

# **Gaya Din (D) Through Lrs. & Ors. vs Hanuman Prasad (D) Through Lrs. & Ors. on 27 November, 2000**

**Author: Syed Shah Mohammed Quadri**

**Bench: S.S.M.Quadri, S.N.Phukan**

CASE NO.:

Appeal (civil) 191 1991

PETITIONER:

GAYA DIN (D) THROUGH LRS. & ORS. ...

Vs.

RESPONDENT:

HANUMAN PRASAD (D) THROUGH LRS. & ORS. ...

DATE OF JUDGMENT: 27/11/2000

BENCH:

S.S.M.Quadri, S.N.Phukan

JUDGMENT:

SYED SHAH MOHAMMED QUADRI, J.

This appeal, by special leave, is from the judgment and order of the High Court of judicature at Allahabad in Writ Petition No.1685 of 1975 dated October 20, 1989. The lis has its origin in the objections filed by the successors of Sheetal Prasad, the respondents, under the U.P. Consolidation of Holdings Act, 1953 (for short, the Consolidation Act) at the time of Partial against the successors of Bala Prasad and Sadhau, the appellants, who were recorded as Khatedars of khatas in dispute. They are Khata Nos. 2,11,21,23 which, comprise of bhumidhari lands, khata Nos. 28,39 which consist of sirdari lands of village Akathi and khata No.8 which is a bhumidhari land of village Chainpur. To appreciate the scope of the controversy and the facts giving rise to it, it would be helpful to notice the genealogy of the family of the parties : PEDIGREE Matai Manni Gokul (died issueless) Bala Pd. Sadhau Sheetal Pd. Parmeshwar Chandrika =Smt.Sheoraja (died (died issueless) issueless) Gayadin Brindaban Mathura Gaya Hanuman Bhikhari A1 A2 A4 A5 R1 =Smt.Sukhdei R2 =Smt.Sheo Devi A3 Jagannath R3 [A represents appellant and R represents respondent] In the objections filed by them, the respondents claimed that they and the appellants are the members of Joint Hindu family and that the entries in the names of appellants are in representative capacity for all the members of the joint family and, therefore, their names should also be recorded as the

co-sharers along with the names of the appellants. This claim was contested by the appellants denying existence of joint family and asserting that they are holding the khatas in their individual capacity. On considering the evidence adduced by the parties the Consolidation Officer held that all the khatas did not belong to a common ancestor and that it was not shown that they were acquired for the whole family from the joint family funds by the head of the family so he dismissed the objections on December 23, 1969. The respondents herein carried the matter in appeal before the Settlement Officer Consolidation. On June 4, 1970, he allowed the appeal and set aside the said order of the Consolidation Officer. But the Deputy Director of Consolidation allowed the revision filed by the appellants and remanded the case to the Settlement Officer Consolidation on July 6, 1971. By order dated September 22, 1973, the Settlement Officer held that the khatas in question were joint Hindu family property and all the parties were co-sharers who were entitled to 1/6th share each. The appellants again carried the matter in revision before the Deputy Director of Consolidation who set aside the order of the Settlement Officer holding that the khatas in question are held by the appellants individually and allowed the revision on April 7, 1975. The respondents assailed the validity of that order before the High Court in the writ petition. By the impugned order the High Court quashed the said order of the Deputy Director of Consolidation dated April 7, 1975 and restored the order of the Settlement Officer Consolidation dated September 22, 1973. The appellants are thus before us in appeal. Mr.V.K.S.Choudhary, learned senior counsel for the appellants, argued that the High Court ought not to have interfered with the order of the Deputy Director of Consolidation under Article 226 of the Constitution and that in any event the tenancy rights were inherited not in accordance with the personal law of the parties but in accordance with the provisions of the U.P. Tenancy Act, 1939. According to Mr.Choudhary, the Joint Hindu family could not have held the tenancy rights even if the lands were that of Manni, the common ancestor, and on his death the sons would have become co-tenants. He contended that under Sections 3-B and 3-C of the United Provinces Agricultural Tenants [Acquisition of Privileges] Act, 1953 (for short, the Acquisition Act) unless an unrecorded co-tenant got a declaration, he could not claim to be a co-tenant (See: Section 7-A). The respondents not having obtained such a declaration, are not entitled to be recorded as sharers in the khatas. Mr.Anil Kumar Gupta, learned counsel for the respondents, submitted that the contentions now raised under the Acquisition Act were not urged before any of the Authorities or the High Court so these contentions could not be raised for the first time before this Court; that the only question which was under the consideration of the Authorities as well as the High Court was whether the parties were members of the Joint Hindu family and the khatas in question were held for their benefit, which was answered in favour of the respondents by the High Court. A perusal of the impugned order of the High Court as well as the orders of the Authorities under the Consolidation Act, shows that the appellants did not urge at any earlier stage, the contentions now raised before us under Sections 3B and 3C of the Acquisition Act, therefore, we are not inclined to deal with the said contentions. The only point which remains to be considered is the controversy which was raised and decided by all the Authorities as well as by the High Court and that is : whether the parties are members of joint Hindu family and the khatas in question are held for all the members of the joint Hindu family. Now, we shall advert to the contentions of the appellants that the High Court ought not to have interfered with the findings of facts recorded by the Deputy Director of Consolidation whose powers under the amended provision of Section 48 of the Consolidation Act are wide enough to upset or reverse the findings of facts recorded by the Settlement Officer Consolidation. The High Court, it was argued, erred in quashing the order of the

Deputy Director on the ground that he unjustifiably interfered with order of the Settlement Officer Consolidation when there was no error apparent on the face of the record. The learned counsel for the respondents has submitted that the powers of the revisional authority -- the Deputy Director -- under amended Section 48 are wider than the unamended Section 48 which was analogous to Section 115 C.P.C.; but even so the powers cannot be equated to the powers of the Court of appeal so interference with the order of the Settlement Officer Consolidation by the Deputy Director on re-appreciating the evidence, was illegal and was rightly quashed by the High Court. There can be no doubt that under amended Section 48 of the Consolidation Act, the revisional power of the Director of Consolidation is not confined to errors of jurisdiction as was the position under the unamended provision. The power of the revisional authority now extends to satisfying himself as to the regularity, correctness, legality or propriety of any order other than an interlocutory order. It is well-settled that conceptually the powers of a revisional authority, even if couched in wide language, cannot be equated with the powers of an appellate authority. The scope of the powers of the Deputy Director under the amended provision came up for consideration of this Court in *Ram Dular Vs. Deputy Director of Consolidation, Jaunpur and Ors.* [1994 Supp. (2) SCC 198]. It was observed that in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity under Section 48 of the Consolidation Act, the Deputy Director of Consolidation could not assume the jurisdiction of the original authority as a fact-finding authority by appreciating for himself of those facts *de novo*; he had to consider whether the legally admissible evidence had been considered by the authorities in recording a finding of fact or law or the conclusion reached by them was based on evidence or any patent illegality or impropriety had been committed or there was any procedural irregularity, which would go to the root of the matter. That judgment was relied on in a recent judgment of this Court in *Seshmani and Anr. Vs. Deputy Director of Consolidation, district Basti, U.P. and Ors.* [2000 (2) SCC 523]. It is true in *Sheo Nand and Ors. Vs. Deputy Director of Consolidation, Allahabad and Ors.* [AIR 2000 SC 1141], this Court observed :

Section 48 of the Consolidation Act gives very wide powers to the Deputy Director. It enables him either *suo motu* on his own motion or on the application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may be effectively adjudicated upon and determined so as to confer finality to the rights of the parties and the Revenue Records may be prepared accordingly.

But in the very next para the amplitude and the extent of the powers have been qualified thus : Normally, the Deputy Director, in exercise of his powers, is not expected to disturb the findings of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation) but where the findings are perverse, in the sense that they are not supported by the evidence brought on record by the parties or that they are against the weight of evidence. It would be the duty of the Deputy Director to scrutinise the whole case again so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him.

Thus, it is clear that notwithstanding the fact that Section 48 has been couched in wide terms, it only permits interference where the findings of the subordinate authority are perverse in the sense that they are not supported by the evidence brought on record or they are against the law or where they suffer from the vice of procedural irregularity. Now, reverting to the facts of this case, the Settlement Officer has correctly framed the questions; whether the parties are members of joint Hindu family and the property in dispute is joint Hindu family property. He discussed the documents of 1905, 1906, 1911, 1916, 1919 and 1920 executed in favour of various members of the family including minors to show that the family acquired properties in the names of the family members including minors. He also referred to Khewat of 1924 and 1932 to arrive at the conclusion of existence of joint family. Another fact which was taken into consideration was that Hanuman Prasad entered into partnership agreement in June 1948 which shows that Hanuman Prasad was a partner and Gaya Din was an honorary manager. It is in that background he referred to Gaya Din depositing ten times revenue in 1950 for acquisition of Bhumidari right in the lands covered by the Khatas in dispute for the benefit of the joint family. He has also relied upon possession of plots irrigation deposits, entries in Kanpur plots, printing of invitation cards by the family to support the conclusion of the jointness of the family. It was the cumulative effect of all these factors that made the Settlement Officer Consolidation to arrive at the conclusion that the family was joint and that the khatas were maintained in the names of members of different branches of the family. He thus concluded that the eight khatas in question were joint Hindu family property and all the parties were co-owners thereof. A perusal of the order of the Deputy Director of Consolidation shows that nowhere he pointed out that the findings recorded by the Settlement Officer Consolidation were perverse or contrary to the evidence or not supported by evidence. What all appears is that in respect of certain facts, the Deputy Director arrived at the conclusion different from that reached by the Settlement Officer Consolidation but that by itself, in our view, does not under Section 48 of the Consolidation Act clothe the Deputy Director with the power to disturb the findings of fact recorded by the Settlement Officer Consolidation. The High Court in the impugned order noted :

The Settlement Officer Consolidation on considering of Khewat, Annexure-1 as also application for mutation on behalf of Mathura Prasad and Ganga Krishna minor sons of Sadhau, opposite party No.1 having applied for their mutation in the joint khewat Annexure-2 and other documents together with other evidence rightly held the family to be joint and no partition had taken place. It was also pointed out that the Deputy director of Consolidation lost sight of the fact that there was no iota of evidence to indicate that the opposite parties made self- acquisition of any land. It was in that context that the High Court observed that since the evidence on record and on appraisal of law, the Settlement Officer Consolidation did not commit any error apparent on the face of the record which could have been disturbed by the Deputy Director of Consolidation. It was further pointed out that the findings of the Deputy Director of Consolidation suffered from non-consideration of oral and documentary

evidence which was taken into account by the Settlement Officer Consolidation and was erroneous on the face of record as such the same could be disturb in exercise of the jurisdiction under Article 226 of the Constitution. The High Court has also noted that the order of the Deputy Director was based on improper consideration of evidence and wrong application of well- settled principle of law about presumption of jointness in a joint Hindu family and quashed the order of the Deputy Director of Consolidation. We find no illegality in the impugned order of the High Court. Mr.Choudhary has next contended that even assuming that Manni was the Head of the family and held the tenancy rights under the U.P Tenancy Act the succession is not according to Hindu Law but under the provisions of the Tenancy Act and that in any event the claim that the joint family possessed tenancy rights cannot be accepted and in support of this contention he relied upon the judgment of the Full Bench of the Allahabad High Court in Chotey Lal & Ors. vs. Jhandey Lal & Anr. [1972 A.W.R. 225]. There can be no controversy about the contention that the succession of the tenancy rights, special rights created under the Act, can only be under the provisions of those Acts. On Mannis death his sons Bala Prasad, Sadhau and Sheetal Prasad became entitled to 1/3rd each. But they continued as joint Hindu family of which their children also became members. It is a well-settled principle of Hindu Law that the joint and undivided family is the normal condition of Hindu society but it is not a juristic person as such it cannot hold any property independent of the members. On a perusal of the aforementioned judgment of Full Bench of Allahabad High Court, we approve the following proposition laid down by it : That the members of the joint family collectively own the coparcenary property. Each member has an interest in such property, though his interest becomes definite on partition. Till then, it is an undivided interest. The view express in Mahabir Singh and the other cases mentioned above, that the members were not the tenants of the holding because they had no interest in it, is, with respect, fallacious. In law, the members of the joint Hindu family together become the tenants of the holding. The coparcenary body as such, and as an entity apart from its members, does not own property. The property does not vest in the coparcenary but in its members, though collectively.

But this position far from supporting the claim of the appellants negatives their claim. As the khatas in question which now comprise of Bhumidari and Sirdari lands, could not be held in the name of the joint family which is not a juristic person, they stand in the names of the members of different branches of the family and the khatedars ought to be taken as holding collectively for the benefit of all the members of the family. For the above reasons, the judgment and order of the High Court does not suffer from any illegality to warrant interference by this Court. The appeal is accordingly dismissed with costs.