

(1960) 08 AHC CK 0005

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 1707 of 1960

Avadh Behari Lal

APPELLANT

Vs

Board of Revenue, UP and others

RESPONDENT

Date of Decision : 26-08-1960

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331, 341

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331, 341

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331, 341

Citation : (1961) 31 AWR 121

Hon'ble Judges : Srivastava, J; Beg, J

Bench : Division Bench

Advocate : D.D. Seth, for the Appellant;

Final Decision : Dismissed

Judgement

Beg, J.—The Petitioner in this writ petition was the Defendant in the revenue courts. The suit which has given rise to these proceedings was filed by the opposite parties Nos. 4 to 6 u/s 209 of the UP ZA and LR Act 1950, (UP Act 1 of 1951). The Plaintiffs case was that they were the sirdars of the plots in dispute. The suit was contested by the Defendant on the ground that he was the sirdar of the plots in suit, and not the Plaintiffs. It was further pleaded on behalf of the Defendant that since 1355F. the plot had lost its character as a grove, and the Defendant, being in cultivatory possession of the said plot since then, had acquired sirdari rights in the same. The suit of the Plaintiffs was decreed by all the three revenue courts, viz the Judicial Officer, the Addl. Commr. and the Board of Revenue. Dissatisfied with the order of the Board of Revenue, the Petitioner has filed this writ petition.

2. Having heard the Learned Counsel for the Petitioner, we are of opinion that there is no substance in this writ petition. The sole point argued by the Learned Counsel is that the Board should not have confined the hearing of the second appeal to questions of law only. The contention of the Learned Counsel is that on

the date on which the second appeal was filed, it was open to the Appellant to agitate both the questions of law as well as questions of fact at that stage. In this connection the Learned Counsel has invited our attention so the fact that Section 331 of the UP ZA and LR Act, as it stood prior to the Amendment Act XXXVII of 1958, did not contain a provision to the effect that a second appeal would lie only on questions of law. It was merely to the effect that a second appeal would lie to the Board. It was only after the Amendment Act No. XXXVII of 1958 that it was laid down that a second appeal would lie only on questions of law. The present appeal having been filed before the Amendment Act of 1958, it is governed by Section 331 of the UP ZA and LR Act (Act XXXVII) of 1958 as it stood in its unamended form.

3. We are, however, unable to uphold the contention of the Learned Counsel. No doubt the second appeal in the present case would be governed by Section 331 as it stood in its unamended form. The argument of the Learned Counsel, however, seems to ignore the provisions of Section 341 of the UP ZA and LR Act, which existed on the relevant date and which would, in any case govern the second appeal. Section 341 laid down that the provisions of the CPC were applicable to the proceedings under the ZA and LR Act, unless it was expressly provided to the contrary in the latter Act. There being no provision to the contrary in the UP ZA and LR Act, in our opinion, it must be held that a second appeal under the unamended provision would also be governed by the restrictions imposed by the CPC on second appeals. The result would be that the second appeal even under the unamended UP ZA and LR Act would be maintainable only on grounds of law.

4. We may further point out that this argument does not appear to have been raised before the Board at all. It does not find a place in their judgment. This Court is not inclined to entertain a fresh point in a writ petition.

5. We, therefore, dismiss this writ petition summarily.