjudicated upon by the consolidation authorities, the suit is barred by Section 49 of the Act. He submitted that the consolidation authorities have jurisdiction to decide the validity of the will and the validity could be adjudicated upon by the consolidation authorities as held by this Court in the case of Ram Subhag v. Kailash and Ors. reported in 1994

R.D., 151. He further submitted that the Apex Court in the case of Gorakh Nath Dube v. Hari Narain Singh and Ors. reported in : [1974]1SCR339 has held that the suit for the cancellation of the will deed stands abated in view of Section 5(2) of the Act after the notification under Section 4(2) of the Act. He further submitted that in the case of Vishwanath Pandey and Ors. v. 1st Additional District Judge, Ghazipur and Ors., reported in 1982 A.L.J., 175, this Court held that a suit filed in Civil Court during the course of consolidation proceedings for declaration of right in respect of lands which were not included in consolidation proceedings is barred under Section 49 of the Act. The decree passed in such a suit is nullity and its validity could be set up whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings and executing Court can go behind such decree. He also relied upon the decision of this Court in the case of Prahlad and Ors. v. Bhavi Chand and Ors., reported in 1974 A.W.R., 209. Learned Counsel for the respondents submitted that in the consolidation proceedings the respondent can not claim for the cancellation of the will and the cancellation of the will can only be claimed in the suit and thus, the suit was barred by Section 49 of the Act. In respect of his contention he relied upon the decision of the Apex Court in the case of Smt. Bismillah v. Janeshwar Prasad and Ors. reported in AIR 1990 SC, 540 and Gorakh Nath Dube v. Hari Narain Singh and Ors. reported in : [1974]1SCR339 .

7. Having heard learned Counsel for the parties and perused the impugned orders and the various documents filed by both the parties.

8. I find substance in the argument of learned Counsel for the petitioner. Section 49 of the Act reads as follows:

Bar to civil jurisdiction. - Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure-holders in respect of land lying in an area, for which a notification has been issued under Sub-section (2) of Section 4 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 this Act, shall be done in accordance with the provisions of this 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 matters for which a proceeding could or ought to have been taken under this Act.

Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122-B of the [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) in respect of any land possession over which has been delivered or deemed to be delivered to a Gaon Sabha under or in accordance with provisions of this Act.

9. In the case of *Gorakh Nath Dube v. Hari Narain Singh and Ors.* (Supra) it has been held by the Apex Court that the suit for cancellation of sale deed of the land in dispute stand abated under Section 5(2) of the Act on the publication of the notification under Section 4(2) of the Act. It was further held that where the plaintiffs claim is that the sale of his half share by his uncle is invalid, inoperative and void, such a claim can be adjudicated upon by consolidation courts. In such case the suit for cancellation of the sale-deed which is pending on the date of notification under Section 4 of the Act would abate under Section 5(2) of the Act. In the case of *Ram Subhag v. Kailash and Ors.* (Supra), this Court held that the consolidation authorities have jurisdiction to decide the validity of the will and its validity could be adjudicated upon by the consolidation authorities. In the case of *Vishwanath Pandey and Ors. v. 1st Additional District Judge, Ghazipur and Ors.* (Supra) learned Single Judge of this Court held that suit filed in Civil Court during the course of consolidation proceedings for declaration of right and interest in respect of lands which were not included in consolidation proceedings is barred under Section 49 of the Act. The decree passed in such a suit is nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon even at the stage of execution and even in collateral proceedings and executing Court can go behind such decree. Learned Single Judge further held as follows:

If Section 5 is read with Section 49 it becomes clear that in respect of declaration of right or interest in such land the dispute can be raised only before consolidation authorities. If a dispute could be raised or ought to be and was not raised, before the authorities it cannot be raised subsequently in any civil or revenue Court.

10. In the case of Prahlad and Ors. v. Bhavi Chand and Ors. (Surpa), plaintiff filed an application under Section 12 of the Act claiming that he was the adopted son of the deceased tenure holder who died after the coming into force of U.P Act VIII of 1963. The claim stood rejected by Deputy Director of Consolidation. Subsequently suit was filed by the plaintiff before Civil Court for declaration that he was the adopted son. This Court held that the suit was not maintainable and was barred by Section 49 of the Act.

11. In the present case, the right on the bhumidhari land was claimed on the basis of the will and it was seriously contested by the respondents in consolidation proceedings on the ground that the will was obtained by fraud. Such claim of the respondents were not found correct. Thus, in my view, the suit filed by the respondents for the alleged cancellation of the will on the ground that the will was obtained by fraud is not maintainable and clearly barred by Section 49 of the Act. The decision cited by learned Counsel for the respondent in the case of Gorakh Nath Dube v. Hari Narain Singh and Ors. (Supra) is not helpful to the respondents; rather it helps the petitioner as referred hereinabove. The decision in the case of Smt. Bismillah v. Janeshwar Prasad and Ors. (Supra) is not applicable to the present case. It is under the U.P. Zamindari Abolition and Land Reforms Act and not under the U.P. Consolidation And Holdings Act.

12. For the reasons stated above, order dated 16.02.2006 passed by Additional District Judge, Hapur, district Ghaziabad in revision No. 8 of 2000, Nand Kishore and Ors. v. Dharmveer and Ors. and the order dated 16.02.2000 passed by Civil Judge (Junior Division), Hapur district Ghaziabad in suit No. 192 of 1997 are liable to be quashed.

13. In the result, writ petition is allowed. Order dated 16.02.2000 passed by Additional District Judge, Hapur, district Ghaziabad and order dated 16.02.2002 passed by Civil Judge, (Junior Division), Hapur, district Ghaziabad are quashed.