

## Ram Dular vs Dy. Director Of Consolidation on 8 February, 1994

**Equivalent citations: 1994 SCR (1) 735, 1994 SCC SUPL. (2) 198, AIRONLINE 1994 SC 718**

**Author: K. Ramaswamy**

**Bench: K. Ramaswamy, N Venkatachala**

PETITIONER:

RAM DULAR

Vs.

RESPONDENT:

DY. DIRECTOR OF CONSOLIDATION

DATE OF JUDGMENT 08/02/1994

BENCH:

RAMASWAMY, K.

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RAMASWAMY, K.

VENKATACHALA N. (J)

CITATION:

1994 SCR (1) 735

1994 SCC Supl. (2) 198

JT 1994 (3) 341

1994 SCALE (2) 338

ACT:

HEADNOTE:

JUDGMENT:

### ORDER

1. This appeal by special leave arises from the order dated August 8, 1977 of the High Court of Allahabad in Civil Miscellaneous Writ No. 1987 of 1976 whereby the High Court has confirmed the order of the Deputy Director of Consolidation dated September 4, 1976 rendered in batch of revisions. The family genealogy has been considered extensively by the Consolidation Officer, Settlement Officer and Deputy Director. From the genealogy it is seen that one Dewan was the common ancestor. He had two sons by names, Nihut and Mata Palat. Nihut had a son by name

Angan. Angan had two sons Jokhu and Sampath. Jokhu had a son by name Ram Sumer. Ram Sumer had two sons Sita Ram and Sri Ram, the respondents in this case and Ram Dular, the appellant is the son of Bachha, who was the son of Sampath. We are concerned in this appeal as regards Khata Nos. 196 and 99 in Village Puharpur. It is the case of the appellant that Angan, his great-grandfather had ancestral property and as a successor in interest through his grandfather, he has been in joint possession and enjoyment of certain Khata Nos. in the said Khata numbers fallen towards his half share as co-khatadar along with Sita Ram and Sri Ram, while his cousins are entitled to the other half share therein. In the consolidation proceedings, the Consolidation Officer had found that the appellant had proved to be co-khatadar in respect of both the Khatas though he found that entries in 1306 Fasli were fabricated. Then, 1308 Fasli entries were also found to be correct, where the name of Sampath was mentioned. On behalf of the plaintiff our attention was drawn to the observation that "Fasli 1308 has been produced and the defendants have not challenged it as a forged document". On that basis and on the basis of the production of revenue receipts from 1365 Fasli onwards for 15 years, it was found that the appellant was a co-khatadar. It was also observed that when the appellant was present in the Court when Sri Ram was examined on behalf of the respondents Sri Ram even refused to recognise him in the Court and expressed his ignorance about the ancestry of the appellant. The Tribunals, however, noticed his admission that there are six houses in the area in which the parties are residing. The appellant had been residing adjacent to the house of Sri Ram and Sita Ram at Purwa, yet he refused to recognise him in the Court. It also found that the genealogical table given by the appellant was correct and no contra family genealogy was given by the respondents before the Consolidation Officer, Settlement Officer and Deputy Director.

2. Three sets of the people made common cause, namely, the parties herein and the legal representatives from the side of Mata Palat. Since their claims have become final, we need not refer to their genealogy and ancestry in these proceedings. The Settlement Officer on appeal found that Ram Sumer had his self-acquired property and that therefore to that extent the appellant could not have made a claim as co-sharer. However, in respect of ancestral property acquired by Angan, the Settlement Officer also found that the appellant is entitled to half share in Khata Nos. 99 and 196, except Khata Nos. 32, 34, 94, 478, 495, 496 and 532/1. On revision the Deputy Director held that the fabricated revenue records for 1306 and 1308 Fasli cannot be relied on. He held that the entries in the revenue records for 1307 Fasli only the name of Jokhu was found. So the appellant cannot be said to be the legal representative from the branch of Sampath. As a result the entire ancestral property would pass on to Jokhu's legal representatives, namely, Sita Ram and Sri Ram. Thus he allowed the revision and set aside the order of both the tribunals. The High Court, as stated earlier, refused to go into the question on its view that it is a finding of fact and Deputy Director had corrected the mistake committed by the authorities in exercise of power under Section 48 of the U.P. Consolidation of Holdings Act, 1953, for short 'the Act'.

3. The question, therefore, is whether the Deputy Director of Consolidation was legally justified in upsetting the findings recorded by the Consolidation Officer and the Settlement Officer. It is true that the finding whether Jokhu and Sampath are sons of Angan is a finding of fact and that the authorities are entitled to consider that question. But while exercising the revisional power under Section 48, what requires to be seen is, whether the Deputy Director has considered the question in its proper perspective or had ignored any material evidence on record in coming to the said

conclusion. Section 48 reads thus:

"48. Revision and Reference.- (1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than an interlocutory order passed by such authority in the case or proceedings, may, after allowing the parties concerned an opportunity of being heard, make such order in the case or proceedings as he thinks fit."

It is clear that the Director had power to satisfy himself as to the legality of the proceedings or as to the correctness of the proceedings or correctness, legality or propriety of any order other than interlocutory order passed by the authorities under the Act. But in considering the correctness, legality or propriety of the order or correctness of the proceedings or regularity thereof it cannot assume to itself the jurisdiction of the original authority as a fact-finding authority by appreciating for itself of those facts de novo. It has to consider whether the legally admissible evidence had not been considered by the authorities in recording a finding of fact or law or the conclusion reached by it is based on no evidence, any patent illegality or impropriety had been committed or there was any procedural irregularity, which goes to the root (sic root) of the matter, had been committed in recording the order or finding. In this case it is seen that admittedly all the parties have been residing in the same locality. It had been found by the Consolidation Officer that the appellant was in possession of the lands and he had produced revenue receipts for continuously 15 years from 1365 Fasli onwards and that finding was not disturbed by the Deputy Director. It is true that the record for the Fasli 1306 was found fabricated and the name of Sampath was not mutated and Jokhu alone was mutated in the revenue records for 1307 Fasli. The Consolidation Officer recorded the genuineness of the entries for the year 1308 Fasli which was not even disputed by the respondents. In the entries for 1308 Fasli the name of Sampath was found as son of Angan and was mutated. This vital aspect was omitted to be taken into consideration by the Deputy Director. The Deputy Director on the other hand concluded that for the year 1308 Fasli also the name of Sampath was fabricated. It is an obvious error committed by the Deputy Director and the High Court refused to correct it on the plea that it is only a finding of fact. Once, from the entries it is seen that Sampath was also mentioned as son of Angan and the appellant had been continuously in possession for 15 years it would clearly indicate that he has been in joint possession in respect of land in the aforesaid Khata Nos. along with the respondents. As seen, there is no alternative genealogy filed by the respondents. The Deputy Director merely recorded the genealogy of the respondents and their ancestry, omitting the branch of the appellant. Thereby he practically omitted to consider the genealogy which was even undisputed by the respondents. Under these circumstances the Deputy Director has committed manifest error of law by reversing the orders of the Consolidation Officer and Settlement Officer. Accordingly the appeal is allowed, the order of the Settlement Officer is confirmed to the extent of half share in the ancestral property acquired by Angan as affirmed by the Settlement Officer on appeal. But in the circumstances, parties are directed to bear their own costs.