

AMAR NATH

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v.

KEWLA DEVI & ANR.

(Civil Appeal No. 1918 of 2007)

APRIL 22, 2014

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[GYAN SUDHA MISRA AND V. GOPALA GOWDA, JJ.]

Code of Civil Procedure, 1908:

s. 100 – Second appeal – Substantial question of law — High Court has committed a grave error in procedure and failed to discharge its duty by not framing substantial question of law and setting aside the judgment and decree of first appellate court – It is a fit case to restore the judgment and decree passed by first appellate court wherein it declared that appellant was the son of the grand-son of respondent's paternal grand-father thereby holding that the order passed by the Consolidation Officer is void and illegal – Judgment of High Court set aside and that of first appellate court restored.

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Suit:

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Suit claiming title to suit property and for declaration – Plaintiff's case that order of Consolidation Officer was obtained by fraud – Held: Order of Consolidation Officer was obtained on the basis of fraud by defendants — Consolidation Officer has also committed fraud on appellant, by accepting withdrawal of his objection and not going into the issue whether he is the rightful heir, with a right in half-share of suit property – Suit was not barred by s.331 of U.P. Zamindari Abolition and Land Reforms Act nor u/s 49 of Consolidation of Holdings Act as it was a suit for possession based on title involving question of 'sonship', which was not within the jurisdiction of authorities under the two Acts – Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 – s.331 – Uttar Pradesh Consolidation of Holdings Act 1953 – s. 49 – Jurisdiction – Fraud.

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A *Property Law:*

- Agricultural land – Held: When trial court, on the basis of the evidence on record, has held that it was proved that the appellant was the son of the grandson of respondent's paternal grandfather, then automatically the court should have given half the portion of the suit land to him along with defendant — Right of appellant cannot simply be extinguished because of defendants' plea that he has entered into a compromise – Defendants have taken undue advantage of appellant's illiteracy and Consolidation Officer has abdicated his role by allowing the objection of appellant to be withdrawn and by not examining whether or not appellant was indeed the son of defendant's grandfather – Order of the Consolidation Officer is thus bad in law and it has resulted in a grave miscarriage of justice – Order of Consolidation Officer is declared as null and void on grounds of patent illegality and acting with legal malice — Appellant is entitled to be recorded in the revenue records as half share owner of the land in dispute — Competent authority is directed to record the name of appellant in revenue records as half share owner of the land in dispute.*

- The appellant filed a suit for possession of the suit property and prayed for quashing of order dated 14.2.1970 passed by the Consolidation Officer, on the ground that defendant no. 1 in connivance with defendant no. 2, taking benefit of the appellant's illiteracy, recorded their names over the suit land and the Consolidation Officer rejected his objection holding that it was not pressed and directed that existing entries would continue. The plaintiff alleged that the order of the Consolidation Officer was obtained by playing fraud on him. The trial court held that the appellant was the son of 'VN', namely the brother of the father of defendant no. 1, but dismissed the suit holding the same, inter alia, barred by s. 331 of the UP Zamindari Abolition and Land Reforms Act, 1950 as also s. 49 of the UP Consolidation**

of Holdings Act 1953 as well as by limitation. However, the first appellate court decreed the suit. In the second appeal filed by the defendants-respondents the High Court set aside the judgment and decree of the first appellate court.

In the instant appeal filed by the plaintiff, the questions for consideration before the court were as follows:

1. Whether the High Court was correct in deciding the appeal without formulating substantial questions of law and whether the matter must be remitted back to the High Court?
2. Whether the suit of the appellant was barred by s.49 of the UP Consolidation of Land Holdings Act and s.331 of the UP Zamindari Abolition and Land Reforms Act?
3. Whether the order dated 14.02.1970 passed by the Consolidation Officer must be declared illegal and void?
4. What order/decreed to be passed?

Allowing the appeal, the court

HELD : Question no.1:

1.1 The High Court has committed a grave error in procedure and failed to discharge its duty by not framing substantial question of law and in setting aside the judgment and decree of the first appellate court. The finding of fact recorded by the first appellate court on the contentious issues was based on re-appreciation of the pleadings and evidence on record and careful perusal of the law. In the interest of justice, the judgment and decree of the High Court has to be set aside as it has omitted to frame substantial questions of law and answer the same and thus has failed to discharge its duty u/s 100, CPC. [Para 8][688-A-D]

- A *Surat Singh v. Hukam Singh Negi* (2010) 15 SCC 525 and *Hardeep Kaur v. Malkiat Kaur* 2012 (2) SCR 478 : (2012) 4 SCC 344 – relied on.

1.2 In the instant case, it is not necessary to remit the matter back to the High Court for consideration afresh. It is sufficient to set aside the impugned judgment and uphold the well-reasoned judgment of the first appellate court, which observed that the trial court, on the basis of the evidence on record, held that it was proved that the appellant was the son of the grandson of respondent's paternal grandfather. In such a fact situation, automatically the court should have given half the portion of the suit land to the appellant along with defendant no.1. Instead the trial court as well as the Consolidation Officer have passed judgments that are bad in law as they have failed to see that the right of the appellant cannot simply be extinguished because of the defendants' plea that he has entered into a compromise. The defendants have taken undue advantage of the appellant's illiteracy and the Consolidation Officer has abdicated his role by allowing the objection of the appellant to be withdrawn and by not examining whether or not the appellant was indeed the son of defendant's grandfather. It is highly likely that fraud was committed on appellant by the defendants as well as the Consolidation Officer by not recording his name in the revenue records and the defendants have taken undue advantage of his illiteracy so that the whole property goes to them. The order of the Consolidation Officer is thus void and illegal and it has resulted in a grave miscarriage of justice. The trial court erred in not quashing the order of the Consolidation Officer. [Para 9] [688-F-G; 689-A-E]

Question no.2:

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2.1 The suit was not barred u/s 331 of the UP Zamindari Abolition and Land Reforms Act, as the authorities under the said Act have no jurisdiction to deal with the subject matter. The suit is also not barred u/s 49 of the UP Consolidation of Land Holdings Act, as it is a suit for possession of the suit schedule property based on title involving the question of 'sonship', which is not within the jurisdiction of the authorities under the said Act. [Para 10][690-B-E]

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Suba Singh v. Mahendra Singh & Ors. (1974) 1 SCC 418 – referred to.

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Questions nos.3 and 4:

3.1 The order of the Consolidation Officer dated 14.2.1970 was obtained on the basis of fraud by the defendants. The Consolidation Officer has also committed fraud on the appellant, by accepting withdrawal of his objection and not going into the issue of whether he is the rightful heir, with a right in half-share of the suit property. The Consolidation Officer has not discharged his duties properly and without examining the alleged statement made on behalf of the appellant and verifying the correctness of the same has accepted the withdrawal of his objection and has passed the order without examining the rights of the parties with reference to the documents in relation to the suit schedule property. He has permitted a gross miscarriage of justice to continue by recording of the name of defendant no.1 as the only rightful heir to the land in dispute. [Para 11][690-G-H; 691-A-C]

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S. Partap Singh v. State of Punjab 1964 SCR 733 : AIR 1964 SC 72 – relied on

3.2 This Court, therefore, declares the order of the Consolidation Officer to be null and void on grounds of

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- A patent illegality and legal malice. The Court further holds that the appellant is entitled to be recorded in the revenue records by the competent authorities as half share owner of the land in dispute and that he has a right to half the share in the property and crops, as it being the ancestral property of his father. The competent authority is directed to record the name of the appellant in the revenue records as half share owner of the land in dispute. The impugned judgment and decree of the High Court is set aside and the judgment of the first appellate court is upheld and restored. [Para 9, 12 and 13] [691-E-F; 692-A-D]

- Madan Mohan Mishra v. Chandrika Pandey (Dead) by LRs 2009 (2) SCR 590 : (2009) 3 SCC 720; Madan Mohan Singh & Ors. v. Rajni Kant & Anr. 2010 (10) SCR 30 : (2010) 9 SCC 209 – cited.*

CASE LAW REFERENCE

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|---------------------|-----------------------------------------------------------------------------------------------------------------------------|---------|
| 2009 (2) SCR 590 | cited | para 6 |
| 2010 (10) SCR 30 | cited | para 6 |
| E (2010) 15 SCC 525 | relied on | para 8 |
| 2012 (2) SCR 478 | relied on | para 8 |
| (1974) 1 SCC 418 | referred to | para 10 |
| 1964 SCR 733 | relied on | para 11 |
| F | CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1918 of 2007. | |
| | From the Judgment and Order dated 08.04.2005 of the High Court of Judicature at Allahabad in Second Appeal No. 283 of 2005. | |
| G | S. R. Singh, Sr. Adv., Ujjabal Pandey, Rameshwar Prasad Goyal, Advs. for the Appellant. | |
| | R. D. Upadhyay, Adv., for the Respondents. | |

The Judgment of the Court was delivered by

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V. GOPALA GOWDA J.

1. This appeal is directed against the impugned judgment and order dated 08.04.2005 of the High Court of Uttar Pradesh at Allahabad wherein the High Court allowed the appeal filed by the respondents and set aside the order passed by the Additional District Judge and upheld the findings of the trial court. The appellant has appealed against the impugned judgment urging various legal and factual contentions, the main contention being that the High Court has allowed the appeal without framing substantial question/questions of law although it is mandatory as per Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC').

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2. The relevant facts of the case in brief are stated hereunder:

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The appellant, Amar Nath is the plaintiff whose father, Vaij Nath is the brother of Ram Nath and Ram Dev. The respondent no. 1 - the defendant is the only daughter of Ram Nath. Ram Dev, the third brother died without issue. The appellant, Amar Nath filed a suit for possession of the suit schedule property and prayed for quashing of order dated 14.02.1970 passed by the Consolidation Officer during the Consolidation proceedings on the ground that defendant no. 1 in connivance with defendant no.2, taking benefit of the appellant's mental weakness and illiteracy have recorded their name over the land in dispute, and the Consolidation Officer rejected the appellant's objection holding that it was not pressed and directed that existing entries shall continue. He prayed for quashing the order of the Consolidation Officer on the ground that fraud was played on him and he had no knowledge of the order. The trial court on the basis of the pleadings has framed 12 issues and after trial, it has decided issue nos. 1 and 12 against the appellant, holding that the appellant is not co-bhumidhar over the land in dispute and

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A further held that the suit is barred by limitation. The trial court also held that the suit is barred by Section 331 of the UP Zamindari Abolition and Land Reforms Act, 1950 and he should instead file a suit before the Revenue Court for his bhumidhar right over the disputed land and for the relief of possession also of the suit schedule property. It was further held that the suit is barred by Section 49 of the UP Consolidation of Holdings Act, 1953 as well as by limitation. The trial court also held that the suit is barred by the principle of estoppel as well as under Sections 34 and 41 of the Specific Relief Act as the defendant has got exclusive possession over the land in dispute. Although the trial court held that the appellant had cause of action to file the suit, it went on to hold that as the appellant did not press the objection filed by him in the consolidation proceedings and he entered into a compromise with the defendant, handing over his share in favour of the defendant which is not based on fraud, coercion or undue pressure and no allegation of the same has been mentioned in the suit, and no evidence either was placed on record. Hence, the trial court held that the appellant is not entitled for the relief as prayed for in the suit, and thereby dismissed the suit with costs. Importantly, even though the suit was dismissed the trial court demolished the contention of the defendants that Amar Nath, the appellant was not Vaij Nath's son. The trial court held that Amar Nath was indeed the son of Vaij Nath, relying on the deposition of witnesses examined on behalf of the appellant and on documentary evidence produced on his behalf i.e. the copy of electoral register of 1991 and ration card in which it is recorded that he is Amar Nath s/o Vaij Nath. The trial court took into account the admission of DW-1, Shyama Chand Tiwari, the husband of defendant no.1 who has recorded his statement on oath in the court wherein he has himself stated that 'Amar Nath s/o Vaij Nath had himself withdrawn his case from the consolidation proceedings'.

3. The appellant appealed against the judgment and decree of the trial court by filing a civil appeal under Section

96 of the CPC in the first appellate court, through the Court of the Additional District Judge. The first appellate court held vide judgment and decree dated 01.02.2005 that the appellant had only to prove that he is son of Vaij Nath who was the son of Gaya and he is their legal heir and the trial court, instead of examining important and reliable evidence of the witnesses has rather examined different interested persons, ignoring the records available before it which constituted complete evidence in favour of the appellant. If evidence were that Amar Nath was son of Vaij Nath then automatically the court should have given half portion of the land in dispute to the appellant along with defendant Kewla Devi. The appeal was allowed as the conclusion arrived at by the trial court were not supported by the pleadings and evidence available on record.

4. The respondents-defendants filed the second appeal before the High Court against the judgment and decree of the first appellate court. It was contended by the respondents that the disputed land was inherited by respondent No. 1 from her father during consolidation proceedings in the year 1969-1970 and some opponent of theirs set up the appellant to file an objection which was later on withdrawn by him by moving an application dated 14.02.1970. It was alleged that the appellant does not belong to the family of the respondents and he is not the heir of Gaya. The appellant alleged that fraud was committed on him and the order dated 14.02.1970 passed by the Consolidation Officer was fraudulent and liable to be set aside. He pleaded that he was defrauded by the respondents and they made him to believe that they are managing the disputed land. The High Court held that as per Order 6 Rule 4 of the CPC, when fraud, breach of trust etc. are alleged, particulars of the same must be stated in the pleading and in the present case, no particulars of fraud were made as part of the pleading and in the absence of such pleading no evidence can be looked into and a finding that the order has been fraudulently procured cannot be given. As a result, the second

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A appeal of the respondents was allowed and the High Court set aside the judgment and decree of the first appellate court. Hence, this civil appeal.

B 5. The learned counsel for the appellant contends that the appellant pleaded about the fraud played and further clarified it in the evidence led by him and that he was assured by the husband of respondent No.1 that his share will be recorded in his name and that he committed fraud upon him. He further stated that the appellant had no knowledge about the consolidation order dated 14.02.1970 and that he had not
C filed any application in the Consolidation Court. He contended that the suit was not barred under Section 49 of the UP Consolidation of Land Holdings Act and also Section 331 of the UP Zamindari Abolition and Land Reforms Act, 1950 as by filing the present suit, the appellant prayed for quashing of
D the order dated 14.02.1970 which, he contended, was obtained by fraud and the power to do this lies only with the civil court. Further, the trial court has committed a grave error by not decreeing the suit by giving half the portion of the disputed property to the appellant when the trial court itself had held in
E para 18 of its judgment that the appellant was the son of Vaij Nath and the legal heir of Gaya. The appellant then contended that the High Court has committed a serious error of procedure by allowing the second appeal without framing any substantial question of law as per requirement of Section 100 of the CPC.

F 6. The learned counsel for the respondent has submitted that the High Court has dealt with the appeal without framing substantial question of law which is mandated as per Section 100 of the CPC. Further, the High Court has not gone into the question whether the suit was barred by Section 49 of the UP
G Consolidation of Land Holdings Act and Section 331 of the UP Zamindari Abolition and Land Reforms Act. The learned counsel relied on the case of *Madan Mohan Mishra v. Chandrika Pandey (Dead) by LRs*¹ to contend that this

H ¹(2009) 3 SCC 720

Court has clearly held that the jurisdiction of a civil court is barred in respect of agricultural land and in *Madan Mohan Singh & Ors. v. Rajni Kant & Anr.*², it was held that the statutory authorities under the Consolidation of Holdings Act enjoy the powers of a civil court as well as a revenue court as all matters pending before the civil court abate once notification of initiation of proceedings is issued under the Act. He stated that the authorities under the Consolidation Act have been conferred the powers of a civil court to adjudicate upon any matter of title or right to inherit property. Therefore, it was submitted that the matter be remitted to the High Court for formulating substantial question of law and then decide the second appeal on its merits or this Court may be pleased to consider the effect of Section 49 of the UP Consolidation of Land Holdings Act and Section 331 of the UP Zamindari Abolition and Land Reforms Act on merits.

7. We have heard the learned counsel for both the parties. The following questions arise before us:

- a. Whether the High Court was correct in deciding the appeal without formulating substantial questions of law and whether the matter must be remitted back to the High Court?
- b. Whether the suit of the appellant was barred by Section 49 of the UP Consolidation of Land Holdings Act and Section 331 of the UP Zamindari Abolition and Land Reforms Act?
- c. Whether the order passed by the Consolidation Officer dated 14.02.1970 must be declared illegal and void?
- d. What order/decreed to be passed?

We will deal with each of these issues separately along with supplementary issues that would arise out of them.

²(2010) 9 SCC 209

A 8. Answer to point no. 1:

In our considered viewpoint, the High Court has committed a grave error in procedure by not framing substantial question of law and setting aside the judgment and decree of the first appellate court. The finding of fact recorded by the first appellate court on the contentious issues was based on re-appreciation of the pleadings and evidence on record and careful perusal of the law and the High Court has failed to discharge its duty by not framing the mandatory substantial questions of law in order to examine the correctness of the judgment and decree passed by the first appellate court. In the interest of justice, the judgment and decree of the High Court has to be set aside as it has omitted to frame substantial questions of law and answer the same and thus has failed to discharge its duty under S. 100 of the CPC. The learned counsel for the respondent has relied on the cases of **Surat Singh v. Hukam Singh Negi**³ and **Hardeep Kaur v. Malkiat Kaur**⁴ in order to establish that the High Court is bound to formulate substantial questions of law at the initial stage itself if it has to satisfy itself that the matter deserves to be admitted and the second appeal to be heard and decided on such questions and further even at the time of hearing of the second appeal, it is open to the High Court to reformulate substantial questions of law. In the judgments relied upon, the impugned judgments of the High Court were set aside and the matter was remitted to the High Court for consideration afresh after formulation of the substantial questions of law. The learned counsel for the respondents has prayed for the same.

G 9. We do not think it necessary to remit the matter back to the High Court for fresh consideration. We feel it is sufficient to set aside the impugned judgment and uphold the well-reasoned judgment of the first appellate court where it was held that the very fact that the trial court held that it was proved

³(2010) 15 SCC 525

H ⁴(2012) 4 SCC 344

that Amar Nath was s/o Vaij Nath based on the evidence on record, then automatically the court should have given half the portion of the disputed land to the appellant along with defendant no. 1, Kewla Devi. Instead, the trial court as well as the Consolidation Officer have passed judgments that are bad in law as they have failed to see that the right of the appellant cannot simply be extinguished because of the defendants' plea that he has entered into a compromise. The defendants have taken undue advantage of the appellant's illiteracy and the Consolidation Officer has abdicated his role by allowing the objection of the appellant to be withdrawn and by not examining whether or not the appellant was indeed the S/o Vaij Nath who was the S/o Gaya. The order of the Consolidation Officer is thus bad in law and it has resulted in a grave miscarriage of justice. We think it fit to restore the judgment and decree passed by the first appellate court wherein the court declared that the appellant, Amar Nath is S/o Vaij Nath who was son of Gaya thereby holding that the order passed by the Consolidation Officer is void and illegal and the trial court was wrong in not quashing the order of the Consolidation Officer and that nowhere in the revenue record was his name recorded and fraud was committed against him as defendant no. 1, Kewla Devi has got her name recorded in each and every revenue record. The judgment of the first appellate court is legal and valid as it is fair and keeping with the principles of justice. The trial court in its answer to issue nos. 1 and 10 has rightly held that Amar Nath is S/o Vaij Nath who was undisputedly the son of Gaya and if that fact was proved, then we see no reason why it was not directed for the appellant's name to be recorded in the revenue records. The right of the appellant over the suit schedule property cannot be extinguished simply because objection was withdrawn, over which there is a cloud of doubt anyway and also, the appellant has pleaded that he had no idea about the order of the Consolidation Officer in the first place. We find it highly likely

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A that fraud was committed on him by the defendants as well as the Consolidation Officer by not recording his name in the revenue records as the defendants have taken undue advantage of his illiteracy so that the whole property goes to the defendants.

B 10. Answer to point no.2:

C The question whether the original suit of the appellant was barred under Section 49 of the UP Consolidation of Land Holdings Act and Section 331 of the UP Zamindari Abolition and Land Reforms Act, we answer in the negative. The suit was not barred under the aforesaid provisions as the UP Zamindari Abolition and Land Reforms Act has no jurisdiction to deal with the subject matter. On the issue of Section 49 of the UP Consolidation of Land Holdings Act, we hold that the present case is not barred under this section as it is a suit for possession of the suit schedule property based on title, which is not within the jurisdiction of the authorities under the aforesaid Act. In the case of *Suba Singh v. Mahendra Singh & Ors.*⁵, it was observed by this Court that Section 49 does not bar jurisdiction of civil courts in matters of title to the land stating that -

D "9. ... The result is that the plea of bar of the civil courts' jurisdiction to investigate and adjudicate upon the title to the land or the sonship of the plaintiff has no substance...."

E Therefore, since the present case too involves a question of 'sonship' of the plaintiff who is the appellant herein, there is no bar to the jurisdiction of civil courts under Section 49 of the aforesaid Act, in deciding the question of the appellant's right to the land he has inherited from his father.

F 11. Answer to point nos.3 & 4:

G The order of the Consolidation Officer dated 14.2.1970 was obtained on the basis of fraud by the defendants. We feel that the Consolidation Officer has also committed fraud on the

H ⁵(1974).1 SCC 418

appellant, by accepting withdrawal of his objection and not going into the issue of whether he is the s/o Vaij Nath or not, and therefore whether he is the rightful heir, with a right in half-share of the disputed property. A

The Consolidation Officer has not discharged his duties properly and keeping with law has not given details of the objection or why the objection was not pressed by the appellant in his order. He has permitted a gross miscarriage of justice to continue by recording of the name of defendant no. 1 as the only rightful heir to the land in dispute. In the case of **S. Partap Singh v. State of Punjab**⁶, Ayyangar J. in his portion of the judgment at para 6 has quoted Lord Denning (in the case *Lazarus Estates Ltd. v. Beasley* 1956 1 All ER 341 at p.345) stating: B C

“No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud.” D

The Consolidation officer without examining the alleged statement made on behalf of the appellant and verifying the correctness of the same has accepted the withdrawal of his objection and has passed the order without examining the rights of the parties with reference to the documents in relation to the suit schedule property. E

12. We therefore hereby declare the order of the Consolidation Officer to be null and void on grounds of patent illegality and acting with legal malice. The appellant has contended that he had no idea about the Consolidation order and was made aware of it only when he asked for his half share of crop which the defendants refused to him, and that he was made to sign an agreement in which he signed over his rights to the property and that he has been taken advantage off due to his illiteracy. We find all this extremely murky and it was incumbent upon the Consolidation Officer to properly enquire into the ownership of the land before recording the defendant's name in the revenue records. We further hold that the appellant F G

⁶AIR 1964 SC 72

- A - Amar Nath is entitled to be recorded in the revenue records by the competent authorities as half share owner of the land in dispute, as he has a right to half the share in the property and crops, as it being the ancestral property of his father – Vajj Nath. It has been proved by examining the evidence on record, such as the election identity card, that Amar Nath is indeed the s/o Vajj Nath thereby it has demolished the contention of the defendants that the appellant is not the s/o Vajj Nath.

13. In view of the foregoing reasons, we hold that the appellant is the half share owner of the land in question and further uphold his right to the ancestral property. We direct the competent authority to record the name of the appellant – Amar Nath in the revenue records as half share owner of the land in dispute. Thus, we hereby set aside the impugned judgment and decree of the High Court and uphold the judgment of the first appellate court. The appeal is allowed in the aforesaid terms with no order as to costs.

Rajendra Prasad

Appeal allowed.