

A.F.R.



2026:AHC:130223

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - B No. - 9462 of 1979

Pardeshi

.....Petitioner(s)

Versus

D.D.C and others

.....Respondent(s)

Counsel for Petitioner(s)	: Shashi Prakash Misra
Counsel for Respondent(s)	: Amit Kumar Singh, Rama Nand Pandey

Court No. – 37

Reserved on 27.4.2026

Delivered on 1.7.2026.

HON'BLE CHANDRA KUMAR RAI, J.

1. Heard Mr. Ramesh Chandra as well Mr. Shashi Prakash Mishra, learned counsel for the petitioners, Mr.Amit Kumar Singh, learned counsel for the private respondents and Mr. Sanjay Kumar Ray, learned Standing Counsel for the state respondents.

2. Brief facts of the case are that the dispute relates to plot no.34 (2-11-4), plot no.35 (0-8-19) and plot no. 37/1 (0-8-0) total area 3-8-3 of khata no.277, situated in village-Baro, Tappa-Menhdawal, Pargana-Maghar Basti, Tehsil-Khalilabad, District-Basti. In the basic year of consolidation operation, the aforementioned Khata no.277 was recorded in the name of petitioners in exclusive

manner as Sirdar. One suit under section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the U.P.Z.A.& L.R. Act) was filed by respondent nos.2 and 3 (Jaglal and Faujdar) which was dismissed by trial court vide judgement and decree dated 16.11.1970. Against the judgement and decree of trial court dated 16.11.1970, appeal was filed by respondent nos.2 and 3, which was allowed and matter was remanded back before trial court to decide the suit afresh. During pendency of the suit under section 229-B of U.P.Z.A. & L.R. Act village in question came under the consolidation operation accordingly suit under section 229-B of U.P.Z.A. & L.R. Act was dismissed as abated. Against the basic year entry of Khata in question, an objection under section 9-A (2) of U.P. Consolidation of Holdings Act 1953 (hereinafter referred as the U.P.C.H. Act) was filed by respondent nos. 2 and 3 with the allegation that Khata in dispute was acquired by Ghirau son of Rupan and after death of Ghirau, Khata in question was recorded in the name of his widow Smt. Jhinka @ Chhotka and after the death of Smt. Jhinka @ Chhotka. Khata in dispute was succeeded by Chetai, Jaglal and Fauzdar, but the Khata in dispute was wrongly recorded in the name of Chetai in exclusive manner as such respondent nos.2 and 3 be recorded over Khata in dispute along with legal heirs of Chetai. The legal heirs of Chetai. contested the claim of respondent nos.2 and 3 stating that Khata in dispute was acquired by Chetai after the separation taken place between

Chetai and his brothers. The claim was also set up by petitioners that the Khata in dispute was not recorded in the name of Smt. Jhinka @ Chhotka as there was no identity and continuity of the holdings of Smt. Jhinka @ Chhotka. The claim was also set up on behalf of petitioners that the present holding is new holding acquired exclusively by Chetai. The claim was also set up by petitioners that there was no pleading of joint acquisition by Chetai and respondent nos.2 and 3 from any joint family fund. Issues were framed before the consolidation officer and parties have adduced evidence in support of their case. Consolidation officer vide order dated 30.5.1978, allowed the objection filed by respondent nos.2 and 3 directing to record the name of respondent nos.2 and 3 as co-tenure holder of Khata nos.277 as well as declared 1/3rd share of petitioner, respondent nos.2 and 3. Against the order of Consolidation Officer dated 30.5.1978, an appeal under section 11 (1) of U.P.C.H. Act was filed by petitioners before Settlement Officer of Consolidation. Assistant Settlement Officer of Consolidation heard the matter and vide order dated 29.12.1978 allowed the appeal filed by petitioners setting aside the order of Consolidation Officer dated 30.5.1978 and directed that Khata no.277 shall be recorded in the name of petitioners in exclusive manner as well as name of respondent no.2 and 3 was ordered to be expunged. Against the order dated 29.12.1978 revision under Section 48 of U.P.C.H. Act was filed by respondent nos.2 and 3. The aforementioned revision was

heard by Joint Director of Consolidation Officer and same was allowed vide order dated 17.8.1979 accepting the claim of co-tenancy set up by respondent nos.2 and 3 setting aside the appellate order and maintaining the order of consolidation officer. Hence this petition on behalf of the petitioners for the following relief:-

"(i). Issue a writ in the nature of certiorari quashing the order of the respondent no.1 dated 17.8.1979 (Annexue IV) and confirming the order of the Assistant Settlement Officer Consolidation dated 29.12.1978 (Annexure III)."

3. This court admitted the writ petition and dispossession of the petitioners from the land in dispute was stayed vide order dated 22.11.1979.

4. In pursuance of the order dated 22.11.1979, parties have exchanged their pleadings.

5. Learned Counsel for the petitioners submitted that petitioners were recorded in the basic year of consolidation operation over the khata in dispute as khata in dispute was acquired by petitioners' father namely Chetai as his exclusive holding. He submitted that suit under section 229-B of U.P.Z.A.&L.R. Act filed by respondent nos.2 and 3 was dismissed as abated due to consolidation operation in the village in question. He submitted that objection under section 9-A (2) of U.P.C.H. Act filed by

respondent nos.2 and 3 was allowed in illegal and arbitrary manner granting co-tenancy right to respondent nos.2 and 3 as such title appeal filed on behalf of petitioners was allowed and the order passed by Consolidation Officer was set aside recording finding of fact that Co-tenancy cannot be granted to respondent nos.2 and 3 in the facts and circumstances of the case. He submitted that Deputy Director of Consolidation has exceeded his revisional jurisdiction at the relevant point of time in setting aside the order of Settlement Officer of Consolidation and maintaining the order of Consolidation Officer. He further submitted that there is no continuity and identity of the holding in the name of Smt. Jhinka @ Chotka in 1323 fasli, as such co-tenancy cannot be granted to respondent nos.2 and 3. He submitted that Khata in dispute was acquired by Chetai as such unless claim for granting co-tenancy is proved in accordance with law, the title objection cannot be allowed by consolidation officer. He further submitted that revisional court has misread and misconstrued the record of the case while passing the impugned revisional order allowing the claim of co-tenancy. He further submitted that statement of witness should be read as a whole to assess its value rather considering the evidence of witnesses in piecemeal. He further submitted that it is settled principle of law that member of joint Hindu family can acquire his property in exclusive manner, as such even being member of joint family, exclusive tenancy right can be acquired by one branch of the family although in the

present case there was separation in the family when the settlement of the khata in dispute was made in favour of petitioner's father namely Chetai. He submitted that impugned revisional order passed by Director of Consolidation should be set aside and the order passed by Assistant Settlement Officer of Consolidation should be maintained.

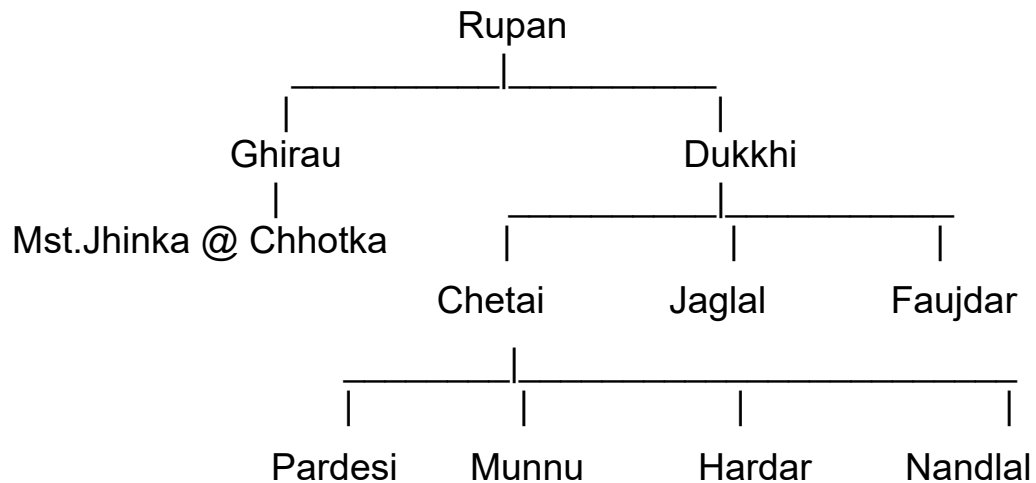
6. On the other hand, learned counsel for the private respondents submitted that name of Chetai was recorded over the Khata in dispute being eldest member of family as karta khandan as such there is no illegality in granting co-tenancy to respondent nos.2 and 3, who are real brothers of Chetai. He submitted that Consolidation Officer after framing issues and considering the evidence on record has held that name of Chetai was recorded over Khata in dispute in the capacity of Karta Khandan as such respondent nos.2 and 3, who are real brothers of Chetai are entitled to co-tenancy right but the order of Consolidation Officer has been illegally set aside in appeal by Assistant Settlement Officer of Consolidation, accordingly Joint Director of Consolidation has rightly set aside the order of Assistant Settlement Officer of Consolidation and maintained order of Consolidation Officer granting co-tenancy right to respondent nos.2 and 3. He submitted that Joint Director of Consolidation has not exceeded his revisional jurisdiction rather exercise revisional power in maintaining the order of Consolidation Officer which was passed considering the evidence on record granting co-tenancy

right to respondent nos.2 and 3. He submitted that no interference is required against the impugned order passed by Joint Director of Consolidation under section 48 of U.P.C.H. Act and writ petition is liable to be dismissed.

7. I have considered the arguments advanced by the counsel for the parties and perused record.

8. There is no dispute about the fact that in the basic year of consolidation operation, petitioners who are sons of Chetai were recorded. There is also no dispute about the fact that against the basic year entry of Khata in dispute, an objection under section 9-A(2) of U.P.C.H. Act filed by respondent nos.2 and 3 for granting co-tenancy right was allowed by consolidation officer vide order dated 30.5.1978. There is also no dispute about the fact that title appeal filed by petitioners was allowed by Assistant Settlement Officer of Consolidation vide order dated 29.12.1978 setting aside the order of Consolidation Officer dated 30.05.1978. There is also no dispute about the fact that revision filed by respondent nos.2 and 3 was allowed by Joint Director of Consolidation vide order dated 17.8.1979 setting aside the appellate order dated 29.12.1978 and maintaining the order of Consolidation Officer dated 30.5.1978.

9. In order to appreciate the controversy involved in the matter, perusal of family pedigree as mentioned in paragraph no.2 of writ petition will be necessary, which is as under:-



10. The aforementioned family pedigree is not disputed between the parties.

11. The perusal of two issues framed before the consolidation officer will be also necessary, which is as under:-

1. क्या जगलाल व औतार विविदित खाता के सहखातेदार व कब्ज़ा है
2. यदि हां तो पक्षों का अंश क्या है?

12. The Consolidation officer, considering the evidence, has held that name of Chetai was recorded over Khata in dispute as Karta Khandan, as such respondent nos.2 and 3 will be entitled to co-tenancy right over Khata in dispute. The assistant settlement officer of consolidation, while deciding the appeal filed by petitioners, has considered the question of granting co-tenancy right in detail in the light of revenue entry of plot in question, as such perusal of relevant portion of the appellate order will be necessary, which is as under:-

"उपरोक्त वंशवृक्ष पक्षो को स्वीकार है। अपीलान्त का कथन कि विवादित गाटा तनहा चेतई ने पैदा किया। उत्तरवादी के तरफ से नकल खतौनी १३१३ फ० दाखिल है जिसमे स्पष्ट है कि विवादित गाटा छोटका विधवा घिराऊ के नाम काश्तकार दखीलकार दर्ज है (उत्तरवादीगण) ने आपत्ति के पैरा ग्राफ २ में कहा कि विवादित गाटा घिराऊ ने पैदा करायी थी और उनके मरने के बाद श्रीमती झीनका उर्फ छोटका के नाम दर्ज हुई और उनके मरने के बाद फरीकन को मिली बयान मे कहा गया है कि जमीन निजाई दुखी व घिराऊ की पैदा करायी है उनके मरने के बाद विवादित गाटा झीनका और उनकी औरत को मिली तथा झीनका के मरने के बाद उभय पक्ष को मिली। अपीलान्त परदेशी ने अपने बयान में कहा है कि विवादित गाटा उनके बाप चेतई की पैदा की हुई है।

विद्वान चक्वन्दी अधिकारी ने अपने निर्णय मे लिखा है कि परदेशी ने अपने बयान मजीद में ही कहा है कि आराजी निजाई के आलावा उनके पूर्वजो में पैदा की हुई कुछ नहीं है उनमे पिता चेतई, जग लाल व फौजदार से जमींदारी टूटने के पहले से अलग होकर मर गये और अपना अलग मकान बना लिया जिरह मे परदेशी ने वसलीम किया है कि घिराऊ की औरत झीनका उर्फ छोटका थी जो उनके होश के पहले मर गये। खेत उनके फिर ने कितने दिन पहले लिया था और किस शर्त पर लिया था इनके जानकारी परदेशी को नहीं है, परदेशी ने कहा है कि वटवारे को जानकारी उनके पिता की है उन्हें नहीं है परदेशी को यह भी जानकारी नहीं है कि वटवारे के कितने दिन बाद चेतई मरे। इस कारण विद्वान चक्वन्दी अधिकारी ने परदेशी के जवानी सहादत पर विश्वास नहीं किया। उत्तर वादी के जबानी सहावत की वगैर व्याख्या किये ही विश्वासनीय मान लिया।

परदेशी का आराजी निजाई के आलावा मेरे बाबा की पैदा की हुई कुछ भी नहीं है ' का अर्थ विद्वान चक्वन्दी अधिकारी ने गलत लगाया है आराजी निजाई के बावत परदेशी ने पहले ही कह दिया है कि उसके पिता चेतई की पैदा किया हुआ है उसके उपरोक्त बयान से यह स्पष्ट होता है कि

आराजी निजाई के अलावा भो उसके बाबा की पैदा की हुई कुछ नहीं है अर्थात् पूर्वजों की पैदा की हुई भूमि विवादित ग्राम कुछ नहीं है।

भार आपत्तिक्ता पर था कि वर सावित करता कि परिवार सम्मिलित अविभक्त हिन्दू परिवार था और अविभक्त हिन्दू परिवार के उपार्जन से विवादित गाटा खरीदा गया अथवा उपार्जित किया गया। अपीलान्ट का कथन है कि विभाजन बहुत पहले हो गया था जबकि फौजदार ने अपने बयान में कहा है कि आराजी निजाई घिराऊ व दुखी की पैदा की हुई है दोनों आदमी एक में रहते थे बड़ा घिराऊ थे। बड़ा होने के नाते उनका नाम दर्ज हो गया। उत्तरवादी फौजदार तथा उनके गवाह जगलाल के बयान से स्पष्ट है कि पक्ष फाट कर विवादित गाटा को जोतते हैं अतः पक्षों की अलहदगी हो गयी है। जब एक बार हिन्दू परिवार विभक्त हो गया तो भार उस व्यक्ति पर है जो कहता है कि विवादित गाटा के पैदा होने के समय परिवार संयुक्त था। उत्तरवादीगण के साक्ष्य के देखने से स्पष्ट है कि उत्तरवादीगण यह सावित करने में असमर्थ है कि जब विवादित गाटा पैदा किया गया उस समय परिवार संयुक्त था।

विद्वान अधिवक्ता उत्तरवादी ने १९६४ आर०डी० पेज ७०, १९६८ आर०डी० पेज ३६६ ए० ३०आर० १९५६ सुप्रीम कोर्ट पेज ६०६ वाम्बे लाया परन्तु उक्त कटिंग इस बाद पर नहीं लागू होगी। १९६४-२१० डी० पेज ७० इसलिये इच्चाद पर लागू नहीं होगा क्योंकि इस वाद में यह साबित नहीं है कि वादी गण (उत्तरवादी गण) का कब्जा विवादित गाटों पर उनके अंश के अनुसार सावित नहीं है और न यह सावित है कि विवादित गाटा ज्वाइन्ट फोमली प्रापटी है। १९६८ आर०डी० पेज ३६६, इसलिये नहीं लागू होगा क्योंकि विवादित गाटा १२८२ फसली अथवा उसके पूर्व के की पैदा की हुई नहीं है और पत्रावली में न ऐसा कोई साक्ष्य है। १९५६ २० आ०आर० सुप्रीम कोर्ट पेज २०६ भी इस वाद पर नहीं लागू होगा क्योंकि विवादित गाटा कर्ता सानान हिन्दू परिवार द्वारा पैदा करना सावित नहीं है

उपरोक्त के विपरीत विवादित गाटा १३२३ फ० में छोटका विधवा घिराऊ के नाम अंकित है काश्तकार दखोलकार। १३४८ फ० में विवादित गाटा अपीलान्ट के पिता चैतई, १ वर्षा मुद्दत कर दे दर्ज है १५६ फ० में विवादित

गाटा चैतई, के नाम म० १७ वर्षों करके दर्ज है। १३५३ फ० में विवादित गाटा जमन ८ मु० २० वर्ष करके अपीलान्ट के पिता चैतई, का नाम अंकित है इससे स्पष्ट है कि विवादित गाटा १३३६ फ० में चैतई अपीलान्ट के पिता ने पैदा किया जो १३२३ फ० से (कनेक्ट) नहीं होता। यदि अपीलान्ट श्रीमती छोटका से वरासतन पाते तो इन्द्राज मुताविक १३२३ फ० के होता। १३२३ फ० के मुद्दत से १३४८ फ० १३५६ फ० १३५६ फ० के मुद्दत से लिंक नहीं करता है। उत्तरवादी गण का यह कथन नहीं है कि वे श्रीमती छोटका के वारिस थे और न यही साक्ष्य है कि श्रीमती छोटका कब मरी विवादित गाटा अपीलान्ट के पिता चैतई, के नाम १३८८ फ० में मुद्दत १ वर्ष करके दर्ज है भार उत्तरवादी गण पर है कि वे साबित करें कि विवादित गाटा कामन एनसेस्टर द्वारा पैदा किया गया था रिप्रजेन्टिव कैपेसिटी में पैदा किया गया।

१९७८ आर० डी० पेज १ में सीरदारी गाटा के वावत यह मत व्यक्त किया गया है कि -

It is also settled that members of the joint Hindu family even if he is joint co-possession separate property such property belongs exclusively to him and no members of the co-possessionary can claim any interest.

सर्व प्रथम उत्तरवादी गण यह साबित करने में असमर्थ रहे कि विवादित गाटा धिराऊ ने रिप्रजेन्टिव कैपेसिटी में विवादित गाटा को पैदा किया। इसके अलावा धिराऊ की पत्नी श्रीमती छोटका के मृत्यु के पश्चात विवादित गाटा चैतई के नाम तनहा दर्ज हुआ और भिन्न मुद्दत के साथ इसने स्पष्ट हो कि कान्टीनियुटी समाप्त हो गयी। श्रीमती छोटका के मृत्यु के पश्चात जमींदारान ने विवादित गाटा पर कब्जा कर लिया होगा और नेतई के नाम तनहा इंतजाम किया होगा। उत्तरवादी गण का यह कथन नहीं है कि चैतई के साथ इंतजाम रिप्रजेन्टिव कैपेसिटी में हुआ। अतः मैं इस निष्कर्ष पर पहुंचा कि विवादित गाटा तनहा अपीलान्ट का है उत्तर वादी गण सहखातेदार नहीं है अपील में बल है और स्वीकार होने योग्य है।

आदेश

अपील स्वीकार की जाती है विद्वान चकबन्दी अधिकारी का निर्णय दिनांक ३०-५-७८ निरस्त किया जाता है। खाता संख्या २७७ अपीलान्त परदेशी आदि के नाम तनहा दर्ज रहेगा और उत्तरवादी गण जगलाल आदि के सहखातेदार का विवाद खारिज होगा।

वाद अमल दरामद मिसिल दाखिल दफ्तर हो।

सत्यप्रतिलिपि:

ह० सी० पी०एन० सिंह
स०ब०अ०, बस्ती २९-१२-७८"

13. Perusal of finding of fact recorded by Assistant Settlement Officer of Consolidation as quoted above demonstrate that appellate court has taken into consideration the revenue entry, duration mentioned in the khatauni as well as fact of non continuity and identity of revenue entry of the Khata in dispute in holding that co-tenancy cannot be allowed in favour of respondent nos.2 and 3. The finding of fact has also been recorded by appellate court that after separation of family, the settlement was made in favour of petitioners' father Chetai, as such it cannot be said that the name of Chetai was recorded as Karta Khandan. The Joint Director of Consolidation has allowed the revision filed by respondent nos.2 & 3 without reversing the finding of fact recorded by appellate court in proper manner. The perusal of revisional order demonstrate that revisional court has mentioned the duration of entry in 1348 Fasli as one year, but the Khatauni of

1348 Fasli which is annexed along with writ petition as annexure no.1 demonstrate that duration of entry was 9 years, as such the impugned revisional order cannot be sustained in the eye of law.

14. It is also material to mention that in the year 1979, the Deputy Director of Consolidation was having limited jurisdiction under section 48 of U.P.C.H. Act, as section 48 of U.P.C.H. Act was amended giving wider power with effect from 10.11.1980, as such the revisional order dated 17.8.1979 cannot be sustained on the ground of limited revisional jurisdiction also.

15. It is also well settled principle of law that any member of joint family can acquire his separate property from his own fund as held by this court in the case reported in 1978 RD 1 Ram Chandra Dubey and another vs. Deputy Director of Consolidation, Deoria and others. Paragraph nos. 20, 21, 22 and 23 of judgment will be relevant for perusal, which are as under:-

"20. Accordingly, I find that the view taken by the Consolidation Authorities that the land belongs to the joint family and that the respondent No. 4 had half share in Khata No. 50 is correct and does not call for interference. Hence the mere fact that the sale-deed was executed in favour of the petitioners alone, that would not mean that the respondent No. 4 would not be entitled to get the right of Bhumidhar along with them.

21. So far as Khata Nos. 95-A and 95-B are concerned, the same were also entered in the name of Sarju as his Sirdari. It is also settled that a member of the joint Hindu

family, even if he is joint can possess separate property. Such property belongs exclusively to him and no member of the co-parcenary, not even his male heirs can acquire any interest in it. Accordingly even if it is correct that the petitioners were the members of the joint family of which the respondent No. 4 was also a co-parcener, the same would not entitle respondent No. 4 to get rights of a sirdar over the disputed land. The Settlement Officer and the Deputy Director of Consolidation held the respondent No. 4 to be the sirdar of this Khata simply on the basis that he was a member of the joint family. None of the two authorities found any evidence on record to show that the property was either acquired by respondent No. 4 along with the petitioner or that the petitioners threw it into the common hotch-potch. The claim of the respondent No. 4, therefore, over these plots simply on the basis that as both the parties were living jointly, therefore, the property must be held to be the joint property of all cannot be accepted. The submission of the learned counsel for the respondent No. 4 that the name of Sarju was recorded in the representative capacity because he was the Karta of the family cannot also be accepted inasmuch as there is no evidence on record to prove that the land of these two Khatas was ever treated by the petitioners or the respondent No. 4 as that of the joint family. Accordingly, the claim of respondent No. 4 with regard to Khata Nos. 95-A and 95-B cannot be upheld.

22. In the result, the writ petition succeeds in part and is accordingly allowed. The judgments of the Settlement Officer, Consolidation and that of the Deputy Director of Consolidation with regard to Khata No. 50 is upheld but that of sirdari Khata Nos. 95-A and 95-B are quashed.

Consequently, the judgment of the Consolidation Officer is restored. In the circumstances of the case the parties shall bear their own costs.

23. Petition partly allowed."

16. This Court in another case reported in 1978 RD 51 **Bala Charan and others Vs. State of Uttar Pradesh and others** has held that there can be presumption of Joint family but there can no presumption of Joint family property. paragraph nos.6, 7 and 8 of the judgment rendered in **Bala Charan (Supra)** will be relevant for persual, which are as under:-

"6. In the case in hand no evidence was adduced on behalf of the opposite parties that there was nucleus from which the plots in question were acquired. It was not proved that the Patta was acquired out of the joint family funds, nor was it established that the income raised out of the plots in question was utilised by the other members of the joint Hindu family, nor any effort was made to show that the plots in question were blended with the joint family property and the opposite parties had thus acquired co-tenancy rights therein. The fact that the plots standing in the name of Mitthoo were held to be joint family property would not go to prove that the plots in question which stood in the name of Thakur were also joint family property. The Deputy Director of Consolidation had thus erred in holding that the opposite parties had acquired co-

tenancy rights in the said plots. The Consolidation Officer had also erred likewise. In my view the Settlement Officer (Consolidation) had applied the correct principles of law to the facts of the case. The orders passed by the Deputy Director as also the Consolidation Officer cannot, therefore, be maintained.

7. In the result, the petition is allowed with costs. The order dated 23-7-1968 passed by the Consolidation Officer and the order dated 5-8-1970 passed by the Deputy Director of Consolidation are quashed. The order dated 8-11-1968 passed by the Settlement Officer (Consolidation) is restored.

8. Petition allowed.”

17. Considering the findings of fact recorded by Assistant Settlement officer of Consolidation while deciding the appeal under section 11 (1) of U.P.C.H. Act, revenue entry of plot in question demonstrate that there is no identity and continuity of in dispute jurisdiction of revisional court under section 48 of U.P.C.H. Act in the year 1979 as well as the ratio of law laid down by this court in **Ram Chandra Dubey (supra) & Bala Charan (Supra)**, the impugned revisional order dated 17.8.1979 passed by respondent no.1-Joint Director of Consolidation cannot be sustained in the eye of law as such the same is hereby set aside.

18. The writ petition is allowed. The Order of appellate court dated 29.12.1978 passed by Assistant Settlement Officer of Consolidation is hereby maintained.

19. No order as to cost.

(Chandra Kumar Rai,J.)

July 1, 2026

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