

CASE NO.:
Appeal (civil) 413 of 1993

PETITIONER:
SARDAR SINGH

RESPONDENT:
DEPUTY DIRECTOR OF CONSOLIDATION AGRA CAMP, MATHURA AND ORS.

DATE OF JUDGMENT: 12/07/1994

BENCH:
KULDIP SINGH & S.P. BHARUCHA

JUDGMENT:
JUDGMENT

1994 SUPPL. (1) SCR 460

The Judgment of the Court was delivered by

KULDIP SINGH, J. Girwar Singh, a big zamindar, died on May 24, 1971. He left behind agricultural land as well as other property. After the death of Girwar Singh many persons claimed rights in the property left by him. Giriraj Kishore, respondent 5 in the appeal herein, is also one of the claimants. Giriraj Kishore claims that his father was adopted as a son by Girwar Singh's father. Sardar Singh-appellant claims to be a son of real sister of Girwar Singh. He further claims right in the property on the basis of a will dated May 19, 1971. One Sharda Devi stakes her right claiming to be the real sister of Girwar Singh. One Narendra Pal Singh states that he is the adopted son of Girwar Singh and as such entitled to the property left by him. All these persons filed testamentary suits in respect of the property of Girwar Singh in the High Court. The Administrator General also filed a testamentary suit claiming letters of administration. All the suits were decided together by the judgment of the High Court dated August 18, 1977. The will set up by Sardar Singh was held to be fictitious. Except the suit filed by the Administrator General all the suits were dismissed. The High Court issued letters of administration to the Administrator General. UP, with the direction that he would manage the property till the rights of the parties are determined by the civil court. A civil suit filed by Giriraj Kishore was pending at that time. Various appeals filed against the judgment of the High Court were dismissed by the Division Bench on October 23, 1981.

The civil suit filed by Giriraj Kishore is pending. Sardar Singh and others who had filed testamentary suits have been arrayed as defendants in the suit. The suit was in respect of agricultural land and also in respect of other property left by Girwar Singh. While the suit was pending the consolidation operations commenced under the U.P. Consolidation of Holdings Act, 1953 (the Act). Section 5(2) of the Act is as under:

"5(2) Upon the said publication of the notification under sub-section (2) of Section 4 the following further consequences shall ensure 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 rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings 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 thereunder.

It is not disputed that the civil suit - in respect of agricultural land - stood abated under Section 5(2)(a) of the Act. The civil court is only proceeding in respect of the property other than the agricultural land. The question for our consideration is whether in the facts and circumstances of this case the proceedings before the consolidation authorities should be stayed till the rights of the parties are finally adjudicated by the civil court. The High Court has answered the question in the affirmative and against the appellant. This appeal by Sardar Singh is against the judgment of the High Court,

On an application filed by respondent-5 the Consolidation Officer framed the following preliminary issue:-

"Whether consolidation proceedings before the Consolidation Officer will remain stayed as civil suit is pending before the civil court."

The issue was decided against respondent-5 and it was held that the consolidation proceedings could not be stayed. Appeal filed against the said order was dismissed by the Assistant Settlement Officer and a further revision filed before the Deputy Director of Consolidation was also dismissed on November 27, 1984. Respondent-5 thereafter filed writ petition before the Allahabad High Court which was allowed and the proceedings before the consolidation authorities have been stayed till the final disposal of the civil suit. As stated above this appeal by Sardar Singh is against the judgment of the High Court.

The High Court allowed the writ petition on the following reasoning:

"In the instant case as the litigation was brought before this court in testamentary suits and thereafter in special appeals and there-after civil suit for declaration was filed which was already pending between the parties and the evidence on behalf of the plaintiff has been led and the evidence on behalf of the defendant was being continued meanwhile consolidation operations started There was possibility of conflicting judgments if the plaintiff is held to be the heir in the civil suit and not as an heir in the consolidation proceedings. Further the powers under section 48 of the Act are much wider, even propriety and incorrectness of an order can be gone into. In the circumstances of the case the orders passed by the Consolidation Officer and the Assistant Settlement Officer (Consolidation) were not proper under the circumstances of the case.... In the instant case the facts of the case are so unique and I am sure that it is very rare to find such chequered litigation as earlier litigation was fought in the High Court and thereafter a civil suit was filed and in the meanwhile the consolidation operations commenced. It is not for his own sake that the plaintiff (the petitioner) had made an application and got an issue framed on the point as to whether the consolidation proceedings may be stayed under the facts and the circumstances of the case, rather it was for the benefit of the contesting respondent also that they may first devote their energy fully in the civil litigation and thereafter the consolidation authorities may decide the case in pursuance of the order of the Civil Court. It is on account of all those insur-mountable difficulties

that the application was moved for staying the proceedings before the consolidation authorities till the civil suit was decided.

In view of the discussions made hereinbefore I am of the opinion that in view of the wide and comprehensive powers conferred on the Deputy Director of Consolidation his decision was manifestly erroneous in law that the proceedings before the consolidation authorities cannot be stayed. Therefore, the impugned orders passed by the consolidation authorities being manifestly erroneous deserved to be quashed.... The proceedings before the Consolidation Officer between the parties in case in 683/684 Sardar Singh v. Administrators are directed to remain stayed till the civil suit between the parties is decided finally."

It is no doubt correct that the issues, on the merit of the controversy between the parties, before the civil court and the consolidation authorities are by and large the same. The consolidation proceedings under the Act are in respect of the agricultural land whereas the civil court is adjudicating the rights of the parties in respect of the property other than the agricultural land. We agree with the High Court that there is possibility of contradictory judgments between the civil court and the consolidation authorities. On the other hand keeping in view the nature of the consolidation operations the staying of the consolidation proceedings in respect of part of land may have an adverse affect on the consolidation operations in the whole of the area. The consolidation operations under the Act include the determination of an area for extension of abadi including the site for harijans and landless persons, area for other public purposes and the preparation of the scheme. We are of the view that the consolidation operations under the Act would not be smoothly completed if the proceedings in respect of a part of the land are stayed. Even the scheme of the Act makes it clear that the authorities under the Act have no power to stay the consolidation proceedings once the said proceedings are commenced by way of a notification under Section 4 of the Act. We are, therefore, of the view that the High Court fell into error in staying the consolidation proceedings to await the decision in the civil proceedings.

We are, however, of the view that the consolidation authorities must have an opportunity to take into consideration the findings of the civil courts. We, therefore, direct that on the final conclusion of the civil proceedings the judgment of the civil court which achieves finality may be placed before the Director of Consolidation who shall thereupon, if necessary,, reopen the proceedings under Section 48 of the Act and pass a fresh order after taking into consideration the findings of the civil court.

We allow the appeal in the above terms, set aside the judgment of the High Court dated May 7, 1985 and dismiss the writ petition filed by respondent-5 before the High Court. No costs.