

(2008) 04 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28322 of 1992

Attar Singh and others

APPELLANT

Vs

Peetam Singh and others

RESPONDENT

Date of Decision : 22-04-2008

Acts Referred:

Citation : (2008) 04 AHC CK 0120

Hon'ble Judges : S.K.Singh, J

Judgement

S.K. Singh, J.—Heard Sri Diwakar Rai Sharma, learned Advocate in support of this writ petition.

2. Writ petition is of the year 1991. Pleadings are complete and thus as submitted by both sides that writ petition be finally decided, writ petition has been heard and is being decided.

3. For disposal of the matter, the facts in brief will suffice.

4. Suit was filed by the plaintiffrespondent for declaration of rights on the basis of adverse possession. Trial Court decreed the suit. Appeal filed by the defendant was allowed and suit was dismissed. Second appeal filed by the plaintiff was allowed and judgment of the Trial Court was restored and thus to challenge the order passed by the Boara of Revenue this writ petition.

5. Submission of learned counsel for the petitioner is that question of declaration of right on the basis of adverse possession is question of fact and there was finding of the first Appellate Court against the plaintiffrespondent and therefore, Board of Revenue was not right in interfering the same and in any view of the matter if there was any error in the finding so recorded by the first Appellate Court then matter was to be remanded for fresh decision. It was then submitted that otherwise also Board has not referred to the evidence on record and in a cursory manner second appeal has been allowed finally accepting rights of the plaintiff on the basis of adverse possession. Lastly, it has been submitted that neither any substantial question of law was there nor it was framed for decision

and therefore in view of the judgment given by this Court reported in 2007, R.D., page 1 judgment of the second Appellate Court is faulty.

6. In response to the aforesaid, learned Counsel for the respondent submits that as the reasonings given by the first Appellate Court was faulty, second Appellate Court on perusal of the judgment of the Trial Court having agreed with the reasonings given if has reversed the judgment then no exception can be taken to it. Argument is that the case is concluded on the facts of fact and therefore no interference is required.

7. In view of the aforesaid, this Court is to decide the matter.

8. There is no dispute about the fact that claim of plaintiffrespondent was based on adverse possession. Law is settled that there is no presumption of possession in favour of a trespasser rather presumption is in favour of the recorded person. To prefer rights on the basis of adverse possession is to be proved from year to year though if the entries are not continuing then it can be supplemented by the oral evidence. There has to be critical analysis of the oral evidence to record a positive finding in favour of the claimant. First Appellate Court has said that the witnesses of the plaintiff is not able to state even boundary of the land in dispute and for other reasons that statement was discarded. The first Appellate Court is the Court to record a finding on the question of fact on assessment of oral evidence. Board of Revenue is not to defer but even if he has power to defer then error will have to be pointed out. In the scrutiny/examination held by the first Appellate Court if the Board finds some error in the analysis and scrutiny of the evidence then the Board cannot reassess the entire evidence so as to record its own findings and the matter is to be remanded to the first Appellate Court. The observation of the Trial Court and second Appellate Court that if there is break in the entry in favour of the plaintiff then that is not relevant, is absolutely not correct. Entry in favour of the claimant is to be proved in accordance with law. Power of interference in second appeal on the question of fact is limited and that is governed by certain norms. The decision on which reliance has been placed by the learned Counsel for the petitioner will also have to be kept in mind while any interference is required on the question of fact in second Appellate Court. The judgment of Board of Revenue on its perusal founds to be well short of the required consideration, and therefore, on the facts of the present case restoration of the judgment of the Trial Court by the second Appellate Court cannot be approved by this Court. Second Appellate Court will have to reconsider the matter on merits, in accordance with law and thus judgment of Board of Revenue needs interference.

9. Accordingly, this writ petition succeeds and is allowed. The impugned order passed by Second Appellate Court is hereby quashed. The Second Appellate Court is to revive the second appeal and to decide the same in accordance with law. The decision is to be taken preferably within a period of four months from the date of receipt of certified copy of this order by either of the sides.