
(1985) 07 AHC CK 0010

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5520 of 1978

Avadhesh Prasad @ Desh Raj and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-07-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 210, 229B, 331(4)

Citation : (1985) AWC 901

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Girish Chandra Saxena, for the Appellant; H.M. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

B.L. Yadav, J.—The suit was filed by Mahadeo Prasad, Respondent No. 4 u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act for declaration of Co-sirdari rights along with Satya Deo and Gokul (Defendant Nos. 3 and 4 in respect of the plots in dispute) which was substantially decreed by order dated 15-7-1970 and against that order the Petitioners preferred a first appeal before the Additional Commissioner which was allowed by order dated 7-3-1972, Second appeal preferred by the Respondent No. 4 u/s 331(4) of the Act was allowed by the judgment and order dated 17-3-1978 rendered by the Board of Revenue. It is against the latter order in second appeal that the present petition has been filed under Article 226 of the Constitution of India and prayer has been made for a writ of certiorari quashing the said order of the Board of Revenue mainly on the ground that in second appeal findings of fact could not have been set aside while exercising jurisdiction u/s 100 Code of Civil Procedure.

2. The facts of the case lie in a very narrow compass and they are these,

Respondent No. 4 Mahadeo Prasad filed a suit u/s 229-B of the Act for declaration of the co-sirdari rights along with Satya Deo and Gokul (Defendant Nos. 3 and 4) and the suit was contested by Defendant Nos. 1 and 2 on the ground that they were sub-tenants before the abolition of the zamindari and became adhivasis and later on sirdars and that the Plaintiff was not entitled for the declaration sought for. The trial court decreed the suit but the learned Additional Commissioner allowed the appeal of the Defendants, the present Petitioners, and the second appeal filed by the contesting Respondents was allowed by the Board of Revenue.

3. I have heard Learned Counsel for the parties.

4. The Learned Counsel for the Petitioners urged that the Additional Commissioner has recorded findings of fact relying upon the statements of DW 1 Deshraj alias Avadhesh, DW 2 Basdeo and DW 3 Dhaniwa whose evidence were corroborated by the khasra of 1363 fasli as well as the receipts of payment of the land revenue. It has held that the Defendant-Petitioners were continuously in possession after the death of their father Narbada Prasad. No steps were taken by the Plaintiff Respondent No. 4 Mahadeo Prasad to eject the Petitioners within the time prescribed for filing a suit u/s 209 of the Act and further the oral evidence of PW 3 Shyam, Naib Registrar Qanungo was also considered and similarly the statements of PW 1 Mahadeo and PW 2 Purshottam were also considered. It was further held by the Additional Commissioner that even the lease-deed dated 30-4-1952 might not have been formally proved but the same was not relevant inasmuch as the possession of the Defendant-Petitioners continued for more than a prescribed statutory period maturing the sirdari rights u/s 210 of the Act. These findings were findings of fact and could not have been set aside or reversed by the Board of Revenue in exercise of its jurisdiction u/s 331(4) of the Act which was equivalent to Section 100 Code of Civil Procedure.

5. Learned Counsel for the Respondents, on the other hand, urged that as the entries in the names of the Petitioners were not made in accordance with law and as the evidence referred to by the Additional Commissioner was not considered in detail, hence the findings based on such discussion and consideration of evidence cannot be said to be findings of fact and that they were correctly set aside by the Board of Revenue. It was further urged that the lease deed dated 30-4-1992 was not proved and the entries in the names of the Petitioners appear to have been made on the basis of this lease-deed and in case the lease deed itself was not proved the entries in the names of the Petitioners had no evidential value and they cannot be relied upon and on that basis the continuous possession of the Petitioners could not be assumed or the Petitioners could not mature sirdari rights u/s 210 of the Act.

6. The Learned Counsel for the Respondents further relied on Babu Rajnarain Singh and Another Vs. Ganesh Bind and Others, . But that was a case where after discussing evidence the Court held the transaction to be imprudent, hence those findings would be deemed to be findings of fact and that case would not

help the Respondents. Further the counsel for the Respondents submitted that substantial justice has been done by the Board of Revenue. In that case he placed reliance on *Kundan Kishanlal Vs. Board of Revenue, U.P. at Allahabad and Others*, . In that case it was held if substantial justice was done no interference need be made in favour of the Petitioner and the remedy of writ can be refused.

7. Having heard the Learned Counsel for the parties I am of the opinion that the petition should succeed. In this case the findings of fact as referred to earlier have been recorded by the Additional Commissioner even if the lease-deed dated 30-4-1952 obtained by the Petitioners in respect of the plots in dispute was not proved, the Petitioners were continuously recorded in the revenue papers for more than the prescribed period. After considering the oral and documentary evidence the Additional Commissioner recorded findings of fact in favour of the Petitioners. The Board of Revenue while exercising its jurisdiction as provided u/s 100 CPC had no jurisdiction to set aside those findings of fact howsoever grossly erroneous those findings might be. It is however, a fact that the judgment of the Additional Commissioner was not as elaborate as that of the trial court. But that was no ground for interference by the second appellate court as held by the Supreme Court in *R. Ramachandran Ayyar Vs. Ramalingam Chettiar*, . The relevant portion of the judgment on page 307 is as follows:

The High Court was not justified in interfering with the findings of fact recorded by the lower appellate court merely because the judgment of the lower appellate court was not as elaborate as that of the trial Judge or because some of the reasons given by the trial Judge had not been expressly reversed by the lower appellate Court. The finding of the lower appellate Court could not be said to be perverse or not supported by any evidence.

8. In the present case substantial justice cannot be said to be in favour of the answering Respondents. Rather keeping in view the continuous entries and possession in favour of the Petitioners the equity lies in favour of the Petitioners, rather in favour of the contesting Respondents. Hence substantial justice lies in favour of the Petitioners, rather in favour of the contesting Respondents. It cannot, therefore, be said that the substantial justice has been done by the impugned order rendered by the Board of Revenue. In my opinion, therefore, the order of the Board of Revenue cannot be sustained in law and deserves to be quashed.

9. In view of the discussions hereinbefore, the present petition succeeds and is accordingly allowed and the judgment dated 17-3-1978 (Annexure III to the petition) passed by the Board of Revenue is hereby quashed There shall, however, be no orders as to costs.