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**ALLAHABAD HIGH COURT (LUCKNOW BENCH)**

**RAM NARESH AND OTHERS — Appellant**

**Vs.**

**DEPUTY DIRECTOR OF CONSOLIDATION, SULTANPUR AND OTHERS**

**— Respondent**

**( Before : Shri Narayan Shukla, J )**

**Writ Petition No.1428 (Con.) of 1980**

**Decided on : 18-04-2012**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 48

**A. Consolidation of Holdings — Co-tenancy — Ancestral property — Family property acquired through a common family fund makes all members co-tenure holders by birth, provided that the joint family status is maintained. (Para 4)**

**B. Consolidation of Holdings — Lease — If a lease is obtained by the Karta of a Hindu Undivided Family using common family funds, then the leasehold property also becomes ancestral property. (Para 4)**

**C. Consolidation of Holdings — Res Judicata — Once a judicial order on the dispute has been made by a court of competent jurisdiction and not challenged further by the parties, the issues settled by that order cannot be re-agitated. (Para 6)**

**JUDGMENT**

Shri Narayan Shukla, J.—The petitioners have challenged the order dated 10th October, 1977, passed by the Settlement Officer of Consolidation, Sultanpur in Appeal Nos. 276 and

1268 as also the order dated 10.3.1980, passed by the Deputy Director of Consolidation, Sultanpur in Revision No.644/844/847.

2. The dispute relates to Khata Nos. 84 and 85. In the basic year Khatauni, these Khatas were recorded in the name of Shri Ram, Udai Raj and Gherrau S/o Satya Narayan. One another Khata No. 277 was recorded in the name of Shri Ram, Udai Raj, Gherrau, Ram Laut S/o Jagesar and Sadhu S/o Bachcha. In regard to these Khatas, objections were filed before the Consolidation Officer. The Consolidation Officer by means of order dated 8th December, 1976 decided the objections. During the course of proceedings before the Consolidation proceedings the claim against Khata No. 217 was dropped and no objection was raised by Ganpat etc.. in regard to Khata No. 85. Therefore, the Consolidation Officer by means of his order directed to record the name of Ganpat and Sukru etc. along with Shri Ram etc. as co tenure holders and divided their share as per pleadings of the family. The pedigree of the family is reproduced hereunder;

Bisesar

Satya Narayan Ram Narayan Jagan Nath

...

Shri Ram, Gherrau , Udai Raj .

Mathura Ganpat

..

Sukru Ram Newal

Kanhai Ram Lakhan

Ram Naresh Ram Pratap

3. The respondent challenged the order, passed by the Consolidation Officer before the Settlement Officer of Consolidation through appeal and contested the matter against the declaration of right of the petitioner as cotenure holders. Another set of appeal was preferred by Ram Laut etc., who are respondents in the present writ petition. In regard to Khata no. 217 they claimed their share over the said Khata. The Settlement Officer of Consolidation observed that upon perusal of extract of Khatauni 137779 it is established that over Khata No. 84, name of Sri Ram, Udai Raj and Gherrau was recorded as tenureholders. Khatauni 1359 F. establishes that over Khata No.204 name of Shri Ram is recorded as tenureholders three years. He also observed that upon perusal of the record and evidence it is obvious that over Khata No.84 and 217 ,the names of Ganpat and Ram Lakhan were never recorded as ancestors rather over Khata No. 84 the name of Satya Narayan is recorded since third settlement. In another Appeal No. 641 decided on 20.12.1974 the Settlement Officer of Consolidation had already recorded the share of Ram

Laut, Sadhu and Shri Ram which was found intact. Accordingly the appeal in regard to Khata Nos. 84 and 217 filed by Sri Ram and another was allowed and direction was issued to record Khata Nos. 84 and 217 in their names and accordingly he divided their respective shares. Being aggrieved the petitioners preferred a revision before the Deputy Director of Consolidation. However, the Court of Revision did not find error in the order, passed by the Settlement Officer of Consolidation. Therefore, he upheld the order, passed in appeal.

4. Challenging the orders, passed by the Courts below the petitioners have stated that the property belongs to one family being acquired by their ancestors and thus it is ancestral property. Another dispute came to Satya Narayan on the basis of lease which was executed in his favour being eldest in the family. Thus, he was Karta in the Khandan. But the alleged lease was taken by common fund of the family, hence the petitioners are also entitled to be recorded as co tenureholders. It is also stated that the status of joint family had been accepted by opposite party no. 4 Satya Narayan in a case filed by one Mr Bhawani under Section 45/59 of the U.P. Tenancy Act. Therefore, at this stage, he should not be permitted to resile from his statement.

5. In reply, the respondents have submitted that Satya Narayan had been the sole tenureholders of Khata Nos. 84 and 217 as he acquired property through lease from his own personal source. They also relied upon the decision of the Consolidation Officer held on 28.1.1974 in Case no.10876 against which the appeal being Appeal No. 641 was filed in which the Assistant Settlement Officer of Consolidation passed order on 20.12.1974 in which Ram Laut was awarded share, Sadhu 1/6 share and respondent and his brothers 1/3 share in which the petitioners were parties but they did not challenge the said order. Accordingly the order, passed by the Assistant Settlement Officer on 20th December, 1974 became final on the basis of which the share of the land in dispute has been divided amongst the parties.

6. Upon perusal of the aforesaid fact, I find that once the matter has been settled between the parties by means of judicial order, passed by the Court of Appeal and the same was not challenged by any of the parties .It is not open for the petitioners to raise same very question again. Apart from this, at this stage also, they have failed to establish their rights over the land in dispute.

7. Under the circumstances, I do not find any error in the orders impugned. In the result the writ petition is dismissed.