



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO(S). 9739-40 OF 2011

NISAR AHMAD & ORS.

APPELLANT(S)

VERSUS

SAMI ULLAH (DEAD) THROUGH LRS. & ANR. RESPONDENT(S)

**WITH
CONTEMPT PETITION (C) NO. 194 OF 2022**

J U D G M E N T

UJJAL BHUYAN, J.

Heard learned counsel for the parties.

2. The two appeals by special leave are directed against the judgment and order dated 05.01.2009 passed by a Division Bench of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 6635 of 1974 (Nisar Ahmad and Ors. Vs. Deputy Director of Consolidation, Sultanpur and Ors.) and in Writ Petition No.18 of 1975 (Sami Ullah and Anr. Vs. Nisar Ahmed and Ors.). By the aforesaid judgment and order dated 05.01.2009, Civil Misc. Writ Petition No.6635 of 1974 was dismissed and Writ Petition No.18 of 1975 has been allowed.

3. By order dated 27.04.2009, this Court had issued notice on the special leave petition as well as on the prayer for interim relief. Subsequently, by order dated 15.01.2010, both the parties were directed to maintain *status quo* prevailing as on 15.01.2010. Thereafter, by order dated 03.11.2011, leave was granted directing the *status quo* order to be continued in the meantime.

4. At the outset, it may be useful to make a brief reference to the relevant facts. Zahoor Ahmed, son of Abdul Shakoor, father of the appellants, had moved the Consolidation Officer, Sultanpur under Section 9(2) of the Uttar Pradesh Consolidation of Holdings Act, 1953 (briefly 'the 1953 Act' hereinafter) raising a dispute as to Khata Nos. 99 and 100 of village Bhati Jarouli of Miranpur, District Sultanpur, U.P., recorded in the name of respondent Sami Ullah and others. Zahoor Ahmed claimed co-tenancy in both the Khatas to the extent of half share. Since the dispute could not be reconciled, he approached the Consolidation Officer. After notice and hearing, the Consolidation Officer passed an order dated 06.12.1972 directing that the name of Zahoor Ahmed be entered as a co-tenant in Khata No. 99 and accordingly partition be made. The shares of Sami Ullah and another (respondents herein) were determined to the extent of 1/4 each. However, the claim of Zahoor

Ahmed of co-tenancy *qua* Khata No. 100 was rejected. Accordingly, direction was issued to intimate the parties and to correct the areas of the land in respect of the parties so determined by the Consolidation Officer.

5. Aggrieved by the aforesaid order dated 06.12.1972, respondents Sami Ullah and others filed appeals before the Assistant Settlement Officer under Section 11(1) of the 1953 Act. Similarly, Zahoor Ahmed also filed an appeal under Section 11(1) of the 1953 Act against the said order dated 06.12.1972 rejecting his claim *qua* Khata No. 100. By order dated 25.04.1973, the appellate authority i.e. the Assistant Settlement Officer, Sultanpur dismissed all the appeals. In other words, order of the Consolidation Officer dated 06.12.1972 was upheld.

6. Thereafter, respondents Sami Ullah and others filed a revision application before the Deputy Director of Consolidation, Gorakhpur ('Deputy Director', hereinafter). Likewise, the legal heirs of Zahoor Ahmed, Nisar Ahmed and others ('appellants' herein) also filed revision before the Deputy Director against rejection of their appeal. By the order dated 20.09.1974, the Deputy Director opined that Zahoor Ahmed was not entitled to get share in the above Khatas and accordingly the order of the

Consolidation Officer as affirmed by the Assistant Settlement Officer i.e. the appellate authority was modified. Deputy Director while dismissing the revision of Zahoor Ahmed, Nisar Ahmed and others allowed the revision of the respondent Sami Ullah and others.

7. Appellants thereafter preferred Civil Misc. Writ Petition No. 6635 of 1974 before the High Court of Judicature at Allahabad (briefly 'the High Court' hereinafter). By the judgment and order dated 05.01.2009, the High Court held that Deputy Director was not justified in importing principles of Hindu law while determining the share of the parties who were admittedly Mohammedans. Accordingly, the High Court held that the appellants have 1/12 share jointly in the plots comprised in Khata Nos. 98 and 99 excluding plot Nos. 35, 37, 111 and 112 which exclusively belongs to the respondents Sami Ullah and his brother Badlu, sons of Abdul Ghafoor. Accordingly, Civil Misc. Writ Petition No. 6635 of 1974 was dismissed and Writ Petition No. 18 of 1975 was allowed.

8. It is this judgment and order dated 05.01.2009 which came to be assailed in the related special leave petitions and upon leave being granted, the present civil appeals came to be registered.

9. While learned counsel for the appellants has contended that the High Court was not justified in upholding the order passed by the Deputy Director in revision thereby adversely affecting the rights of the parties, learned counsel for the respondents on the other hand supports the impugned order. He submits that the order of the High Court is a well-reasoned and balanced order and therefore should not be disturbed.

10. Submissions made by learned counsel for the parties have received the due consideration of the Court.

11. Zahoor Ahmed, the predecessor in interest of the appellants, had approached the Consolidation Officer under Section 9(2) of the 1953 Act raising a dispute regarding Khata Nos. 99 and 100. It may be mentioned that the Khata No. 99 was recorded in the name of Sami Ullah and Badlu (the respondents) whereas Khata No. 100 was recorded in the name of Sami Ullah alone. Zahoor Ahmed claimed co-tenancy in both the Khatas to the extent of 1/2 share. He also claimed half share in Khata No. 100. Since the dispute could not be reconciled, the same was raised before the Consolidation Officer.

11.1. According to Zahoor Ahmed, the land in question were acquired by Mohammad and Abdul Ghafoor, father of Allah Bux,

jointly for the benefit of the entire family. Thus, they were in joint occupation of the land. At the time of death of Allah Bux, Ghafoor was the 'karta' of the family and all the sons of Allah Bux remained in joint occupation. Zahoor Ahmed claimed that he was in joint occupation of the land in question, paying land revenue to the extent of his share. Thus, he claimed half share in the land in question by way of pedigree.

11.2. According to the respondents, their father had acquired the lands covered by Khata No. 98 through lease; their father had five shares in the said land and one share belonged to Mohammad who died in 1942. Though he was survived by his daughter, as per family custom, she did not have any share in the lands in question. Respondents claimed one share in this land as well. Thus, according to the respondents, they had 11/12 share in Khata No. 98 and 1/12 share belonged to Zahoor.

11.3. In so far Khata No. 99 is concerned, according to the respondents, these lands were acquired by their father and devolved upon them on the death of their father. They challenged the claim of Zahoor to such land on the ground that Zahoor had made a *dastbardari* in their favour in the year 1948. Plot Nos. 45, 57, 111 and 112 were claimed by the respondents as having been

acquired by their father Ghafoor. They, however, admitted half share claim of Zahoor Ahmed in respect of Khata No. 99 while denying the claim to the remaining extent of half. Plot No. 115 of Khata No. 100 was wholly claimed by the respondents denying the claim of Zahoor to the extent of half share in the said land.

11.4. Consolidation Officer upon consideration of the pleadings of the parties in dispute had framed the following issues:

- (i) Whether respondents were entitled to 11/12 share of Khata No. 98?
- (ii) Whether Zahoor Ahmed was entitled to half share of Khata No. 98?
- (iii) What was the share of the parties in respect of Khata No. 98?
- (iv) Whether Zahoor Ahmed was co-tenant of Khata No. 99 as claimed?
- (v) Whether the respondents were recorded as the sole owner of the land covered by Khata No. 99?
- (vi) Whether Sami Ullah and Badlu i.e. the respondents were entitled to 11/12 share in respect of plot Nos. 31, 94, 95, 96, 97 and 99 etc. as claimed?
- (vii) Whether plot Nos. 35, 57, 111 and 112 were the sole *sirdari* of the respondents as claimed?

- (viii) What were the share of the parties *qua* Khata No. 99?
- (ix) Whether Zahoor was co-tenant of plot No. 115 of Khata No. 100 as claimed?
- (x) Whether the respondents were the sole owner of the land of Khata No. 100?
- (xi) What were the shares of the parties *qua* Khata No. 100?

11.5. After noting that it was an admitted position that neither the daughter in the family nor their sons got any share in the lands belonging to the family, Consolidation Officer observed that the appellants and the respondents were recorded as co-tenant of the land in Khata No. 98. Respondents also admitted the share of the appellants in plot Nos. 94, 95, 96, 99, 100 etc. to the extent of 1/12. Thus, according to the Consolidation Officer, in view of the admission made by the respondents, Zahoor Ahmed was the co-tenant and that the dispute was only regarding his share. Further, the Consolidation Officer remarked that the onus was on the respondent to prove that they were entitled to 11/12 share of the land. Consolidation Officer also noticed that there was a lease deed of 1922 but what was to be seen was whether the lands were acquired jointly.

11.6. After discussing the evidence and the materials on record, the Consolidation Officer *vide* the order dated 06.12.1972 held that Zahoor Ahmed was in occupation of the plots of land bearing Nos. 95, 96, 97, 99, 100 and 107 and as many as five plots being 99, 100, 107 etc. were being cultivated by Zahoor. The *Khasra* for the relevant years indicated that Zahoor was all along in occupation of the above lands; his name was recorded over an area of 3 bighas 10 biswas of lands and he also paid land revenue in respect of which large number of revenue receipts were on record. Thus, the Consolidation Officer concluded that the lands were acquired jointly when Zahoor Ahmed was a minor and his share would be half of the land. Therefore, he was entitled to half share in Khata Nos. 98 and 99. In so far plot No. 115 of Khata No. 100 is concerned, it was held that the same remained the exclusive property of the respondents. The Consolidation Officer declared that Zahoor Ahmed being the co-tenant of Khata No. 99 was entitled to half share thereof. Accordingly, it was ordered that the name of Zahoor Ahmed be entered as a co-tenant in Khata No. 99 and partition be made in Khata Nos. 98 and 99 in the following manner:

- | | | | |
|------|------------|---|-----|
| (i) | Zahoor | - | 1/2 |
| (ii) | Sami Ullah | - | 1/4 |

(iii) Badlu - 1/4

12. Against the aforesaid order dated 06.12.1972, altogether three appeals were filed before the appellate authority i.e. Assistant Settlement Officer- one by Zahoor Ahmed and the other two by the respondents. The appeals were filed under Section 11(1) of the 1953 Act.

12.1. By the common judgment and order dated 25.4.1973, the appellate authority i.e. Assistant Settlement Officer, Sultanpur dismissed all the three appeals. While dismissing the appeals, the appellate authority noted that in the basic year, Khata No.98 was recorded in the name of Sami Ullah and Badlu and also in the name of Zahoor Ahmed. Khata Nos.99 and 100 were recorded in the name of Sami Ullah and Badlu. Zahoor Ahmed filed objection under Section 9 of the 1953 Act contending that in Khata No.99 his name should be recorded. He claimed 1/2 share in Khata Nos.98 and 99 contending that Satai was the common ancestor of both the parties and that he had acquired the disputed land from the joint family. According to him, Allah Bux and Mohammad were the sons of Satai. Abdul Ghafoor was the elder son of Allah Bux and became the 'karta' of the joint family. After the death of Allah Bux, Abdul Ghafoor, Abdul Shakoore and Mohd. Ismail, being sons

of Allah Bux, came into possession of the disputed land jointly. Mohd. Ismail died issueless. The disputed land was recorded in the name of Sami Ullah and Badlu being the sons of Abdul Ghafoor as 'karta' of joint family.

12.2. Zahoor stated that at the time of death of his father, he was a minor and lived with Abdul Ghafoor. Abdul Ghafoor and Abdul Shakoor had 1/2 share in the disputed land. Accordingly, both the parties were in possession of the disputed land.

12.3. Sami Ullah and Badlu objected to the claim of Zahoor and contended that the land in Khata No.99 was acquired by Abdul Ghafoor. Sami Ullah and Badlu admitted 1/12 share in the disputed land and denied share of Zahoor in plot No.115 of Khata No.100.

12.4. The primary authority i.e. the Consolidation Officer on the basis of the materials of record and the evidence adduced decided the share of Zahoor in Khata Nos. 98 and 99 at 1/2 and dismissed the objection of Zahoor *qua* plot No. 115 of Khata No. 100. Therefore, Zahoor filed Appeal No. 43 in respect of plot No. 115 of Khata No.100. Sami Ullah and Badlu filed Appeal Nos. 50 and 51 against the decision of the Consolidation Officer declaring

1/2 share in the disputed land of Khata Nos. 98 and 99 as belonging to Zahoor.

12.5. The appellate authority was of the view that plot No.35 was recorded only in the name of Allah Bux. Zahoor had relinquished in favour of Sami Ullah on 30.06.1948. Zahoor also relinquished the share of Ismail. Sami Ullah had filed the patta for the first time before the Consolidation Officer on 07.05.1992. In the settlement exercise, some disputed land was acquired by Allah Bux and Mohammed jointly. Plot Nos.111 and 112 were recorded in the name of Abdul Ghafoor. The appellate authority noted the submission made on behalf of Zahoor that he was in possession of the disputed land in Khata Nos.98 and 99 and paying land revenue and took the view that the disputed land was in possession of the joint family. When Shakoor, father of Zahoor, had died Zahoor was a minor. Thereafter, father of Sami Ullah brought up Ghafoor and Ghafoor lived as a member of the joint family. Though the name of Ghafoor was not recorded, Sami Ullah admitted 11/12 share of Zahoor. According to the appellate authority, Zahoor was in continuous possession over the disputed land. The revenue receipts indicated that he was in possession of 1/2 share thereof and paying the revenue in respect of the said land. As regards plot

No. 115 of Khata No. 100, the appellate authority concurred with the view of the primary authority. Therefore, the appellate authority i.e. the Assistant Settlement Officer upheld the order of the Consolidation Officer and dismissed all the appeals.

13. Two revision petitions were filed under Section 48 of the 1953 Act, Revision No. 3302 was filed by the respondents and Revision No. 3312 was filed by the appellants, against the judgment and order dated 25.04.1973 passed by the Assistant Settlement Officer in appeal.

13.1. The revisional authority i.e. the Deputy Director of Consolidation noted that according to Zahoor, the disputed land was joint family property and as such, his share in it was 1/2. Khata No. 98 was recorded in the name of Sami Ullah and Badlu on the one hand and Zahoor on the other hand whereas Khata No. 99 was recorded only in the name of Sami Ullah and Badlu. Consolidation Officer had allowed the name of Zahoor Ahmed to be in half of Khata No. 98 and Khata No. 99; however, dismissed the claim of Zahoor Ahmed in respect of plot No. 115 of Khata No. 100. Against the aforesaid decision, appeal was filed but the same was dismissed. It was thereafter that the revision came to be filed by Zahoor Ahmed.

13.2. On the other hand, Sami Ullah claimed that Zahoor had 1/12 share in Khata No. 98 as well as in Khata No. 99 and none in respect of plot No. 115 of Khata No. 100. His objection was allowed in respect of plot No. 115 of Khata No. 100 but was dismissed in respect of the other two Khatas. Therefore, he also filed appeals before the Assistant Settlement Officer which were however dismissed. Thereafter, the related revision petition came to be filed claiming 5/6th share in Khata No. 98 and exclusively claimed Khata No. 99 for himself and Badlu.

13.3. During the revision proceedings, Zahoor Ahmed died and he was substituted by his legal heirs (sons) Nisar Ahmed, Irshan Ahmed and Ishtiyag Ahmed. The revisional authority considered the claim of Sami Ullah. Zahoor Ahmed had disputed 1/12th share in Khata No. 98 because in the year 1922, the disputed land was taken on lease by Abdul Ghafoor: 5/6th share from Mohammad Ismail and 1/6th share from the zamindar. Mohammad Ismail died in the year 1942. After his death, his 1/6th share got devolved in 1/12th share, viz, in plot Nos. 35, 57, 111 and 112. It was noted that Khata No. 99 was recorded in the name of Sami Ullah and Badlu. The revisional authority noted on the basis of the evidence adduced that Shakoore had expired in the year

1930. Thereafter, the name of Zahoor was recorded as a member of the joint family in Khata No. 98. From the materials on record, the revisional authority noticed that Zahoor was in possession and paying rent in respect of the disputed land. However, the revisional authority accepted the contention of Sami Ullah that Zahoor had relinquished his share in respect of plot Nos. 35, 57, 111 and 112 by way of relinquishment deed of the year 1948. Deputy Director i.e. the revisional authority noted that relinquishment was by way of a relinquishment deed and that Zahoor had admitted his signature on it. Therefore, there was no reason to disbelieve the contention of Sami Ullah because in the year 1948, Zahoor had relinquished his share in plot Nos. 35, 57, 111 and 112. Further, possession of Zahoor Ahmed was also not recorded. Thus Zahoor Ahmed was held to be not entitled to any share in so far the said plots were concerned. The lower authorities had ignored the relinquishment deed which vitiated their respective orders. On the basis of the relinquishment deed, the Deputy Director allowed the revision of Sami Ullah in respect of plot Nos. 35, 57, 111 and 112. As regards claim of Zahoor in respect of plot No. 115 of Khata No. 100, the Deputy Director was not convinced about the said claim. That being the position, the revisional authority upheld the view

taken by the lower authorities and dismissed the revision of Zahoor Ahmed.

14. Assailing the above order of the revisional authority, appellants preferred Civil Misc. Writ Petition No. 6635 of 1974 whereas respondents preferred Writ Petition No. 18 of 1975 before the High Court. High Court heard both the writ petitions together as the two writ petitions arose out of the same consolidation proceedings in respect of Khata Nos. 98, 99 and 100 in village Bhati Jarouli, Sultanpur.

14.1. High Court traced the pedigree of the parties. Satai was the common ancestor and he had two sons, namely, Allah Bux and Mohammad. Mohammad died issueless in the year 1942. Allah Bux had three sons i.e. Abdul Ghafoor who died in 1946, Abdul Shakoor who died in 1930 and Mohammad Ismail who died issueless in 1935. High Court pointed out that the dispute was between the two branches of Abdul Ghafoor and Abdul Shakoor. Petitioners of Civil Misc. Writ Petition No. 6635 of 1974 i.e. the appellants represented the branch of Abdul Shakoor. The contesting respondents of the said writ petition i.e. respondents herein represented the branch of Abdul Ghafoor. In the basic year, the entries were recorded in the following manner:

- (i) Khata No. 98 was recorded in the names of the respondents Sami Ullah and Badlu as well as in the name of Zahoor Ahmed (father of the appellants).
- (ii) Khata No. 99 was recorded in the names of Sami Ullah and Badlu (the respondents).
- (iii) Khata No. 100 was exclusively recorded in the name of Sami Ullah (respondent No. 1).

14.2. Zahoor Ahmed, father of the appellants, had filed objection before the Consolidation Officer claiming co-tenancy rights in Khata Nos. 98 and 99 to the extent of half share. He also claimed one half share in plot No. 115 of Khata No. 100.

14.3. According to Zahoor Ahmed (father of the appellants), the disputed Khatas were acquired jointly by the common ancestor. After the death of Satai and Allah Bux, the name of Abdul Ghafoor was recorded since he had attained majority by that time and Abdul Shakoor was still a minor. Abdul Ghafoor was 'karta' of the family and he looked after Abdul Shakoor and Mohammad Ismail. After the death of Abdul Ghafoor, in view of the settlement arrived at between the legal heirs of Abdul Ghafoor and Zahoor

Ahmed, the parties were in cultivatory possession of their respective shares in the disputed Khatas.

14.4. On the other hand, Sami Ullah and Badlu (respondents) had contended that Khata No. 98 was taken on patta by Abdul Ghafoor and Mohammad. In the said patta, share of Abdul Ghafoor was mentioned as 5/6 and that of Mohammad 1/6. After the death of Mohammad, his share devolved in equal proportion upon Abdul Ghafoor and Abdul Shakoor. Therefore, the appellants who represents the branch of Abdul Shakoor got only 1/12 share.

14.5. The case of the contesting objectors (the respondents) with regard to plot Nos. 35, 57, 111 and 112 comprising Khata No. 99 was that these plots were their exclusive property in view of the registered relinquishment deed dated 30.06.1948 (which was registered on 07.07.1948 and executed by the father of the appellant Zahoor Ahmed) in favour of the respondents. They contended that the said Khata was neither recorded in the name of Zahoor Ahmed nor was he in possession thereof. Respondents were the exclusive owners of plot Nos. 35, 57, 111 and 112 of Khata No. 99.

14.6. After tracing the trajectory of the orders passed by the Consolidation Officer, appellate authority i.e. the Assistant

Settlement Officer and the revisional authority i.e. the Deputy Director of Consolidation, the High Court noted that the Deputy Director *vide* the order dated 20.09.1974 had confirmed the orders of the lower authorities with respect to plot No. 115 of Khata No. 100 but had partly allowed the revision of the respondents with respect to plot Nos. 35, 57, 111 and 112 of Khata No. 99 as well as of Khata No. 98.

14.7. High Court *vide* the impugned judgment and order dated 05.01.2009 held that execution of the relinquishment deed in respect of the four plots of land i.e. plot Nos. 35, 57, 111 and 112 of Khata No. 99 was not denied by Zahoor Ahmed. It was a registered document and thus carried the presumption of genuineness. High Court further noted that the appellants had not questioned the genuineness and correctness of the relinquishment deed at any stage of the litigation. Zahoor Ahmed was very much alive when the consolidation operation had commenced in the village. Though he filed objections and had the full opportunity to dispute the relinquishment deed, he did not do so. There was no evidence on record to show that execution of the relinquishment deed was ever disputed by Zahoor Ahmed. On the contrary, the stand of Zahoor Ahmed all along was that after the death of his

father, he was brought up by his uncle Abdul Ghafoor; after attaining the age of majority, he might have executed the said relinquishment deed. In the writ proceedings, appellants had contended that they did not admit the genuineness and the binding nature of the relinquishment deed. But such contentions were rejected by the High Court on the ground that Zahoor Ahmed during his entire lifetime at no point of time had disputed the said relinquishment deed. Even otherwise also, the High Court found that said plots were exclusively recorded in the names of the respondents which would go to show that Abdul Shakoor had surrendered his right and title in favour of Abdul Ghafoor. In view of the above, High Court opined that the finding recorded by the Deputy Director of Consolidation in revision was justified and called for no interference.

14.8. As regards plot No. 115 of Khata No. 100, High Court noted that all the three authorities below had rejected the claim of the appellants holding that the said land belongs to the respondents exclusively. Learned counsel for the appellants also did not press the writ petition with regard to the said plot. That being the position, High Court found no merit in Civil Misc. Writ Petition No. 6635 of 1974 and the same was accordingly dismissed.

14.9. In so far Writ Petition No. 18 of 1975 filed by the respondents is concerned, the challenge was to the finding of co-tenancy recorded by all the authorities below with respect to Khata Nos. 98 and 99 holding that Abdul Ghafoor had half share therein. Respondents (petitioners in Writ Petition No. 18 of 1975) placed reliance on a lease deed dated 07.05.1922 executed by Fateh Bahadur and Jagat Narayan Singh in favour of Abdul Ghafoor and Mohammad mentioning their respective shares : Abdul Ghafoor had 5/6 share and Mohammad had 1/6 share. On the death of Mohammad, his share devolved on Zahoor Ahmed to the extent of 1/12 share and the remaining 11/12 share devolved on the respondents. The said patta (lease) was rejected by the Consolidation Officer on the ground that at the relevant time, Zahoor Ahmed was a minor and that the lease had not seen the light of the day nor was it proved. In appeal, the appellate authority held that though the patta (lease) was executed by two persons, it was signed by only one person i.e. Fateh Bahadur. High Court considered the lease deed dated 07.05.1922 and noted that land was taken by two persons, viz, Abdul Ghafoor, son of Allah Bux and Mohammad, son of Satai. Abdul Shakoor, father of Zahoor Ahmed was very much alive in the year 1922. He had died some time in the year 1930. It was clear that the lease was taken jointly

by Abdul Ghafoor and Mohammad and not as a joint family property by the two persons. That apart, the concept of joint family property prevalent amongst the Hindus was unknown to the Muslims. Abdul Ghafoor and Mohammad were the only lessees of the said land. High Court held that the lower authorities had misdirected themselves by considering acquisition of the said property by Abdul Ghafoor and Mohammad as joint acquisition on behalf of the entire family. The source of acquisition of the said property was the lease deed dated 07.05.1922 and in the revenue records, names of the respondents and of Zahoor Ahmed were recorded. The only dispute was with regard to the extent of their respective shares. The authorities below had proceeded to allot 1/2 share to Zahoor Ahmed on the premise that it was a joint family property. According to the High Court, the said approach was not legally tenable. The revisional authority was also not justified in importing principles of Hindu law while determining the shares of the parties who were admittedly Mohammedans. Accordingly, it was held that appellants would get 1/12 share in the land comprised in the lease deed and not half (1/2) as was decided by the authorities below.

14.10. In that view of the matter, High Court held that the appellants would have 1/12 share in the plots comprised in Khata Nos. 98 and 99 excluding plot Nos. 35, 37, 111 and 112 which exclusively belonged to the respondents.

14.11. That being the position, Writ Petition No. 18 of 1975 was allowed.

15. Thus, against the dismissal of Civil Misc Writ Petition No. 6635 of 1974 and partly allowing of Writ Petition No. 18 of 1975, the related special leave petitions were filed.

16. This being the factual scenario, let us now have a brief survey of the 1953 Act. The Uttar Pradesh Consolidation of Holdings Act, 1953 (already referred to as 'the 1953 Act') is an Act to provide for the consolidation of agricultural holdings in Uttar Pradesh for the development of agriculture. The statement of objects and reasons of the 1953 Act is as under:

After the enforcement of the U.P. Zamindari Abolition and Land Reforms Act, 1950, there was naturally a pressing demand for the consolidation of holdings in the State. Since the complicated and numerous types of tenures, both proprietary and cultivatory, the greatest stumbling blocks in the way of successful consolidation of holdings, have been abolished it is an opportune time to start this work. The advantages of

having in compact blocks all the land farmed by one family need only be briefly mentioned. Boundary lines should be reduced in “number and extent, saving land and diminishing boundary disputes, larger fields would be possible and time saved in making trips to the fields. Further, if land were all one piece barriers, such as fences, hedges or ditches could be erected to obtain privacy and prevent trespassing, thieving and gleening. The control of irrigation and drainage water would be easier; control of pests, insects and disease would also be less difficult.

16.1. Thus, as per the statement of objects and reasons, after the enforcement of the U.P. Zamindari Abolition and Land Reforms Act, 1950, there arose the need for consolidation of holdings in the State. It was felt that the advantages of having compact blocks of all the lands farmed by one family was too well known. Boundary lines would be reduced in number thereby not only saving the lands but also reducing boundary disputes. This would also lead to larger fields with attendant advantages. It could be barricaded properly to prevent trespassing and ensure proper irrigation and pest control.

17. *Raison d'être* of the Act was examined by this Court in *Attar Singh Vs. State of U.P.*¹. This Court observed that the object of the 1953 Act is to allot a compact area in *lieu* of scattered plots to tenure-holders so that large scale cultivation would be possible with all its attendant advantages thus leading to reduction of boundary lines. In the process lot of land would be saved resulting in lesser number of boundary disputes. While reducing the movement of the farmers from one plot to another, consolidation would enure to the benefit of the farmers in erecting fences etc. around a compact area to prevent trespassing and thieving. It would also become easier to control irrigation and drainage besides reducing the number of disputes over water. That apart, pest control etc. would become easier as the farmers would have compact areas for cultivation. This Court observed that such advantages resulting from consolidation of holdings are intended to encourage the development of agriculture leading to more production of foodgrains, so essential for the community.

18. Making a comparison of the 1953 Act with the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951), a Single Bench of the Allahabad High Court in *Mool*

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AIR 1959 SC 564

*Chandra Vs. Deputy Director of Consolidation*², observed that U.P. Act No. 1 of 1951 was enacted to provide for abolition of the zamindari system involving intermediaries between the tillers of the soil and the State and for acquisition of the right, title and interest over the land by the tillers and also to reform the law relating to land tenure consequent upon such abolition and acquisition. On the other hand, the primary object of the 1953 Act is consolidation of agricultural holdings for the development of agriculture. It was in this backdrop that Allahabad High Court observed that the 1953 Act has only a limited role to play and that is only with regard to consolidation of agricultural holdings to facilitate better quality of agriculture. Thus, the 1953 Act does not deal with the grant of substantive rights to the tenure-holders. While substantive rights are governed by the provisions contained in U.P. Act No. 1 of 1951, the 1953 Act is only procedural with regard to consolidation of holdings.

19. Section 3 of the 1953 Act contains the definitions of various words and expressions used in the said Act. As per Section 3(1A), *chak* means the parcel of land allotted to a tenure-holder on consolidation. *Consolidation* has been defined in Section 3(2) to

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mean re-arrangement of holdings in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact. Section 3(2A) defines *consolidation area* to mean the area in respect of which notification under Section 4 has been issued. Section 3(4C) defines *holding* to mean a parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holders. *Land* has been defined in Section 3(5) to mean land held or occupied for purposes connected with agriculture, horticulture and animal husbandry, including pisciculture and poultry farming. *Rectangulation* as defined in Section 3(8A) means the process of dividing the area of a unit into rectangles and parts of rectangles of convenient size with a view to regulating the allotment of *chaks* during consolidation. *Tenure-holder* has been defined in Section 3(11) to mean a *bhumidhar* either with transferrable rights or with non-transferrable rights. *Unit* has been defined in Section 3(11A) to mean a village or part thereof or two or more villages or parts thereof for which a single scheme of consolidation is to be framed.

19.1. Section 4 deals with declaration and notification regarding consolidation. As per sub-Section 1(a), the State Government, where it is of opinion that a district or part thereof

may be brought under consolidation operations, may make a declaration to that effect to be published in the official gazette whereupon it shall be lawful for any empowered officer or authority to enter upon the declared land and carry out survey etc. Thus, consolidation proceedings start in a district or part thereof with the issuance of notification under Section 4 which besides being published in the official gazette is also to be published as a public notice at convenient places of the district or part thereof.

19.2. The consequences which would ensue following publication of notification under Section 4 are enumerated in Section 5(2). Amongst the various consequences, it is important to note that once a declaration is notified, every proceeding for correction of records and every suit or proceedings in respect of declaration of rights or interest in any land lying in the area or for declaration or adjudication of any other right at any stage of the proceedings would stand abated. Ofcourse, such abatement would have to be preceded by notice and hearing. That apart, such abatement would be without prejudice to the rights of the persons affected to agitate the rights or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the 1953 Act.

19.3. While Section 7 deals with revision of village map, Section 8 speaks about revision of the field book etc upon such revision of village map. Section 8A provides for preparation of statement of principles to be followed in carrying out the consolidation operations. Section 9 on the other hand provides for issue of extracts from records and statements and publications of records mentioned in Sections 8 and 8A and the issue of notices for inviting objections under sub-section (1) thereof. Sub-section (2) empowers the noticee to file objections within the prescribed period disputing the correctness or nature of the entries in the records or in the extracts furnished therefrom or in the statement of principles or the need for partition. Section 9A deals with disposal of cases relating to claims to land and partition of joint holdings. Section 9B provides for disposal of objections on the basis of the statement of principles.

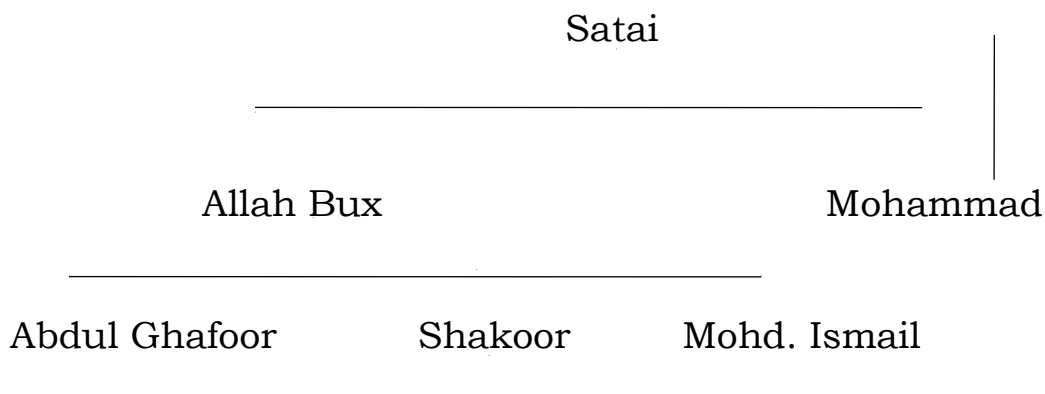
19.4. Any party to a proceeding under Section 9 and who is aggrieved by an order of the Assistant Consolidation Officer or the Consolidation Officer, as the case may be, may prefer an appeal before the Settlement Officer, Consolidation, within the period prescribed under Section 11. The appellate authority after providing due opportunity of hearing to the parties shall pass

appropriate order in appeal which shall be final. Sub-Section (2) of Section 11 makes a declaration that the Settlement Officer, Consolidation, hearing an appeal under sub-Section (1) shall be deemed to be a court of competent jurisdiction.

19.5. While the appellate order is final, the Director of Consolidation has been conferred the power of revision and reference under Section 48. He can exercise the powers under Section 48 either on a reference or *suo moto*. The said power is to be exercised by the Director of Consolidation to satisfy 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 the subordinate authorities.

20. This is broadly the scheme of the Act.

21. Before we analyse the impugned judgment and order of the High Court, it will be useful to have the pedigree of the parties in the form of a chart which is as under:



Zahoor

Sami Ullah Badlu

22. As can be seen from the chart above, the dispute is between the legal heirs of Shakoor i.e. the appellants and the legal heirs of Ghafoor i.e. the respondents. High Court has duly considered the claim of the appellants as well as of the respondents and has taken the view that in so far claim of the appellants to plot Nos. 35, 57, 111 and 112 of Khata No. 99 and plot No. 115 of Khata No. 100 are concerned, Zahoor Ahmed himself had relinquished those lands in favour of the respondents. Relinquishment deed is a registered one and was never questioned by Zahoor Ahmed during his lifetime. In that view of the matter, the High Court concurred with the finding recorded by the revisional authority and rightly dismissed Civil Misc. Writ Petition No. 6635 of 1974 filed by the appellants.

23. In so far Writ Petition No. 18 of 1975 is concerned, the same was filed by the respondents, being aggrieved by the declaration made by the consolidation authorities that appellant would get half (1/2) share in the plots comprised in Khata Nos. 98 and 99 excluding plot Nos. 35, 57, 111 and 112 which exclusively belonged to the respondents. High Court took the view that

consolidation authorities had erroneously proceeded to allot half (1/2) share to Zahoor Ahmed on the premise that the land was a joint family property. High Court held that the authorities were not justified in importing principles of Hindu law while determining the share of the parties who were admittedly Mohammedans. Thus, the High Court held as follows:

I have given careful consideration to the three orders of the authorities. I also perused copy of the lease deed dated 07.05.1922. A bare perusal of the said lease deed dated 07.05.1922 clearly shows that the said lease deed was taken by two persons, namely, Abdul Ghafoor, son of Allah Bux, and Mohammad, son of Satai. Abdul Shakoor, father of Zahoor Ahmed (Objector) was very much alive in the year 1922. He, according to the finding of the Deputy Director of Consolidation, died some time in the year 1930. It shows that the lease was taken jointly by Abdul Ghafoor, son of Allah Bux, and Mohammad, son of Satai. The said lease was not taken as joint family property by these persons. The concept of joint family property which is prevalent amongst the Hindus is not known amongst the Muslims. Abdul Ghafoor, son of Allah Bux, and Mohammad, son of Satai, were the only lessees and no other person. The authorities below misdirected themselves by considering the said acquisition of the property by Abdul Ghafoor and Mohammad as joint acquisition for the family.

So far as the validity of the lease in question is concerned, the same cannot be disputed by the contesting respondents Nos. 4 to 7 (petitioners of writ petition No. 6635 of 1974). It is not their case that the property was acquired by Abdul Ghafoor and Mohammad in any other manner. It is also not their case nor established by them that the said property was acquired by Satai, the common ancestor, or by Abdul Ghafoor, father of Zahoor Ahmad, in any other manner. Source of acquisition of the said property is the lease deed in question dated 07.05.1922. In the revenue records in the basic year, names of Sami Ullah and Badlu (respondents Nos. 4 and 5) of the connected writ petition and of Zahoor Ahmad are recorded. Only dispute is with regard to the extent of their respective shares therein. The authorities below have proceeded to allot 1/2 share to Zahoor Ahemed on the basis that it was a joint property of the family. The said approach, in my considered opinion, is not legally tenable. The lease in question was acted upon and was accepted as is evident from the extract of khatauni (record of rights) of the third settlement, Annexure-2 to writ petition No. 18 of 1975. The Deputy Director of Consolidation was not justified in importing principles of Hindu law while determining the shares of the parties. In a nut shell, the petitioners of writ petition No. 6635 of 1974 will get 1/12 share in the land comprised in the said lease deed and not 1/2 as was wrongly held by consolidation authorities.

In view of the above discussions, it is held that the petitioners of writ petition No. 6635 of 1974 have 1/12 share jointly in the plots comprised in khata Nos. 98 and 99 excluding plot Nos. 35, 37, 111 and 112 which exclusively belongs to Sami Ullah and his brother Badlu, sons of Abdul Ghafoor.

24. We do not find any error or infirmity in the view taken by the High Court. The decision rendered by the High Court is on a bundle of facts agitated and counter agitated by both the parties. It is a factual determination by the High Court based on the evidence on record. We do not find any perversity in the approach of the High Court or any error apparent on the face of record to warrant further scrutiny by this Court.

25. That being the position, we are of the view that there is no merit in the two civil appeals which are accordingly dismissed. However, there shall be no order as to costs.

26. In view of the judgment passed in C.A.Nos.9739-9740/2011, the Contempt Petition stands closed.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

**NEW DELHI;
OCTOBER 24, 2024.**