

(2006) 05 UK CK 0039

In the Uttarakhand High Court

Case No : Review Application No. 72 of 2006 in Writ Petition No"s. 61 of 2000 and 285 of 2001 (M/S)

Baikunth Nath Kaushik

APPELLANT

Vs

Anand Swaroop Kaushik (deceased), through L.Rs.

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122, 3(30), 331(4), 341

Citation : (2007) 1 UC 615

Hon'ble Judges : Rajeev Gupta, C.J.;Prafulla C. Pant, J

Bench : Division Bench

Advocate : Rajendra Dobhal, for the Appellant;

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—Sri Rajendra Dobhal, Advocate for the review Petitioner.

He is heard.

2. The Petitioner is seeking review of the order dated 6th of May, 2006, 2006 (1) U.D., 525 whereby the two questions referred by the learned Single Judge were answered in Para 12 of the order, Which reads as follows:

Therefore, both the questions referred as mentioned above by learned Single Judge of this Court, are answered as under:

Answer to Question No. 1:- Sub-section (4) of Section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951) adopts provision of Section 100 of Code of Civil Procedure, 1908 by incorporation as it existed in 1951 but rest of the provisions of the Code are adopted by reference u/s 341 of U.P. Act. No. 1 of 1951.

Answer to Question No. 2 :-The amended provision of Section 100 of Code of

Civil Procedure, 1908, (as amended vide Act No. 104 of 1976, would not apply to Sub-section (4) of Section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951) and the said sub-section cannot be deemed to have been substituted after the amendment made in Section 100 of the Code.

Writ petitions be listed before appropriate bench with aforesaid answers.

3. Sri Rajendra Dobhal, the learned (counsel) for the review Petitioner submits that the effect of Sub-section (30) of Section 3 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 has not been considered in the above order.

4. Sub-Section (30) of Section 3 of the aforesaid Act, reads as follows:

(30) any reference to any enactment shall be construed as a reference to that enactment as amended from time to time in its application to Uttar Pradesh and in the case of Code of Civil Procedure, 1908, as a reference to that Code subject also to any annulments, alterations and additions to the rules contained in the First Schedule thereto made from time to time u/s 122 thereof by the High Court.

5. Sub-section (30) of Section 3, quoted above, does not make any difference as Sub-section (4) of Section 331 of the Act mentions only Section 100 of CPC whereas Section 341 refers to the entire Code of Civil Procedure, Therefore, the amended provisions of CPC would be applicable to Section 341 only and not to Sub-section (4) of Section 331.

6. We, therefore, do not find any ground for review of the order dated 6th of May, 2006. The review petition is, therefore, fails and is hereby dismissed.