

Khursheed & Anr.

v.

Shaqoor

(Special Leave Petition (C) No. 26454 of 2019)

10 September 2024

[Sudhanshu Dhulia and Ahsanuddin Amanullah, JJ.]

Issue for Consideration

Whether by virtue of s.5(2)(a) upon publication of Notification u/s.4 of the U.P. Consolidation of Holdings Act, 1954, any pending civil suit for cancellation of sale deed executed by fraud and impersonation, stands abated and the jurisdiction of the Civil Court to try such a suit is ousted in terms of s.49 of Consolidation Act.

Headnotes[†]

U.P. Consolidation of Holdings Act, 1954 – s.5(2)(a) and s.49 – Respondent herein filed a civil suit for cancellation of the Sale Deed before the Civil Judge – Petitioner No.2 herein filed an application stating that suit stands abated as per s.5(2)(a) of the Consolidation Act – The said application was allowed by the Civil Court and appeal against the same was dismissed – However, the High Court came to the conclusion that as the allegation is that the sale deed was executed by playing fraud and by impersonation, it would be a “voidable” document and thus, any suit, for cancellation of a voidable sale deed will not abate by virtue of Section 5(2)(a) of the Consolidation Act – Correctness:

Held: It is settled that a “voidable” document continues to be in force until it is set aside and such a document can only be set aside by a competent civil court – Further, such documents are binding upon the Consolidation Authorities so long as they are not cancelled or set aside by a Court vested with the jurisdiction to do so – It is also settled that the consolidation authorities do not have the jurisdiction and power to cancel a document, which is required to be set aside or cancelled and the document will continue to be valid till it is cancelled by a Competent Court i.e. a Civil Court – If the document is void, it would be open for the Consolidation Authorities to disregard such a document & in such a case, they would get the exclusive jurisdiction to proceed with

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the matter – But if the document is voidable, the Civil Court is vested with the jurisdiction to declare the same to be voidable – In the case of voidable documents, not only would the Consolidation Authorities have no power to cancel such documents, but even the proceedings pending before any competent Civil Court would not abate – In the instant case, the allegation here is that the fraudulent misrepresentation was by petitioner No. 1's mother, who executed the sale deed dated 09.08.2016 by impersonation, it would make the sale deed voidable, but not void – The Sale Deed dated 09.08.2016 will be binding on the Consolidation Authorities unless it is set aside by a competent Civil Court and there would be no bar on jurisdiction of the Civil Court to try a suit for cancellation of such a sale deed. [Paras 10, 11]

Case Law Cited

Ningawwa v. Byrappa [\[1968\] 2 SCR 797](#) : (1968) 2 SCR 797 – relied on.

Gorakh Nath Dube v. Hari Narain Singh [\[1974\] 1 SCR 339](#) : (1973) 2 SCC 535; *Dularia Devi v. Janardan Singh & Ors.* [\[1990\] 1 SCR 799](#) : AIR 1990 SC 1173; *Ram Sakal Singh v. Mosamat Monako Devi* [\[1997\] 2 SCR 357](#) : (1997) 5 SCC 192 – relied on.

List of Acts

UP Consolidation of Holdings Act 1954; Code of Civil Procedure, 1908; Constitution of India.

List of Keywords

Section 5(2)(a) of the UP Consolidation of Holdings Act, 1954; Section 49 of the UP Consolidation of Holdings Act, 1954; Article 226/227 Constitution of India; void document; Voidable document; Jurisdiction; Competent civil court; Cancellation of sale deed; Consolidation Authorities; Fraud; Misrepresentation; Impersonation; Abate.

Case Arising From

CIVIL APPELLATE JURISDICTION: Special Leave Petition (C) No. 26454 of 2019

From the Judgment and Order dated 02.08.2019 of the High Court of Uttarakhand at Nainital in WPMS No. 93 of 2019

Khursheed & Anr. v. Shaqoor**Appearances for Parties**

Ravindra Kumar Raizada, Sr. Adv., Sarthak Raizada, Ms. Divya Roy, Advs. for the Petitioners.

Ansar Ahmad Chaudhary, Md. Anas Chaudhary, Mohd. Sharyab Ali, Ms. Shehla Chaudhary, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Order**

1. The question which arises in this petition for our determination relates to the bar on jurisdiction of the Civil Court under Section 5(2) (a) read with Section 49 of the U.P. Consolidation of Holdings Act, 1954 (hereinafter referred to as '**Consolidation Act**').
2. Whether, by virtue of Section 5(2) (a), upon publication of the Notification under Section 4 of the Consolidation Act, any pending civil suit for cancellation of a sale deed executed by fraud and impersonation, stands abated and the jurisdiction of the Civil Court to try such a suit is ousted in terms of Section 49 of the Consolidation Act?
3. The Petitioners-Defendants, assail the correctness of the Order dated 02.08.2019, passed by the High Court of Uttarakhand, whereby Writ Petition (M/S) No. 93/2019, filed by the Respondent-Plaintiff was allowed holding that a suit for cancellation of a "voidable" sale deed relating to agricultural land pending in a Civil Court would not stand abated in terms of Section 5(2) (a) of the Consolidation Act and the bar on jurisdiction of the Civil Court's under Section 49 of the Consolidation Act would not be applicable when the suit is for cancellation of a "voidable document"; as opposed to a "void document".
4. The dispute in this petition relates to certain parcels of agricultural land bearing Khata Nos. 154 and 154A, situated at village-Basedi Khaadar, Pargana-Manlore, Tehsil-Laskar, District-Haridwar. The facts which have given rise to this dispute are as follows:
 - i. One Illahibaksh the owner of the aforementioned parcels of land had three sons- Shafi, Gafoor and Shaqoor (Respondent herein). Upon the death Illahibaksh, the land devolved upon the three sons equally and they each acquired 1/3rd share in the

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land. His son Shafi had 3 daughters & one of them (Haneefa) is the mother of the Petitioner No.1 herein.

- ii. The other son, Gafoor did not have any children and therefore, his share devolved upon his wife, namely Vakila. Her name was accordingly mutated in the revenue records. Later, Vakila married the Respondent herein, i.e. Shaqoor.
 - iii. In the year 2003, the property in dispute was brought under consolidation proceedings and a notification to that effect was published in the Gazette.
 - iv. It is averred by the Respondent herein that after the death of his wife-Vaqila in 2009, the mother of Petitioner No.1 (Haneefa) fraudulently claimed to be the daughter of Gafoor and by impersonation, inherited the property which had devolved upon Vakila and got herself recorded as the co-tenure holder of the property on 03.08.2016
 - v. Thereafter, it is alleged that mother of Petitioner No. 1 (Haneefa) executed a Sale Deed dt. 09.08.2016 in favour of Petitioner No. 2 and in this way, alienated and sold the property, to which she had no title or any transferable right in respect thereof.
5. A Civil Suit praying for the relief of cancellation of the Sale Deed dated 09.08.2016 was then filed by the Respondent herein before the Civil Judge (Junior Division), Laksar (hereinafter referred to as 'the Civil Court'). The mother of petitioner No. 1-Haneefa and petitioner No. 2-Jodh Singh, who had purchased the property were impleaded as Defendant Nos. 1 and 2 respectively in the suit.
6. On 09.09.2016, an application came to be filed by Petitioner No. 2 herein before the Civil Court praying for an order that suit stands abated as per Section 5(2) (a) of the Consolidation Act, which reads as under:

(2) Upon the said publication of the notification under sub-section (2) of Section 4, the following further consequences shall ensue in the area to which the notification relates, namely-

(a) every proceeding for the correction of records and every suit and proceeding in respect of declaration of

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rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceeding can or ought to be taken under this Act, pending before any court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceedings is pending, stand abated:

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard:

Provided further that on the issue of a notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part as the case may be, shall stand vacated;

(b) Such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of this Act and the rules made there under.

7. The application filed by petitioner No. 2 was allowed vide Order dated 26.09.2016, passed by the Civil Court. What weighed in with the Civil Court, while allowing the application was that the dispute which it had to adjudicate in the Civil Suit filed by the Respondent is pending consideration before the Consolidation authorities. In view of the fact that the village where the property is situated has been notified under Section 4(1) (a) of the Consolidation Act, thus, civil suit filed by the Respondent-Plaintiff would stand abated, in terms of Section 5(2) (a) of the Act.
8. Aggrieved by the order of the Civil Court, by which his suit stood abated, the Respondent-Plaintiff filed a Miscellaneous Civil Appeal under Section 96 of the Code of Civil Procedure, 1908 before the Additional District Judge, Laksar, District-Haridwar. The Respondent's appeal was dismissed vide Order dated 22.11.2018.
9. Invoking the extra-ordinary writ jurisdiction of the High Court under Article 226/227 of the Constitution of India, the respondent challenged

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the order dated 22.11.2018 of the Additional District Judge, Laksar by filing a Writ Petition before the High Court of Uttarakhand. The learned Single Judge of the High Court, by passing the impugned order dated 02.08.2019 allowed the Writ Petition filed by the Respondent & set aside the order dated 22.11.2018 of the Additional District Judge, Laksar and consequently ordered that the Civil Suit filed by the Respondent be restored to the file of the Civil Judge (Junior Division), Laksar, District-Haridwar. The learned Single Judge, after placing his reliance upon a judgment of this Court in ***Gorakh Nath Dube v. Hari Narain Singh (1973) 2 SCC 535***, came to the conclusion that as the allegation is that the sale deed was executed by playing fraud and by impersonation, it would be a “voidable” document and thus, any suit, for cancellation of a voidable sale deed will not abate by virtue of Section 5(2) (a) of the Consolidation Act. The distinction between ‘void’ and ‘voidable’ documents was made by this Court in the case of ***Ningawwa v. Byrappa (1968) 2 SCR 797*** and this is what was held:

4..... It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded. “The fact that the contract has been induced by fraud does not make the contract void or prevent the property from passing, but merely gives the party defrauded a right on discovering the fraud to elect whether he shall continue to treat the contract as binding or disaffirm the contract and resume the property. If it can be shown that ‘the party defrauded’ has at any time after knowledge of the fraud either by express words or by unequivocal acts affirmed the contract, ‘his’ election is determined for ever. The party defrauded may keep the question open so long as he does nothing to affirm the contact.” (*Clough v. L. & N.W. Ry.*) [(1871) LRs 7 Ex 26, 34].

5. The legal position will be different if there is a fraudulent misrepresentation not merely as to the

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contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable.

(emphasis supplied)

10. This Court, in Dularia Devi v. Janardan Singh & Ors. AIR 1990 SC 1173 relying upon the law laid down in Ningawwa (supra) and Gorakh Nath Dube (supra) had held that a “voidable” document continues to be in force until it is set aside and such a document can only be set aside by a competent civil court. Further, such documents were held to be binding upon the Consolidation Authorities so long as they are not cancelled or set aside by a Court vested with the jurisdiction to do so. Moreover, in Ram Sakal Singh v. Mosamat Monako Devi (1997) 5 SCC 192 this Court has held that the consolidation authorities do not have the jurisdiction and power to cancel a document, which is required to be set aside or cancelled and the document will continue to be valid till it is cancelled by a Competent Court i.e. a Civil Court. This court also held that if the document is void, it would be open for the Consolidation Authorities to disregard such a document & in such a case, they would get the exclusive jurisdiction to proceed with the matter. But if the document is voidable, the Civil Court is vested with the jurisdiction to declare the same to be voidable. In the case of voidable documents, not only would the Consolidation Authorities have no power to cancel such documents, but even the proceedings pending before any competent Civil Court would not abate.
11. The allegation here is that the fraudulent misrepresentation was by petitioner No. 1's mother, who executed the sale deed dated 09.08.2016 by impersonation, it would make the sale deed voidable, but not void. As such, in view of the law laid down by this Court in Gorakh Nath Dube (supra), the Sale Deed dated 09.08.2016 will be binding on the Consolidation Authorities unless it is set aside by a competent Civil Court and there would be no bar on jurisdiction of the Civil Court to try a suit for cancellation of such a sale deed.

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12. In view of the aforesaid, we see no reason to interfere with the impugned order dated 02.08.2019 passed by the High Court of Uttarakhand. The Special Leave Petition, accordingly, stands dismissed.
13. Pending application(s), if any, shall stand disposed of.

Result of the Case: Special Leave Petition Dismissed.

[†]Headnotes prepared by: Ankit Gyan