(1994) 03 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 375 of 1979

Babulal Singh APPELLANT

Vs

Board of Revenue,U.P.and Others RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:

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

Citation : (1994) 03 AHC CK 0037

Hon'ble Judges : S.R.Misra, J

Final Decision : Allowed

Judgement

S. R. Misra, J.—By means of the present writ petition, the petitioner seeks quashing of the judgment and order of Board of Revenue dated 9101978, Annexure 3 to the writ petition.

2. Petitioner and respondent No. 8 filed .a suit under Section 229B of the U.P.Zamindari Abolition and Land Reforms Act (hereinafter referred to as ''the? Act'') read with Section 209 of the Act. Their case was that the property in dispute belonged to Bhagwati Singh, petitioner was sister''s son of Bhagwati Singh respondent No. 8 was widow of one of the brothers of the petitioner, were entitled to the property owned by Bhagwati Singh as Bhagwati Singh died issueless. It appears that in mutation proceedings regarding the land in dispute, some dispute arose between the petitioner and father of respondent Nos. 4 to 7 and a compromise was arrived at between them. Petitioner disputed the aforesaid compromise.

3. Respondents contested the suit on the ground that Bhagwati Singh died issueless and petitioner and respondent No. 8 are not sister''s son of Bhagwati Singh, it was also pleaded that in the mutation proceedings, the petitioner made ,an admission, which is binding on him.

4. Trial Court dismissed the suit by its order, dated 5111971. Appeal preferred against the said order was allowed by Additional Commissioner on 531974 but

the ?revision preferred by respondent Nos. 4 to 7 was allowed by Board of Revenue by the impugned order and hence this petition.

5. Having heard the learned counsel for the petitioner who has attacked the impugned order on the ground that that exercising jurisdiction of second Appellate Court, the Board of Revenue is not entitled to interfere with the finding of fact and its order is liable to be set aside on this score alone. He next contended that even on merits, since the judgment and order .of the Board of Revenue is solely based on alleged compromise entered between the parties in mutation proceeding, the same cannot be sustained in law. Moreover, according to the learned counsel for the petitioner, the respondent No. 1 has recorded selfcontradictory finding and reason for non suiting the petitioner is wholly misconceived, as the claim of the petitioner and respondent No. 8 was that they are legal representatives of Bhagwati Singh and, if the finding is arrived at that, property belongs to Bhagwati Singh, then the heirs of Bhagwati Singh are bound to inherit the same. On the basis of erroneous assumption that since the name of Ram Awadh was also entered, the Board of Revenue wrongly held that the heirs would become cotenants whereas there was no case of cotenancy, set up by the petitioner.

6. Having heard learned counsel for the petitioner, I have given my anxious consideration to the facts and circumstances of the case. Despite time granted to the learned counsel for the respondents on so many occasions, and due notice, no counteraffidavit has been filed nor any one is present on behalf of the respondents. Thus, this court is deprived of any assistance from the side of the respondents. In view of non assistance from the side of respondents, it is utmost necessary for this court to carefully consider the case of the respondents so that substantial justice may be done to the parties.

7. From perusal of the judgment and order ''of respondent No. 1, it is apparent that'' the respondent No. 1 has committed illegality in interfering with the finding of fact and by treating miscellaneous proceeding as final, inter parties, and deciding the appeal for the purpose of dismissal of the suit .on misconceived notion, for which neither there was any material, nor, he was legally justified to do so. This court is constrained to observe that a second Appellate Court is not expected to totally ignore all rules and regulations, and the procedure for deciding second appeal. While deciding a Second Appeal, it is incumbent on the part of the appellate court to at least look into the materials available on record, provisions of law and concerning rules and regulations. By now it is well settled in view of string of decisions of Hon''ble the Supreme Court, as well as, this Court that while deciding a Second Appeal, the appellate court is not entitled to interfere with the findings of fact, and, even if the appellate court is satisfied that some material evidence has been ignored, then the appropriate course is to send the case back to the first appellate court for deciding question of fact. In 1978 AWC 378 this court held that a decision in mutation proceeding is of summary nature and it has no binding effect in regular suit. In the present case, on the

basis of mutation proceeding, which was even challenged before Mutation Authority itself by the petitioner, the respondent No. 1 has not only placed reliance on the same, but has also treated the alleged compromise in the mutation to be final between the parties and accordingly, Ram Awadh was treated to be cotenant along with petitioner. Thereafter, the respondent No. 1 jumped upon to hold that as it was a suit for declaration of sole tenancy under Section 229 of the U.P. Zamindari Abolition and Land Reforms Act, and since in view of alleged compromise, Ram Awadh becomes cotenant, the suit was liable to be dismissed, and accordingly, the appeal was allowed and order of Additional Commissioner was set aside.

8. The observation of the Board of Revenue that Additional Commissioner has ignored material piece of evidence is erroneous, on the face of record, Additional Commissioner has rightly observed that the order in mutation proceeding will not be treated to be final, specifically when there was no verification of the said compromise arrived at between the parties in mutation proceeding. At best, it can be looked into for limited purpose if there was an admission for possession on a particular date, and, not otherwise. Additional Commissioner, after, due, consideration of oral and documentary evidence came to the conclusion that the plaintiffs were heirs of deceased Bhagwati Singh, and if it was admitted to the parties that the property was of Bhagwati Singh, or, even if it was disputed by defendant, then finding was to be arrived independent of socalled mutation proceeding. If there was no material, the question of recording any finding on the basis of compromise in mutation proceeding that Ram Awadh was cotenant, was also erroneous on the face of it. In paragraph 5, the Board of Revenue has held as under:

?Therefore, even if it is held that the plaintiffs are sister''s sons of Bhagwati Singh, the question of cotenancy will not arise and the suit for cotenancy would not be decreed. It was for this reason that no issue on cotenancy was framed by the trial court.?

In view of what has been said above, the aforesaid observation of the Board of Revenue is erroneous on the face of record.

9. So far as the compromise, where it is said to be admitted that Babu Lal was not heir of Bhagwati Singh, he has no concern with the land in dispute, land is mutated in the name of Ram Awadh, is concerned, according to the Board of Revenue, the Additional Commissioner should have placed reliance on the aforesaid compromise, as mere fact that the compromise was not verified by court concerned could not affect its validity and the parties were bound by their admission made .in the compromise, is absolutely erroneous. Even final decision on a compromise in mutation proceedings is not final between the parties and it is subject to regular proceedings, or suit. In a case where so called compromise was filed and one of the parties objected to the said compromise and the said compromise was not verified, thereafter, it is not open for a court hearing an appeal, or deciding a dispute between the parties on regular side to treat that

socalled admission, which was not'' even verified by Court, to be final. The reliance placed by respondent No. 1 in AIR 1960 SC 1001, relating to admission, as the said case will have no application to the facts of the present case and without taking care of provisions of Evidence Act and the context on which the Apex Court had made those observations, the Board ''of Revenue has taken into consideration the aforesaid case and misapplied its ratio to the present case.

10. In the result, the writ petition succeeds and is allowed. The judgment and order dated 9101978. passed by Board of Revenue is hereby set aside and the Board of Revenue is directed to decide the Second Appeal afresh in accordance with law and in the light of the observations made above.

11. Board of Revenue is further directed to send notices to the concerning parties for hearing of appeal within a month from the date of production of certified copy of this judgment and order and since it is an old case, the appeal may be decided within four months thereafter. Parties shall bear their own costs.

