

(2012) 02 AHC CK 0367
In the Allahabad High Court
Case No : Second Appeal No. 239 of 2012

Bajrangi Pandey (Dead) Through L.Rs.	APPELLANT
Vs	
Gyandutt Pandey and others	RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B, 29B

Citation : (2012) 5 ADJ 11 : (2012) 3 AWC 2789 : (2012) 115 RD 809

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : O.P. Tripathi and Ramesh Upadhyay, for the Appellant;

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the appellants at the admission stage. This is plaintiffs' second appeal arising out of O.S. No. 198 of 1984, which was dismissed on 18.03.1993 by First Additional Musnif, Ghazipur. Against the said decree plaintiffs-appellants filed Civil Appeal No. 19 of 1993, which was dismissed on 11.11.2011 by A.D.J. Court No. 3, Ghazipur, hence this second appeal.

2. The suit was filed by Bajrangi Pandey who died during pendency of the suit and was survived by the appellants who are his sons.

3. In the suit the first three defendants were private parties. Defendant No. 4 was Gaon Sabha and defendant No. 5 was State of U.P. The relief claimed in the suit was for permanent prohibitory injunction and for declaration that an earlier decree passed by the Revenue Court u/s : 29-B of U.F.Z.A. & L.R. Act in favour of defendants No. 1 to 3 was void.

4. Property in dispute is agricultural Plot No. 125 (old No. 228). It was entered in the revenue records as pond/bhita. Case of the private defendants was that during consolidation property was continued to be recorded in the name of Gaon

Sabha even though some order had been passed in their favour. On the basis of the said order defendants afterwards filed suit u/s 229-B of U.P.Z.A. & L.R. Act, which was decreed in their favour. Plaintiff had also filed a suit u/s 229-B of U.P.Z.A. & L.R. Act, which was dismissed. Both the Courts below held that matter had been agitated u/s 229-B of U.P.Z.A. & L.R. Act hence Civil Court had no jurisdiction and in any case no ground for setting aside earlier decree in favour of defendants No. 1 to 3 dated 07.1.1982 had been made out.

5. I do not find least error in the impugned findings. Plaintiff had absolutely no right over the property in dispute. Over a pond no one can have any right. Even the earlier decree passed in favour of defendants No. 1 to 3 was utterly without jurisdiction and void.

6. The argument of learned Counsel for the appellant that appellant had at some point of time planted some trees is utterly meaningless. Even if someone plants trees over Gaon Sabha land he does not become owner. In an earlier suit filed by plaintiff himself before Civil Court (O.S. No. 221 of 1958) it was held that plaintiff was owner of the trees but had no concern with the land.

7. Accordingly, second appeal is dismissed under Order XLI, Rule 11, C.P.C.

8. Supreme Court in Hinch Lal Tiwari Vs. Kamala Devi and Others, has held that a pond entered as such on 01.07.1952 shall continue to be recorded as such and even if it or some part of it has ceased to be a pond still it cannot be allotted to anyone.

9. I have heard and decided hundreds of matters pertaining to agricultural land and my experience is that Gaon Sabha property has been looted by unscrupulous persons on a very large scale by manipulation in the revenue records and forging of orders particularly of Consolidation Courts. The modus operandi is that a very old entry or copy of order is produced like a rabbit from the hat of a magician and its resumption or recording is sought.

10. Supreme Court in Civil Appeal No. 1132 of 2011, Jagpal Singh and others v. State of Punjab, in Para-20 observed as follows:

20. In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1953 was widely misused to usurp Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices.

11. In Dina Nath v. State of U.P., 2009 (108) RD 321. I held that not making any efforts for getting the name of the petitioner entered in the revenue records on the basis of alleged patta by Gaon Sabha for 29 years proved that no patta was executed. I issued directions to all the Collectors to reopen all such cases where

names of private persons were entered in the revenue records over Gaon Sabha land. Matter was carried to the Supreme Court in the form of SLP (Civil) C.C. 4398 of 2010 Dina Nath v. State. The Supreme Court decided the matter on 29.03.2010 and quoted almost my entire judgment in inverted commas and approved the same. Accordingly, Collector, Ghazipur is directed to record the land in dispute as pond in the revenue records after hearing defendants No. 1 to 3, i.e. Gyandurt Pandey, Shambhu Nath Pandey and Mahendra Nath Pandey, all sons of Paras Nath Pandey. The property in dispute is situated in village Pandeypur Radhe, Pargana Pachotar, District Ghazipur. The number of the suit u/s 229-B decreed in favour of the defendants respondents No. 1 to 3 on 07.10.1982 was 215. The property in dispute shall be recorded as pond and restored as pond by using M-NEREGA funds and the pond shall be let out for the fisheries purposes after due advertisement for at least ` 10,000/- per hectare per year as directed by this Court in the following authorities:

1. Ram Kumar v. State.2005 (99) RD 823
2. Ram Kumar v. State.2009 (107) RD 557
3. Babban v. State.2004 (97) RD 675

Office is directed to supply a copy of this order free of cost to Sri S.P. Mishra, learned Standing Counsel for immediately sending the same to Collector, Ghazipur by 14.3.2012.