

JURISDICTION OF CIVIL COURTS VIS-A-VIS C.H. COURTS

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1. **Object behind the C.H. Act, 1953---** The object of the Act is to allot a compact area in lieu of scattered plots to tenure-holders so that large scale cultivation may be possible with all its attendant advantages. Thus by the reduction of boundary-lines saving of land takes place and the number of boundary disputes is reduced. There is saving of time in the management of fields inasmuch as the farmer is saved from traveling from field to field, which may be at considerable distance from each other. Proper barriers such as fences, hedges and ditches can be erected around a compact area to prevent trespassing and thieving. It would further be easier to control irrigation and drainage and disputes over water would be reduced considerably where compact area is allotted to tenure-holders. Lastly, the control of pests, insects and plant-disease is made easier where farmers have compact areas under cultivation. Their advantages resulting from consolidation of holdings are intended to encourage the development of agriculture and larger production of food grains, which is the necessity of the day.

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 block 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 in one piece then barriers, such as fences, hedges or ditches could be erected to obtain privacy and prevent trespassing, thieving and gleaning. The control of irrigation and drainage water would be easier and control of pests, insects and disease would also not be difficult. See---

1. **Attar Singh vs. State of U.P., 1959 RD 149 (SC)**
 2. **Smt. Asharfunisa Begum vs. DDC, Hardoi, 1970 RD 532 (All-FB)**
 3. **Ram Manorath vs. Surya Pal, 2007(102) RD 593 (All)**
2. **“Consolidation” & its meaning**--- Sec. 3(2) of the C.H. Act, 1953 defines word “consolidation” as under---
- “Sec. 3(2)--- ‘Consolidation’ means re-arrangement of holding in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact.”
3. **Definition of “land” under C.H. Act, 1953**--- Sec. 3(5) of the C.H. Act, 1953 defines the word land as under---
- “**Sec. 3(5)**--- ‘Land’ means land held or occupied for purposes connected with agriculture, horticulture and animal husbandry (including pisciculture and poultry farming) and includes---
- (i) the site, being part of a holding, of a house or other similar structure; and
 - (ii) trees, wells and other improvements existing on the plots forming the holding.”

4.1 Jurisdiction of consolidation court not to extend to “land” unconnected with agriculture etc.--- The use of the holding for purposes unconnected with agriculture whether permitted under the Act or whether commenced before the enforcement of this Act, in either case that area which is put to a different use other than agriculture etc. would not be covered by the definition of the word ‘land’ and therefore, the provisions of this Act would not apply. The land not covered by the provisions of the C.H. Act cannot be the subject matter of a dispute before the Consolidation courts and the said courts will have no jurisdiction to decide the question of title between the parties thereto. If the land is used for purposes of making bricks, consolidation courts are not competent to adjudicate. See--- **Triloki Nath vs. Ram Gopal, 1974 RD 5 (All—D.B.)**

4.2 Merits of the case not to be discussed when court has no jurisdiction:

It is settled law that once court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter. Kindly see: **Jagraj Singh vs. Birpal Kaur, AIR 2007 SC 2083**

5. Land reserved for public purposes outside purview of consolidation--- Explaining Sec. 3(2), Explanation and Sec. 19A(2) and proviso, it has been held that ‘holding’ does not include land mentioned in Sec. 132 of the UPZA & LR Act, 1950. Hence, land reserve for public purpose is outside the purview of consolidation operations. Unless declaration is made by ACO in terms of proviso to Sec. 19A (2) in provisional consolidation scheme, land of Gaon Sabha or State cannot be allotted. See--- **Shiv Mangal Singh vs. DDC, Banda, 2009 (3) AWC 3013 (All)**

6. Notification u/s. 4 to be effective only on publication--- Notification issued u/s. 4(2) of the C.H. Act, 1953 would be complete on the date when it is published in the unit and not before that. See---

1. Charan Singh vs. DDC, Muzaffarnagar, 2007(102) RD 29 (All)

2. **Sheetla Prasad vs. DDC, Varanasi, 2007(102) RD 44 (All)**

7. **Effect of notification u/s. 4 of the C.H. Act, 1953 on the suits pending in civil courts**--- On the notification u/s. 4 of the C.H. Act, 1953 being issued, by operation of law u/s. 5 of the Act, the suit gets abated. Even an appeal pending before the Supreme Court becomes infructuous. See---
 1. **Bhola Nath Rai vs. Vishwanatha Rai, 1969 RD 218 (SC—Three-Judge Bench)**
 2. **Ram Adhar Singh vs. Ramroop Singh, 1968 RD 254 (SC)**

8. **Abadi land & civil suit relating thereto not to abate on notification u/s. 4 of the C.H. Act**--- Abadi land is excluded u/s. 3(5) of the C.H. Act, 1953 from purview of consolidation authorities and as such suit pending in civil court in relation to Abadi land cannot be abated u/s. 5 of the Act. See---
 1. **Kumar Lohar vs. Ram Dhandra Dubey, 1982 ALJ 1129 (All)**
 2. **Kali Prasad vs. DDC, Allahabad, 1986 RD 225 (All)**

9. **Banjar land & civil suit relating thereto not to abate on notification u/s. 4 of the C.H. Act**--- Consolidation authorities have no jurisdiction in respect of banjar land. Sec. 49 of the C.H. Act, 1953 is no bar to a civil suit for injunction and such suit in civil court seeking injunction in respect of banjar land is maintainable. See--- **Ramphal vs. Champat Singh, 1982 ALJ 1424 (All)**

10. **Banjar & usher & land converted into grove land covered under C.H. Act**--- Where party had claimed his rights over banjar land as Zamindars and also over trees as allegedly planted by them and the banjar land had got converted into grove land, it has been held that it becomes 'land' and the consolidation authorities have jurisdiction to decide the disputes relating to such property. Usher and banjar is 'land' within the meaning of C.H. Act,

1953 and civil suit filed in civil court in relation to such land and even appeal having arisen therefrom would be liable to abatement u/s. 5(2-A) of the Act on the village coming under consolidation operations u/s. 5(3) of the Act. See---

1. **Bajinath Rai vs. DDC, Ghazipur, 1986 RD 306 (All—D.B.)**
2. **Ram Lakhan vs. Gaon Sabha, 1983 RD 29 (All)**

11. **“Grove” not covered within the meaning of land under C.H. Act---**
Grove is not covered within “land” u/s. 3(5) of the C.H. Act, 1953 and groves cannot form subject matter of consolidation proceedings. Inclusion of groves in chak is ultra vires and not binding as the same is beyond the jurisdiction of the consolidation authorities. Such order of the consolidation authorities being void can be ignored. See--- **Prem Pal Singh vs. Board of Revenue, 1998 (2) AWC 2(113) (NOC)**
12. **C.H. Act to apply to grove land as well---** The provisions of Secs. 7 to 11 and 11-A of the Act to apply to grovelands. Determination of title over them under Sec. 9 to 11 is final and not liable to be questioned in any court of law and Sec. 49 ousts the jurisdiction of civil and revenue courts to entertain any suit or civil proceedings in respect of them. See--- **Kushar vs. Ahmad Khan, 1962 ALJ 564 (All—D.B.)**
13. **Suit for injunction, declaration of title or rights or interest in land to abate u/s. 5 of C.H. Act---** It is well settled that every suit and proceeding in respect of ‘declaration of rights, title or interest in any land’ includes a suit for possession. Even such suits would abate whether they are pending in the trial court or in appellate court. In the instant case, the suit which ought to have been filed was one for possession. Even a suit for an injunction implies a declaration of right or title to hold land. Even a suit for an injunction, which involves a declaration of title or right or interest in

land, would be struck by Sec. 5 of the UPCH Act. A suit for an injunction which does not involve such a declaration, but is based on an alleged right of easement, may fall outside the provisions of Sec. 5. However, as the instant suit is not based on an alleged easementary right, but involves a declaration of right and title to a portion of plot No. 1200, it must be held to have abated. See--- **Zor Singh vs. Hukum Singh, 1971 RD 331 (All)**

14. Civil suit for permanent prohibitory & mandatory injunction, demolition of construction & damages not to abate on commencement of consolidation operations---

Where in a civil suit the relief of demolition of certain construction as well as injunction against interference into possession and recovery of damages was sought, it has been held that none of these reliefs can be granted by the consolidation courts since no effective relief can be granted by the consolidation courts, the mere fact that the question of title has also to be decided to grant the said relief, it cannot be said that Sec. 5(2)(a) of the C.H. Act, 1953 would apply. If the consolidation authorities are not competent to go into the real controversy involved in the suit, it cannot be abated. In a suit seeking mandatory injunction for demolition of constructions, the only effective relief would be to direct the removal of the constructions. Such a relief would be beyond the competence of the consolidation authorities. There is no provision in the Act under which such an order can be enforced or given effect to. A suit of such nature cannot be abated and must be decided by the court. See---

1. **Ramphal vs. Sheo Mangal, 1980 ALJ 700 (All)**
2. **Hasrat vs. Haridwar, 1973 RD 204 (All)**

15. Civil suit for possession to abate u/s. 5 on notification u/s. 4 of the C.H. Act---

It is well settled that every suit and proceeding in respect of 'declaration of rights, title or interest in any land' includes a suit for possession. Even such suit would abate whether they are pending in the trial court or in appellate court. In the instant case, the suit which ought to

have been filed was one for possession. Even a suit for an injunction implies a declaration of right or title to hold land. Even a suit for an injunction, which involves a declaration of title or right or interest in land, would be struck by Sec. 5 of the UPCH Act. A suit for an injunction which does not involve such a declaration, but is based on an alleged right of easement, may fall outside the provisions of Sec. 5. However, as the instant suit is not based on an alleged easementary right, but involves a declaration of right and title to a portion of plot No. 1200, it must be held to have abated. See--- **Zor Singh vs. Hukum Singh, 1971 RD 331 (All)**

16. **Suit for cancellation of sale deed involving agricultural land to abate on notification u/s. 4 of the C.H. Act, 1953**--- Suits for cancellation of sale deed in respect of agricultural land, which are pending on the date of the notification u/s. 4 of the UP Consolidation of Holdings Act, 1953, should be abated u/s. 5(2) of that Act. Where a civil suit was filed for cancellation of sale deed in respect of agricultural land on the ground of the sale deed being void as executed without authority and appeal was pending, it has been held that on notification being issued u/s. 4 of the C.H. Act bringing the village where suit land was situate, the suit stood abated by virtue of Sec. 5(2) of the C.H. Act. Consolidation authorities are competent to decide right, title and interest in suit land ignoring the sale deed which is admittedly void. Document which is void and liable to be ignored by courts, would not affect the jurisdiction of consolidation authorities and they would be well within their jurisdiction to adjudicate upon that document so as to finally decide the rights of parties. See---
1. **Bekaru vs. Shiv Murat, 2001 (2) AWC 1225 (All)**
 2. **U.P. State Sugar Corporation Ltd. vs. DDC, 2000 (2) AWC 933 (SC)**
 3. **Jagarnath Shukla vs. Sita Ram, 1969 RD 429 (All—D.B.)**
 5. **Gorakh Nath Dube s. hari Narain Singh, AIR 1973 SC 2451**

17. **Civil suit for cancellation of sale deed when not to abate on notification u/s. 4 of the C.H. Act**--- A suit for cancellation of a sale on the ground that it was not for legal necessity or consideration is not a suit for a declaration of rights or interests over land nor for possession of land or for partition. Therefore, even after the initiation of consolidation proceedings, this part of the suit cannot be stayed. The proper procedure would be to decide the suit for a declaration that the sale deed is invalid and remit this decision to the consolidation proceedings for decision of other questions namely, which party is entitled to this land, and so on. See--- **Sri Niwas vs. Sarwan, 1965 RD 310 (All)**
18. **Civil suit for cancellation of will deed to abate on notification u/s. 4**--- Where during the consolidation operations, a civil suit for cancellation of will deed was filed by stating that the will was result of forgery, it has been held that the jurisdiction of the civil court was barred u/s. 5 of the C.H. Act, 1953 as the will deed, allegedly a result of forgery, was a void document and not a voidable document. See---
1. **Amar Nath Singh vs. D.J., Jaunpur, 1988 RD 284 (All)**
 2. **Amanatullah vs. Mohd. Faryad, 1978 RD 262 (All)**
19. **Abatement of suit not automatic but requires order**--- Abatement of suit u/s. 5(2) of the C.H. Act is not automatic but it requires passing of order of abatement by the court before which the suit is pending. See--- **Ram Nath vs. Puranmasi, 1975 RD 152 (B.R.)**
20. **Civil suit for cancellation of sale deed to abate u/s. 5 of the C.H. Act**--- Where a civil suit was filed for cancellation of sale deed involving agricultural land by stating that the sale deed was void for being executed by imposter, it has been held that only the consolidation authorities had

jurisdiction to decide the dispute. A void sale deed can be ignored by the consolidation authorities. See---

1. **Bhurey Lal vs. District Judge, Budaun, 1997 (88) RD 149 (All)**
2. **Gorakh Nath vs. H.N. Singh, 1973 RD 423 (SC)**

21. **Composite civil suit for partition of house as well as Bhumidhari plots and jurisdiction of civil court**--- In a suit for partition of joint family properties consisting of houses, cattle, movable and **sirdari** and **bhumidhari** plots, the civil court passed a decree allotting certain sirdari plots to the petitioners. During consolidation operations, the Deputy Director of Consolidation held that, since the commencement of the U.P. Zamindari Abolition and Land Reforms Act the civil court had no jurisdiction to partition sirdari holdings. He held that one of the respondents was entitled to a certain share in the aforesaid sirdari plots. On writ petition, held: A civil court has inherent power to decide the question of its own jurisdiction. It is also settled that a court has jurisdiction to decide rightly as well as wrongly. The decision of the civil court previous suit as to his jurisdiction to entertain the suit, which was a composite suit, hence, will operate as res judicata between the parties in the consolidation proceedings under the doctrine of res judicata. See--- **Gokul vs. DDC, 1968 RD 160 (All)**
22. **Notification u/s. 4 of the C.H. Act when not to render the already passed decree as nullity?**--- Where notification u/s. 4 of the C.H. Act, 1953 in respect of land in dispute was published during pendency of appeal, it has been held that the decree passed by Addl. Civil Judge holding that Sec.5 of the Act was not applicable after publication of notification u/s. 4 of the Act brought to his notice would not render the decree nullity. See--- **Ram Audh Singh vs. State of U.P., 1969 ALJ 748 (All—F.B.)**

23. Fate of preliminary & final decree after notification u/s. 4 of the C.H. Act

--- Where a preliminary decree was already passed in a partition suit before the issue of notification u/s. 4 of the C.H. Act, it has been held that the suit would not abate so far as declaration of rights under the preliminary decree was concerned. Although a case may not terminate unless final decree was passed, yet there may be finality to the various stages of that case and in those proceedings there may be a stage where the parties have already obtained a declaration in respect of their rights or interests in any land which is the subject of consolidation proceedings and if that declaration has become final and is no longer pending for its finality, the declaration of rights so obtained in a preliminary decree cannot be affected by a notification made under the C.H. Act. See---

1. **Sukhkhan vs. DDC, 2003 (21) LCD 1370 (All)**
2. **Moolchand vs. DDC, 1995 RD 490 (SC)**
3. **Sobaran Singh vs. DDC, 1992 RD 359 (All)**
4. **Satish Kumar vs. Lalta Tiwari, 1974 RD 379 (All—L.B.)**

24. Preliminary decree when to be given effect to by the consolidation authorities during the pendency of proceedings for final decree

--- There is, thus, distinction between a case in which an appeal is filed against a preliminary decree and a case in which a preliminary decree is not appealed against and its correctness is not assailed. If, therefore, a Notification u/s. 4 of the Act is issued in a case where an appeal against the preliminary decree was not pending, the latter, viz. the preliminary decree, will remain unaffected and will not abate but if the preliminary decree had been assailed in appeal, and the appeal is pending on the date of Notification, the latter, namely, the notification, will have the effect of abating the entire suit/proceedings including the preliminary decree passed therein. On the contrary, if an appeal is filed against the final decree without there being any appeal against the preliminary decree and the preliminary decree

becomes “unassailable” on account of Sec. 97 CPC, the Notification u/s. 4 would abate the proceedings relating to the final decree without in any way touching, impairing or affecting the preliminary decree. The reason, to repeat, is obvious. Once, a preliminary decree is passed, the proceedings so far as declaration of rights or interests in the land are concerned, comes to an end. Those rights are to be worked out by the final decree. In a case, therefore, where a preliminary decree has already been passed and only the proceedings relating to the preparation of final decree are pending in any Court, either at the original stage, it cannot be said that proceedings relating to “declaration or determination of rights in the land” within the meaning of Sec. 5(2) of the Act are pending. See---

1. **Moolchand vs. DDC, 1995 RD 490 (SC)**
2. **Satish Kumar vs. Lalita Tiwari, 1974 RD 379 (All—L.B.)**

25. **Question of title not open after determination of disputes under the C.H. Act**--- In view of Sec. 49 of the C.H. Act, 1953, questions of title do not remain open after the determination of all disputes under different provisions like Sec. 9, 10, 11, 27 of the C.H. Act, 1953. See---

1. **Kushar vs. Ahmad Khan, 1962 ALJ 564 (All—D.B.)**
2. **Kailash Chandra vs. State of U.P., 2007(102) RD 301 (All)**

26. **Notification u/s. 4 of the C.H. Act, not to bar proceeding for cancellation of lease u/s. 198(4)**--- Notification issued u/s. 4(2) of the C.H. Act, 1953 does not bar the proceedings for cancellation of lease u/s. 198(4) of the UPZA & LR Act, 1950 and such proceeding does not abate u/s. 5(2) of the Act. See---
1. **Smt. Suhagwati vs. State of U.P., 2008(104) RD 510 (All.)**
 2. **Similesh Kumar vs. Gaon Sabha Uskar, Ghazipur, 1977 RD 408 (All- FB)**
 3. **Bharat vs. Board of Revenue, 2006 (101) RD 613 (All)**
27. **Sec. 5 of the C.H. Act not to apply when the decree already executed**--- When the suit is finally decided, decree executed and parties are put into possession, rehearing of the suit is not possible. The consolidation authorities are not at all competent to deal with the matter. The appeal and proceedings cannot be abated u/s. 5 of the C.H. Act, 1953. If a matter can be gone into consolidation proceeding, a suit in respect of such matters must stand abated u/s. 5 of the Act. If, however, the matter is such that the consolidation authorities are incompetent to decide, such a matter could not be abated. See--- **Sarju Koeri vs. Mukteshwar Pandey, 1972 RD 150 (All)**
28. **Civil suit u/o. 21, rule 63 CPC not to abate u/s. 5(2) of the C.H. Act**--- The question, whether any plots are or are not liable to attachment and sale in execution of a decree can be decided not by the consolidation authorities but in a suit filed u/o. 21, rule 58. Since no relief can be obtained by the application from the consolidation authorities in this regard, the suit is not covered by Sec. 5(2) and therefore the appeal against a decree in the suit cannot be abated u/s. 5(2). See--- **Ram Bharose Lal vs. Sukhdevi, AIR 1975 All 90**

29. **Review application not to abate u/s. 5(2)(a) of the C.H. Act**--- On notification being issued u/s. 4(2) of the C.H. Act, 1953, a review petition already pending would not be abated as Sec. 5(2)(a) of the Act does not contemplate a review petition. See--- **Dwarika vs. Deu, 2009 (108) RD 341 (All—L.B.)**
30. **Sec. 5(2) not to apply when notification u/s. 52 already issued**--- Sec. 5(2) of the C.H. Act, 1953 as incorporated in 1966 does not apply to cases where a notification u/s. 52 has already been published. See--- **Dahdeo Singh vs. Jagdish Singh, 1971 RD 337 (All)**
31. **Civil suit for cancellation of voidable deed not to abate u/s. 5(2) of the C.H. Act**--- A civil suit pending in respect of cancellation of void document abates u/s. 5(2) of the C.H. Act but the suit for cancellation of voidable deed does not abate. Both void and voidable instruments do not stand at par with reference to Sec. 5 of C.H. Act. The void documents were invalid and were liable to be disregarded by the consolidation authorities. So far as the other class of documents, viz., the voidable documents was concerned, their legal effect can be taken away only by them being cancelled or set aside and that the documents could be cancelled only by a court having power to cancel them and that the documents remain binding so long as they were not cancelled. The consolidation authorities had no power to cancel such documents. Where there are allegations that fraud was practiced with respect to the contents of document, such document is voidable and not void and suit to avoid such document cannot abate u/s. 5(2) of the C.H. Act, 1953. See---
1. **Ram Nath vs. Smt. Munna, 1976 RD 220 (All--F.B.)**
 2. **Brijendra Singh vs. IIIrd ADJ, Agra, 2005 (99) RD 16 (All)**
 3. **Hawaldar Singh vs. Aditya Singh, AIR 1978 All 266**

32(A). Scope & extent of Sec. 49 of the C.H. Act--- The word “entertain” in Sec. 49 means ‘proceed to consider or adjudicate upon’. Entertainment of a suit or proceeding in Sec. 49 means that the suit or proceeding such as was filed will not be admitted to consideration or adjudicated upon by a Civil or Revenue Court. Obviously entertainment would relate to the point of time when the appeal is being considered, i.e., the first occasion on which the Court takes up the matter for consideration which may be the admission stage after the appeal has been filed in the Court. Sec. 49 thus debars the Court from taking into consideration for the purposes of the admission of the appeal the merits of the case if the appeal is with respect to such rights as are referred to in that section in a land which is situated in a village which has been brought under consolidation operations. See--- **Mst. Nazira Begum vs. Syed Ali Zaheer, AIR 1974 All 104**

32(B). Sec. 49 of the C.H. Act when not to operate as bar : If the cause of action disclosed to have occurred later on after close of consolidation operations and some new desire is expressed or new relief is claimed on subsequent cause of action that did not exist before, it has been held that previous conclusion of consolidation operations would not be ca bar and provisions of Section 49 of the C.H. Act would not be attracted. See : **Zamindar Prasad Vs. Hawaldar, 2013 (118) RD 164 (All)**.

33. Sec. 49 of the C.H. Act & Principles of resjudicata & constructive resjudicata--- Bar of Sec. 49 of the C.H. Act, 1953 applies to the civil or revenue courts in the form of resjudicata and constructive resjudicata. The bar u/s. 49 contemplates bar of entertainment of suit by a civil or revenue court in respect of following matters-----

- (a) the declaration and adjudication of rights of tenure holders.
- (b) adjudication of any other rights arising out of consolidation proceedings, and
- (c) adjudication of any right in regard to which a proceeding could or ought to have been taken under UPCH Act, 1953. See---

- (i) **Raj Nath Dubey Vs. DDC, Allahabad, 2014 (102) ALR 4 (All)**
- (ii) **Amar Singh vs. State of U.P., 2008 (26) LCD 1051 (All)**

34. Bar of Sec. 49 need not be decided as preliminary issue in every case---

The question of bar of Sec. 49 of the C.H. Act, 1953 need not be decided as preliminary issue in every case. However, in appropriate cases bar of jurisdiction u/s. 49 of the Act, may be decided as preliminary cases. There is no absolute bar in this regard. See—

- 1. **Smt. Manjhari vs. 2nd ADJ, Jaunpur, 2007(102) RD 293 (All)**
- 2. **Kanak Lata vs. DDC, Allahabad, 2003(95) RD 381 (All)**
- 3. **Smt. Fatima Bibi vs. Board of Revenue, Allahabad, 1981 ALJ 812 (All)**
- 4. **Pushpan vs. Nirmala, 1991(1) ACJ 573 (All)**

35. Bar of Sec. 49 not to apply in the event of fraud etc.--- When fraud has

been played in consolidation proceedings, bar of Sec. 49 of the C.H. Act, 1953 does not apply and a suit u/s. 229-B of the UPZA & LR Act, 1950 for correcting the entries is maintainable. See---

- 1. **Amar Singh vs. State of U.P., 2008 (26) LCD 1051 (All)**
- 2. **Smt. Sudama vs. Hansraj, 1981 RD 116 (All)**
- 3. **Karbalai Begum vs. Mohammad Sayeed, 1980 RD 300 (SC)**

36(A). Sec. 49 not to bar suit before civil court for cancellation of sale deed

obtained by fraud : Where civil suit was filed before the civil court obtained by fraud, following the Full Bench decision of the Hon'ble Allahabad High Court in **Rampadarath Vs Second ADJ, Sultanpur, 1989 RD 21 (Full Bench)**, it has been held that the suit was not barred by Section 49 of the C.H. Act, 1953 and the same was maintainable before the Civil Court. See : **Smt. Sajrunnisha alias Sajida Khatoon & Another Vs District Judge & Another, 2013 (119) RD 415 (All)**.

36(B). Sec. 49 when to bar civil suit for cancellation of sale deed obtained by fraud---

Where a civil suit u/s. 9 CPC for cancellation of sale deed was filed on the ground that the sale deed was got executed by fraudulent misrepresentation as to its character and not merely as to its contents, it has been held that the transaction was void and not voidable. When thumb impression was obtained from illiterate plaintiff land lady on two documents viz. one for gift of her land to her daughter and another for the sale of land to defendants and got them registered on mis-representation that he was executing only the gift deed, the plaintiff was totally deceived as to character of the documents and therefore the transaction was void and the civil suit u/s. 9 CPC was barred by Sec. 49 of the C.H. Act, 1953. The transaction i.e. the sale deed being void can be adjudicated upon by the consolidation courts. If the sale deed in question whose cancellation/declaration has been sought in the civil court on plaintiff's own pleading is a void document, consolidation authorities have every jurisdiction to adjudicate with regard to such sale deed. See---

1. **Dularia Devi vs. Janardan Singh, 1990 (Suppl) SCC 216**
 2. **Brijendra Singh vs. IIIrd ADJ, Agra, 2005 (99) RD 16 (All)**
- 37. Bar of Sec. 49 to be decided after evidence of parties**---- In the event of allegations regarding fraud during the consolidation proceedings, the bar of Sec. 49 of the C.H. Act, 1953 should be decided after permitting the parties to lead their evidence. See--- **Amar Singh vs. State of U.P., 2008(104) RD 421 (All)**
- 38. Injunction suit by not recorded tenure holder bared u/s. 49**--- Claim of unrecorded tenure holder, if not raised during consolidation proceedings, becomes barred u/s. 49 of the C.H. Act, 1953. Relief of injunction can not be granted without declaring title and declaration of title is clearly barred u/s. 49 of the C.H. Act. See---
1. **Narendra Singh vs. Jai Bhagwan, 2006(100) RD 69 (SC)**

2. **Smt. Manjhari vs. 2nd ADJ, Jaunpur, 2007(102) RD 293 (All)**
39. **Jurisdiction of civil court to decide ownership of trees standing on banjar land not barred u/s. 49**--- Jurisdiction of civil court to decide ownership of trees standing on banjar land is not barred u/s. 49 of the C.H. Act, 1953. See--- **Jheelam vs. Malti Devi, 1987 RD 242 (All)**
40. **Sec. 49 not to bar suit u/s. 229-B by Co-sharer not recorded in consolidation records**--- A co-sharer who claims to be in possession of the property and his name being not recorded in the consolidation proceedings is not debarred from bringing a suit u/s. 229-B of the UPZA & LR Act, 1950. See--- **Amar Singh vs. State of U.P., 2008(104) RD 421 (All)**.
41. **Injunction suit based upon rights declared by consolidation authorities not to abate u/s. 49**--- Where a suit for injunction was filed in civil court based upon the rights declared by the consolidation authorities, it cannot be said to be barred u/s. 49 of the C.H. Act, 1953. A suit which proceeds to enforce the entries made in consolidation proceedings is not barred. If the plaintiff has not raised the question of title with respect to the piece of land in dispute, suit cannot be barred u/s. 49 of the Act. See--- **Hori Lal vs. Babu Ram, 2005 (99) RD 314 (All)**
42. **Bar of Sec. 49 in cases of minors**—It would appear from the provisions of Sec. 6(i) of the Limitation Act that a minor is entitled to institute a suit or make an application within the same period after the disability has ceased as would otherwise have been allowed from the time specified thereof in the third column of the Schedule. Where the notification u/s. 52 of the C.H. Act, 1953 was issued during the minority of plaintiff, the consolidation proceedings had closed before the minor became major and she could not move the consolidation courts for the declaration of her rights as a tenure

holder after the ceasure of her disability, it has been held that in view of the disability it cannot be said that she could or ought to have taken a proceeding under the C.H. Act during the consolidation proceedings. The bar of Sec. 49 of the Act cannot apply unless the second condition is fulfilled. See—**Smt. Prabhawati vs. Kashi, 1983 RD 196 (All)**

43. **Applicability of Sec. 49 & 52 after de-notification of the consolidation proceedings**--- Where a suit is filed in a civil or revenue court questioning the allotment of plots during the consolidation operations already undertaken under the C.H. Act, 1953, it has been held that the allotments so made during the consolidation operations became final and the suit in civil or revenue court is barred u/s. 49 r/w. Sec. 52 of the C.H. Act, 1953. See--- **Zafar Khan vs. Board of Revenue, U.P., 1984 (Suppl) SCC 505**
44. **Party seeking ouster of jurisdiction of civil court to establish it**--- It is for the party who seeks to oust jurisdiction of civil court u/s. 9 CPC to establish his contention. See--- **Abdul Waheed Khan vs. Bhawani, AIR 1966 SC 1718**
45. **Permission of SOC not required when the sale deed is executed by civil court**--- The restriction contained in Sec. 5(c)(ii) of the UPCH Act relates to a voluntary sale by the tenure holder. If the tenure holder refuses to execute sale deed in pursuance of an agreement to sell and the Civil Court is called upon to execute necessary sale deed in favour of the decree holder, it would be too much to expect that the Civil Court should seek permission of the Settlement Officer of Consolidation for executing the necessary sale deed in favour of the decree holder. More reading of Sec. 5(c)(ii) of the Act indicates that the bar contained in the aforesaid section is only upon the tenure holder. If the Civil Court executes a sale deed against the will of the tenure holder it would not at all be necessary for the Civil Court to seek permission of the Settlement Officer of Consolidation under the provisions

of Sec. 5(c)(ii) of the Act. See--- **Smt. Bhagwati vs. DDC, 1983 RD 201 (All)**

46. **C.H. Courts can rely upon the evidence & findings recorded by the Civil Court**--- Although the effect of notification issued u/s. 4(2) r/w. Sec. 5 of the C.H. Act, 1953 would be that the civil suit would stand abated but the evidence recorded in the suit or appeal and the findings recorded by the civil courts do not get wiped out. Unless contrary evidence is established, consolidation authorities can go into the evidence and are entitled to rely upon the findings recorded by the civil courts in support of their conclusions. See--- **Ram Prasad vs. Asstt. Director of Consolidation, 2001 (19) LCD 958 (SC)**
47. **Eviction suit u/s. 209 of the UPZA & LR Act not barred after the expiry of consolidation proceedings**--- A suit u/s. 209 of the UPZA & LR Act, 1950 for eviction of a trespasser filed after the consolidation proceedings had come to an end is not barred by Sec. 49 of the UPCH Act, 1953. See---
1. **Sher Ali vs. Board of Revenue, 1987 RD 155 (All)**
 2. **Ram Raj vs. Board of Revenue, 1978 RD 13 (All—D.B.)**
48. **Presumption about entries during consolidation operations rebuttable**--- After the amendment of U.P. Consolidation of Holdings Act in the year 1963 the entries made during consolidation operation are only presumed to be true until the contrary is proved. This change in the section would suggest that wrong entries made during consolidation proceedings or wrong entries which remained uncorrected during consolidation proceedings could be proved to be wrong in suit instituted after the conclusion of consolidation proceedings. If an Abadi plot is wrongly recorded as an agricultural plot during consolidation proceeding and because of absence of knowledge of this fact by the real owner the entry in

revenue papers remains uncorrected, a suit claiming right in the Abadi plot cannot be held to be barred by Sec. 49 of the Act. In such cases it is Sec. 27 of the Act which has to be looked into. Since the entry has not been corrected during consolidation operation every presumption will be made against a person challenging the entry. But once he proves the inaccuracy of the entry he is entitled to succeed. This is the result of the amended Sec. 27 sub-clause (2) of the Act. See--- **Jagdeo vs. Lauhar, 1970 RD 396 (All)**

- 49. Correctness of consolidation entries not to be questioned by civil & revenue courts**--- Having regard to the various provisions of the C.H. Act, 1953, as also the law as specifically laid down in Sec. 49, the only conclusion one can arrive at is that the jurisdiction of Civil and Revenue Courts to question the correctness or otherwise of the entries which are made in the revenue records as a result of the consolidation proceedings is completely barred. See--- **Kushar vs. Ahmad Khan, 1962 ALJ 564 (All—D.B.)**
- 50. Orders passed during first phase of consolidation proceedings not to be challenged during second phase of consolidation proceedings**--- Where orders of the consolidation authority regarding ownership and share passed during the first phase of consolidation proceedings in the year 1961 were not challenged by the party and the party had allowed those orders to have become final, it has been held that in view of the bar u/s. 49 of the C.H. Act, 1953, it was not open for the party to raise same issues in second round of consolidation proceedings. Such objection or suit is clearly barred by Sec. 49 of the C.H. Act. See---
1. **Ashok Kumar vs. DDC, Allahabad camp Fatehpur, 2009 (4) AWC ` 3545 (All)**
 2. **Mewa Lal vs. IInd ADJ, Mirzapur, 2009 (107) RD 458 (All)**
 3. **Sri Ram Laut vs. Sri Gomti, 2008 (26) LCD 1223 (All)**

51. **Khasra entries not proof of title and ownership of land** : Khasra entries are not proof of title and ownership of land. See : **Municipal Corporation, Gwalior Vs. Puran Singh, (2015) 5 SCC 725.**

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