

**Sudarshan Vs. Tapesar and Others**

**Sudarshan Vs. Tapesar and Others**

**SooperKanoon Citation :** [sooperkanoon.com/917232](http://sooperkanoon.com/917232)

**Court :** Allahabad

**Decided On :** May-03-2011

**Judge :** Sibghat Ullah Khan,J.

**Acts :** U.P. Consolidation of Holdings Act - Section 49 ;

**Appeal No. :** WRIT - C No. - 28924 of 1994

**Appellant :** Sudarshan

**Respondent :** Tapesar and Others

**Advocate for Def. :** R.N.Rai; B.L.Srivastava; Purushottam Upadhyay,S.C., Advs

**Advocate for Pet/Ap. :** S.K.Varma; Siddharth Varma, Advs

**Judgement :**

1. Heard learned counsel for the parties.
2. The only question involved in this writ petition is as to whether bar of Section 49 of U.P. Consolidation of Holdings Act applies to grove land or not? Para-1 of the writ petition is quoted below:

That the opposite parties 1 and 2 filed a Suit under section 229-B of the U.P. Zamindari Abolition and L.R. Act on 30.10.70 on the ground that even though initially the plot in dispute belonged to Purnvasi, Shiv Nath and Vira yet when the Zamindar had given permission to the plaintiffs Tapeswar and Munni Lal for the

plantation of a grove then the plaintiffs alone became the grove holders and after the abolition of Zamindari the plaintiffs alone became Bhumidhars.

3. The number of the plot in dispute is 40, area 13 biswas 16 biswansis. S.D.O., Ghazipur dismissed the 1 Suit No.359 on 15.03.1986 holding the same to be barred by Section 49 of U.P.C.H. Act as consolidation in the area in question had taken place and the plea raised in the suit by the plaintiff could be raised by him before consolidation courts but it was not done. Against the said order, Appeal No.33 of 1986 was filed. Additional Commissioner First, Varanasi Division, Varanasi allowed the appeal on 26.06.1989 (Annexure-III to the writ petition). The lower appellate court in Para-10 of its judgment held that plaintiffs appeared to be the only grove holders/ bhumidhars in use and occupation of the land in dispute. Ultimately lower appellate court set aside the judgment and decree passed by the trial court and remanded the matter to it. Against the appellate court judgment and decree, Second Appeal No.39 of 1988-89 was filed. Board of Revenue, Allahabad dismissed the second appeal on 30.05.1994, hence this writ petition.

4. Section 49 of U.P.C.H. Act is quoted below:

5. 2"49. Bar to Civil Jurisdiction.-- Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of right of tenure-holder in respect of land lying in an area, for which a [notification] has been issued [under sub-section (2) of Section 4] or ad-judication 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." (proviso not relevant)

6. Consolidation in respect of grove land cannot take place in the sense that a plot having grove cannot be given to any other person in rearrangement of chak. However, as far as question of title is concerned, consolidation courts have got full jurisdiction to decide the matter and bar of Section 49 squarely applies. In this regard reference may be made to Dalel v. Baroo, 1963 RD 67 (H.C. F.B.), Ram

Dulare v. Ram Charan, 1977 RD 108 (H.C.), Shambhu v. D.D.C., 1975 AWC 469, Baijnath Rai v. D.D.C., 1986 RD 306 (D.B.) and Anwar Ali v. Munir Ali, 1981 RD 300 3(H.C.).

7. Accordingly, writ petition is allowed. Judgment and decrees passed by the lower appellate court and Board of Revenue are set aside. Judgment and decree passed by the trial court is affirmed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**