courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 07/09/2026

(2009) 03 AHC CK 0197

In the Allahabad High Court

Ayodhya Singh and Another APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 144, 99

Citation : (2009) 3 AWC 2708

Hon'ble Judges : Ran Vijay Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ran Vijay Singh, J.—This writ petition has been filed against the judgment and order dated 21.12.2006 passed by the Member, Board of Revenue and the order dated 11.5.1999 passed by the Additional Commissioner (Judicial), Gorakhpur Annexure No. 23 and Annexure No. 11 to the writ petition.

2. The facts giving rise to this case are that one Shri Shambhu Singh who happened to be Bhumidhar of the disputed land sold 3/4 share of his holding through registered sale deed on 21.6.1976 to the petitioner No. 1 and remaining 1/4 share sold in favour of Smt. Urmila Devi, the petitioner No. 2.

3. For the part of the said holding a suit was filed by the petitioner No. 1 u/s 176 of U.P. Zamindarl Abolition and Land Reforms Act (hereinafter referred to as U.P.Z.A. and L.R. Act) against the petitioner No. 2. The said suit was decreed on 16.7.1979 and the several lots were carved out in favour of each petitioner. Plot No. 7 in the said lot was allotted to the petitioner No. 1 and plot No. 19 was allotted in favour of the petitioner No. 2. According to the petitioners, they have entered into the possession after the said decree on their respective shares.

4. It appears that the respondent No. 4, Banshraji has filed suit in the year 1983 u/s 229B of U.P. Z.A. and L.R. Act, 1950 in respect of the disputed plots on the allegations that she may be declared as Bhumidhar of the aforesaid land as she had advanced money for purchasing the said land in her name. After contest the

suit was dismissed as not maintainable on 31.8.1994 by the Sub-Divisional Officer. However after dismissal of the suit Smt. Banshraji has filed a review application on 23.9.1994 for reviewing the judgment and order dated 31.8.1994.

5. It appears pending review application the respondent No. 4 has also filed an appeal before the Commissioner, Gorakhpur Division, Gorakhpur. The appeal was numbered as 1/B of 1994. After the appeal was filed, the review application was dismissed on 1.6.1998 by the court below.

6. Learned Counsel for the petitioner submits that when the appeal was presented, there was no reporting with regard to the limitation etc. and the report was sought for that purpose from the office. In his submissions without obtaining any report, without fixing any date in the appeal and without issuing notice to the petitioners a compromise application was filed and the appeal was decided in terms of the compromise on 11.5.1999. It is alleged that the present petitioners were also shown to be signatories on the said compromise.

7. It is further alleged that while moving the compromise application, the order passed on the review application was not disclosed by the respondent No. 4. However, an amendment application was filed by the petitioners before the Additional Commissioner disclosing this fact that review application seeking review of the judgment and decree dated 3.8.1994 was dismissed on 1.6.1998.

8. When the petitioner came to know about the order dated 11.5.1999 passed on the compromise application, they have filed restoration application before Additional Commissioner, Gorakhpur Division, Gorakhpur. On that application, learned Commissioner vide order dated 7.8.1999 has stayed operation of the order dated 11.5.1999 passed by him on the compromise application.

9. Against the order dated 7.8.1999 passed by the Additional Commissioner, Gorakhpur Division, Gorakhpur the respondent No. 4 has filed a Revision before the Board of Revenue U.P. at Allahabad and the Board of Revenue has set aside the order dated 7.8.1999 on 3.5.2000.

10. Against the order dated 3.5.2000, passed by Member, Board of Revenue, the petitioners have preferred Writ Petition No. 23511/2000, the said writ petition was allowed on 24.4.2003 and order dated 3.5.2000 passed by Member, Board of Revenue was quashed.

11. After quashing of the order dated 3.5.2000 the respondent No. 4 filed an objection to the restoration application filed by the petitioner for recalling the order dated 11.5.1999 passed on the compromise application also filed an application for verification of the signatures of the parties on the compromise application. The petitioner has also filed reply to the objection filed by the respondent No. 4 stating therein that the compromise was forged and was passed without any knowledge of the petitioners. It was also stated that the application was allowed and the suit was decreed in terms of compromise without participation of the petitioners.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ayodhya-singh-and-another-appellan…

12. The Additional Commissioner, thereafter, vide order dated 23.3.2004 has allowed the restoration application of the petitioner and recalled the order dated 11.5.1999. Against this order, the respondent No. 4 has filed a Revision before the Board of Revenue U.P. at Allahabad. The Board of Revenue has allowed the Revision and remanded the same before Commissioner for verification of signatures on compromise as well as vakalatnama on 21.12.2006. The order passed by Board of Revenue on 21.12.2006 is impugned in this writ petition.

13. I have heard Shri Triveni Shankar, learned Counsel for the petitioners, Sri Ayub Khan and learned standing counsel for the respondents.

14. It is undisputed that suit was filed by respondent No. 4 u/s 229B of U.P. Z.A. and L.R. Act in respect of disputed plots was dismissed on 31.8.1994 as not maintainable. The Review filed by respondent No. 4 was also dismissed on 8.6.1998.

15. It has been alleged in para 22 of the writ petition that appeal No. IB of 1994 was filed in the Court of Commissioner, Gorakhpur Division Gorakhpur and the appeal was presented before the Additional Commissioner Judicial, Gorakhpur on 4.10.1994. At the back of the memo of appeal the Additional Commissioner has passed an order noting therein that the appeal was presented by Sri Umesh Kumar Dwivedi advocate and the office of the Commissioner was required to register the appeal and submit the report.

16. In paragraph 24 of the writ petition it is averred that inspite of the order of the Additional Commissioner Judicial, Gorakhpur to submit report the office has not given its report with regard to limitation etc.

17. In paragraph 25 of the writ petition it has been stated that no date was fixed for the last five years since the date of its filing and there is no indication on record to suggest that any notice was issued or service of notice was affected on the respondents (petitioners).

18. In paragraph 28 of the writ petition it is stated that there is no verification at the back of the compromise dated 26.4.1999 before the Court.

19. In paragraph 29 of the writ petition it is averred that there is no order sheet on record to show that after the presentation of appeal on 26.4.1999 any date was fixed for verification or order of the Court

20. The reply of paragraphs 22 to 29 have been given in paras 18 to 22 of the counter affidavit. From the perusal of the same it transpires that there is a vague denial and there is no specific denial with regard to the non-submissions of the report by the office with regard to the limitation, sufficiency of court fee paid, issuance of notice to the other side and the verification of the compromise by the Court.

21. In view of the submissions made and in view of the averments made in the counter-affidavit it is apparent that the appeal was presented in the year 1994

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ayodhya-singh-and-another-appellan…

and without obtaining any report from the office with regard to the limitation, sufficiency of court fee paid and without issuing any notice, the compromise application was entertained and without verification of the Court, the alleged compromise was relied upon and the appeal was decreed in terms of the compromise.

22. It is settled procedure that whenever any appeal is filed the office concerned submits a report with regard to the limitation, sufficiency of court-fee paid on the memo of appeal reporting of caveate etc. and unless those reports are obtained the file is not presented before the Court and even if by mistake the file is presented before the court then it is the duty of the Court to ensure the report of office and then proceed to pass any order on the appeal against the respondents except the dismissal of appeal in limine.

23. Para 176 of the Uttar Pradesh Revenue Court Mannual talks about the applicability of certain procedure of CPC if an appeal is filed against a decree before the Commissioner. Para 177 deals with the fixation of a date for hearing if the appeal is not rejected summarily. Paras 176 and 177 are reproduced below:

176. Application of certain provision of the Civil Procedure Code.?The provisions of Rules 2 to 4, 6 to 10, 15 to 29, 31 to 37 of Order XLI, Order XLII and Sections 99 and 144 of the CPC relating to appeals from decree shall apply to appeals from orders under the Uttar Pradesh Land Revenue Act:

Provided that the decree passed by the Board of Revenue may be dated and signed by the Registrar of the Board.

177. Fixation of a date for hearing if appeal not rejected summarily.?(1) If an appeal has not been rejected summarily u/s 216, of the Uttar Pradesh Land Revenue Act, 1901, the Court shall fix a date for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court.

(3) Court, the place of the residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

(4) The appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred. Such notice may be given in the requisition for the record.

24. Here in the present case the Court concerned without obtaining any report from the office with regard to the limitation, sufficiency of the court fee have passed an order on compromise application even without ensuring whether notice has ever been issued and served on the respondents.

25. I am of the view that the procedure for entertaining the appeal as contained in Revenue Court Manual and CPC (in short C.P.C.) is not formal one but its observance is must particularly in the circumstances when the Court is going to allow the appeal and decree a suit in terms of the compromise.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ayodhya-singh-and-another-appellan…

26. So far as the decreeing the suit in terms of the compromise is concerned the Court concerned ought to have observed the requirement of law as contained under Order XXIII, Rule 3 of the C.P.C. Here the compromise has neither been verified nor any satisfaction of the Court has been recorded, therefore, the alleged compromise appears to be bogus particularly in the circumstances when the other party is denying the signatures on the compromise. Otherwise also there appears to be no occasion to the petitioners to appear before the Commissioner in an appeal where no notice was issued to them, suit filed against them was dismissed as non-maintainable and review application seeking review of the dismissal of suit order was dismissed coupled with the facts that the present petitioners throughout been denying their signatures on the compromise application as found by the Additional Commissioner with regard to the forged nature of compromise, while recalling the order dated 11.5.1999 passed on the compromise application.

27. I have perused the order dated 11.5.1999 passed by the Additional Commissioner, the Additional Commissioner has nowhere recorded that the parties to the appeal have signed the compromise before the Court and they were made aware of the contents of the alleged compromise and the Court was satisfied, therefore, this cannot be said to be valid compromise in view of the provisions contained under Order XXIII, Rule 3 of the Code of Civil Procedure. The observation made by the Board of Revenue that even if the Court has not verified the compromise and recorded its satisfaction will not vitiate the compromise as the compromise has been signed by the parties and their counsel is not sustainable in the eye of law. It is the duty of the Court to follow the procedure as contained in Order XXIII, Rule 3 of the C.P.C. before decreeing a suit in terms of the compromise.

28. Another very strong point goes in favour of the petitioners, i.e., decreeing the appeal in terms of the compromise when the suit filed by respondent No. 4 was dismissed as not maintainable and the claim of respondent No. 4 was not based on any statutory right over the disputed property, hence in absence of any statutory rights the suit could not have been decreed in terms of the compromise. A learned single Judge of this Court in the case of Shiv Prasad Vs. Deputy Director of Consolidation and Others, has observed:

A right which does not accrue to a person under the provisions of the U.P. Zamindari Abolition and Land Reforms Act or any other provisions of law could not be recognized by any agreement or compromise in the consolidation proceedings, Thus, it is held that if a person had no right under the statute .any such right could not be recognized or admitted by a compromise or a new right could not be created through compromise or conciliation.

It is clear from the law laid down by the Apex Court in Rana Sheo Ambar Singh v. Allahabad Bank Ltd., Allahabad, the bhumidhari rights in all the estates vested in the State is a new statutory right under the U.P. Zamindari Abolition and Land Reforms Act. Relevant portion of the Judgment is being reproduced below:

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ayodhya-singh-and-another-appellan…

(7) ...We are of opinion that the proprietary rights in sir and khudkashat land and in grove land have vested in the State and what is conferred on the intermediary by Section 18 is a new right altogether which he never had and which could not therefore have been mortgaged in 1914.

In view of the discussions made above, as in the present case there is no such family arrangement acted upon between the parties of which parties have taken benefit as claimed by the petitioners, the Deputy Director of Consolidation rightly set aside the compromise and orders passed by the Consolidation Officer and the Assistant Settlement Officer, Consolidation. Finding recorded by the Deputy Director of Consolidation does not suffer from any error of law apparent on the face of record in holding that the compromise relied upon by petitioner was not lawful. Impugned order was rightly passed in accordance with law. The questions framed above are decided accordingly.

In the light of the discussions made above, writ petition has no force and is dismissed.

29. Since in the present case the suit of respondent No. 4 was itself dismissed as not maintainable, therefore, unless the suit was held to be maintainable the appeal should not have been allowed in terms of the compromise particularly in the circumstances when the petitioners had throughout been denying their signatures on the compromise.

30. I have gone through the judgment passed by learned Member Board of Revenue U.P. at Allahabad dated 21.12.2006 the learned Member without setting aside the findings with regard to the forged nature of the compromise recorded by Additional Commissioner Judicial Gorakhpur in his order dated 23.3.2004 has allowed the Revision and remanded the matter for verification of the signatures only.

31. I am of the considered opinion that unless a definite finding was recorded by the Member Board of Revenue U.P. at Allahabad with regard to the complete observance of procedure before entertaining the appeal and without being definite with regard to the petitioners presence before the Court concerned, the satisfaction of the Court recorded in the order and the verification of compromise as required under Order XXIII, Rule 3 of the Code of Civil Procedure, there was no occasion for the Member Board of Revenue to set aside the judgment of the learned Additional Commissioner Judicial, Gorakhpur to the extent to remand the matter only for verification of the signatures.

32. I am of the view that learned Member Board of Revenue U.P. at Allahabad ought to have refused to interfere with the order dated 23.3.2004 passed by Additional Commissioner Gorakhpur.

33. In view of that the writ petition succeeds and is allowed. The order passed by learned Member Board of Revenue U.P. at Allahabad dated 21.12.2006 is quashed. The pending appeal may proceed accordingly as per order of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ayodhya-singh-and-another-appellan…

Additional Commissioner, dated 23.3.2004.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ayodhya-singh-and-another-appellan…