2025:AHC:174527

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT –B No. - 5902 of 1980

Tirath Raj and others .....Petitioners(s)

Versus

D.D.C. and others .....Respondents(s)

Counsel for Petitioners(s)	:	N. Lal, Ruduvant Pratap Singh, Yogesh Kumar Tiwari
Counsel for Respondent(s)	:	Shankatha Rai

AFR
Reserved on 22.09.2025
Delivered on 26.09.2025

Court No. - 5

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. This writ petition is arising out of consolidation proceedings. Petitioners before this Court have lost before all the three authorities, i.e., Consolidation Officer, Settlement Officer of Consolidation and Deputy Director of Consolidation, under U.P. Consolidation of Holdings Act, 1953 *(hereinafter referred to as "Act, 1953").*

2. Sri Ruduvant Pratap Singh, learned counsel for petitioners, is not able to dispute that scope of interference by High Court in writ jurisdiction in the concurrent findings recorded by Consolidation Authorities, is very limited, i.e., except the findings are absolutely perverse.

3. Learned counsel for petitioners submitted that the petitioners' consistent case was that they are owner of land in dispute of the share of Kadedeen in Khata No. 40 and 130, situate in Village Chati, Pargana

Garwara, District Jaunpur, through a registered Will dated 07.05.1951 executed by Kadedeen in favour of petitioners. However, admittedly no such issue was framed by Consolidation Officer while considering the objections filed by parties and, therefore, the Will was not proved in accordance with law. He further submitted that in appeal petitioners have specifically taken the plea about execution of Will, however, without taking note of such grounds and without framing any issue in this regard, Settlement Officer of Consolidation has rejected claim of petitioners on basis of Will. For reference relevant part of order dated 24.01.1979 passed by Settlement Officer of Consolidation is reproduced hereinafter:

"कडेदीन द्वारा लिखा गया वसीयतनामा पत्रावली पर उपलब्ध है जिसके हासिये के गवाह केदार नाथ निवासी मनकापुर तथा बासुदेव तिवारी निवासी बक्खोपुर के है। इससे स्पष्ट है कि गांव का एक भी गवाह वसीयतनामा पर नहीं है। और यह वसीयत नामा गांव वालों से छिपाकर चुपके से लिखाया गया है जिससे कि इस वसीयत नामा को कडेदीन की कार्यवाही गांव के किसी व्यक्ति को न हो सके यह भी संदेह है कि इस वसीयतनामा को कडेदीन ने लिखा या नहीं कडेदीन के जीवनकाल में ही उसका लडका सूर्य नरायन की मृत्यु हो गई। नाबालिग पोता कमलाकान्त के जीने का कोई सहारा नहीं था उसका ख्याल न करते हुये कडेदीन ने तीर्थराज आदि के हक में अपने आराजी का वसीयत कर दिया जब कि तीर्थ राज के पिता सत्यानरायन भी जीवित थे किसी दादा से इस प्रकार की आशा नहीं की जा सकती कि अपने नाबालिग पोतो को छोडकर दूसरे पोतो को तनहा जमीन वसीयत कर दे कडेदीन के मरने के बाद आराजी निजाई पर कमला कान्त व तीर्थराज आदि दोनो का नाम वरासतन दर्ज हुआ। उस समय भी तीर्थराज आदि ने इस बात की कोई आपत्ति किया कि जरिया वसीयत वह कडेदीन के वारिस है। देव नरायन व सीताराम आदि ने कडेदीन आदि पर यू०पी० टिनेन्सी ऐक्ट की धारा 59 के अन्तर्गत दिनांक 03.12.49 को दावा दाखिल किया जिसका निर्णय दिनांक 05.11.52 को हुआ। यह मुकदमा माननीय अदालत राजस्व परिषद तक चला जहां पक्षों के बीच सुलह हुआ। उस मुकदमें में कडेदीन मृतक के स्थान पर तीर्थराज आदि बनाम कमलाकान्त उर्फ कल्लन नाबालिग

पुत्र सूर्य नरायन वारिस बताये गये तथा कमला कान्त को नाबालिग के वली व कारपरदाज तीर्थ राज ने सुलहनामा कमलाकान्त कारपरदाज की हैसियत से सुलहनामा पर हस्ताक्षर किया है इस दफा 59 के मुकदमें में भी उन्होने जिक्र नहीं किया गया। अपील कर्ता गण की जानकारी में नाम कमलाकान्त का खाता में दर्ज चला आ रहा है उसी के अनुसार आराजी निजाई पर उनका कब्जा है। 1953 से अब तक वसीयतनामा के आधार पर अपना नाम दर्ज करने की कोई कार्यवाही नहीं की गई। इससे स्पष्ट है कि अपीलकर्ता गण को 1953 के वाद ही वसीयत के जरिया अपना नाम दर्ज कराना चाहिये था यदि उन लोगो ने अपने साथ कमला कान्त को भी कडेदनी का वसीयत नामा तथा 1953 से अब तक कमलाकान्त उनके साथ बतौर सहखातेदारो दर्ज चला आ रहा है तो आज अपीलकर्ता गण यह कहने के हकदार नहीं है कि कमला कान्त का नाम खाता में गलत दर्ज है वे स्टापुल तथा एक्युलेन्स के सिद्धान्त से बाधित है। च०अ० ने अपीलकर्ता गण की आपत्ति खारिज करने में त्रुटि नहीं की है।" *(Emphasis supplied)*

4. Learned counsel further submitted that in revision said objection was reiterated, however, on similar grounds revision of petitioners was dismissed by Deputy Director of Consolidation vide order dated 19.02.1980 and relevant part thereof is mentioned hereinafter:

"7– सूर्य नरायन की मृत्यु दिनांक 10.4.43 को हुई। पक्षो मान्य है कि कडेदीन की मृत्यु 1953 में हुई। और निगरानी कर्ता के पिता सत्य नरायन की मृत्यु 1956 में हुई। इस प्रकार वसीयत के निष्पादन के साक्ष्य समय सत्य नरायन जीवित थे पत्रावली पर यह भी सिद्ध है कि कमलाकान्त का जन्म 1942 में हुआ थे और वसीयत के निष्पादन के समय वह भी जीवित था और नाबालिग था कमलाकान्त दिनांक 01.07.1952 के पूर्व पैदा हुआ था और इसलिये परिवार की सब संयुक्त सम्पत्ति में उनके निहित अधिकार थे वसीयत की इबारत में कडेदीन द्वारा यह लिखा गया है कि उनके सत्य नरायन व सूर्यनरायन थे यह उल्लेख वसीयतनामा में कडेदीन ने लिखा है कि वसीयत में लाभार्थी के अतिरिक्त उसके लडके सत्य नरायन और पूर्व मृतक पुत्र के कमला कान्त जीवित थे वसीयत में हिब्बेनामें से प्राप्त जायदाद व संयुक्त

परिवार की मौरूसी जायदाद को कतई अलग अलग नहीं बयान किया गया है। इस उल्लेख से जाहिर होता है कि वसीयत बिल्कुल फर्जी है और अमान्य है। इसके विपरीत उत्तरवादियों ने दो एक पत्र काफी पुराने प्रस्तुत किये है जिसमें सत्य नरायन और कमलाकान्त के आपसी सम्बन्ध की चर्चा है जो एक परिस्थिति गत साक्ष्य है जिसमें यह पुष्टि होता है कि परिवार सदैव संयुक्त रहा है और सारी सम्पत्ति का इसी तरह से प्रयोग हुआ है इसके अतिरिक्त एक बात और भी उल्लेखनीय है कि विवादित सम्पत्ति में 165, 176 आदि ऐसी भूमि होती है जो दखिल कारी सीरदारी थी जिनका न हिब्बा नामा हो सकता था न ही वसीयत हो सकती थी।" *(Emphasis supplied)*

5. Learned counsel further submitted that Settlement Officer of Consolidation as well as Deputy Director of Consolidation, both have committed error that matter ought to have been remitted back to Consolidation Officer to pass a fresh order after framing issue on validity of Will, however, it was not done. He also submitted that without specific pleadings on the issue, both authorities, i.e., Settlement Officer of Consolidation and Deputy Director of Consolidation, have made comments disputing execution of Will. No opportunity was granted to petitioners to prove the Will in accordance with law.

6. None appeared on behalf of respondents despite a notice was issued by this Court and on basis of office report dated 15.05.2022 this Court vide order dated 17.08.2022 found that service upon respondents was sufficient.

7. I have considered the above submissions and perused the record.

8. As already referred that the in case of concurrent findings of all authorities under consolidation proceedings, no interference could be caused, except in exceptional circumstances, such as, if the impugned order was passed by an authority who does not have jurisdiction to pass such order or the findings are patently perverse. In this regard, the Court takes note of judgments passed Supreme Court in **Krishnanand (dead) through Lrs and others vs. Deputy Director of Consolidation and others, (2015) 1 SCC 553** and **Central Council for Research in Ayurvedic**

Sciences and another vs. Bikartan Das and others, 2023 SCC Online SC 1996. Relevant paragraphs of said judgments are mentioned hereinafter:

Krishnanand (supra):

"12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for re-appreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. In the present case, though the High Court reversed the concurrent findings of the authorities below and came to the opposite conclusion on matter of facts, the High Court did not do so on the ground that the authorities below acted in excess of their jurisdiction or without jurisdiction or that the finding is vitiated by perversity.

13. We are of the view that the High Court ought not to have entered into re-appreciation of evidence and reversed the findings of fact arrived at by the three authorities below, especially since, the authorities had neither exceeded their jurisdiction nor acted perversely. The High Court has no where stated that it was of the view that there is any perversity, much less the High Court failed to demonstrate any such circumstances."

Central Council for Research in Ayurvedic Sciences (supra):

"65. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.

66. A writ of certiorari, being a high prerogative writ, is issued by a superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded the jurisdiction. It

cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter. However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. We may only say that while adjudicating a writ-application for a writ of certiorari, the court is not sitting as a court of appeal against the order of the tribunals to test the legality thereof with a view to reach a different conclusion. If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well-established principle of law that a writ of certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits. [See : King v. Nat Bell Liquors Ltd., [1922] 2 A.C. 128 (PC)]"

9. In the present case, admittedly, Consolidation Officer has not made an issue with regard to validity of Will allegedly executed in favour of petitioners. Only two issues, i.e., "whether name of Kamla Kant alias Lallan was wrongly recorded in Khata No. 40 and 130" and "what would be the share of parties in land in dispute", were framed. No objection was raised by petitioners at relevant stage, i.e., before Consolidation Officer and they have led evidence only on basis of aforesaid two issues and accordingly the Consolidation Officer passed order whereby objections filed by petitioners were rejected.

10. Admittedly, petitioners are not part of family of Kadedeen, therefore, a doubt that said Kadedeen could execute a Will in favour of strangers, would be a natural doubt, specifically when all three authorities have returned a finding that family members of Kadedeen have cordial relations amongst each other. The execution of Will, therefore, surrounds with suspicious circumstances.

11. Surya Narain son of Kadedeen, died in 1945, when Kadedeen was alive and in normal circumstances it could not be believed that Kadedeen would disassociate his minor grandson, when there was no evidence that there was uncordial relationship between father and son. Settlement Officer of Consolidation has also upheld said findings. Deputy Director of Consolidation has considered the issue of Will at length that it was dated 07.05.1951 and though he referred that a 20 years old document, if submitted from a genuine custody, could be considered a genuine

document, however, still a finding was returned that petitioners have failed to prove the Will in accordance with law as well as upheld the suspicious circumstances.

12. Aforesaid concurrent findings were based on material and at this belated stage the Court cannot reopen the issue of Will, since all the authorities under Act, 1953 have put a doubt on the manner of execution of Will, which are legally valid also.

13. Consolidation proceedings were commenced in the year 1977, i.e., 48 years ago and this writ petition was filed against concurrent findings of all three authorities under Act, 1953 in the year 1980, i.e., about 45 years ago. The prayer for stay was already rejected by this Court, therefore, at this stage even if the Court considers argument of learned counsel for petitioners that issue of Will could be decided, however, the matter cannot be remitted to Consolidation Officer. Otherwise also, the Court is of the view that concurrent findings cannot be disturbed since the same are not perverse.

14. The Court also takes note of a judgment passed by this Court in **Satish Chandra Sharma vs. State of U.P. and others, 2023:AHC:233235** wherein the manner to prove a Will was discussed at length and since admittedly petitioners have failed to prove Will in accordance with law, therefore, also no case of interference is made out in the concurrent orders passed by all three authorities under Act, 1953.

15. The writ petition is accordingly dismissed.

September 26, 2025 **(Saurabh Shyam Shamshery,J.)**
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Digitally signed by :-
AWADESH KUMAR
High Court of Judicature at Allahabad