

(2007) 04 AHC CK 0303
In the Allahabad High Court

Bhirghu Nath and Others

APPELLANT

Vs

Smt. Beila and Others

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Citation : (2009) 1 AWC 38

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. P. Mehrotra, J.—Cause list has been revised.

2. Learned Counsel for the parties are not present.

3. It appears that pursuant to the preliminary decree for partition having been passed in Suit No. 1739 of 1957, the proceedings were taken for preparation of final decree.

4. By the judgment and order dated 7.2.1970, the trial court confirmed the partition scheme submitted by the Commissioner subject to modifications indicated in the said judgment and order dated 7.2.1970, and directed for preparation of final decree.

5. An appeal being Civil Appeal No. 303 of 1970 was, thereafter, filed against the said final decree dated 7.2.1970.

6. The lower appellate court partly allowed the said Civil Appeal No. 303 of 1970 by passing the judgment and order dated 23.9.1972. The operative portion of the said judgment and order dated 23.9.1972 is as under:

The appeal is partly allowed so far, as it relates to bhumidhari plots and trees, etc. standing thereon and the judgment and final decree prepared by the learned Munsif, are hereby set aside. The suit is remanded to him with the direction that he will send it to the Collector, Azamgarh for preparation of partition scheme and

final decree for the plots in suit, as he has got jurisdiction to do so and as regards the partition scheme and final decree for the trees of plot No. 156 are concerned, the appeal is dismissed and the judgment and final decree are, hereby confirmed. In the circumstances of the case the parties will bear their own costs.

7. Thereafter, the plaintiffs-appellants filed the present second appeal before this Court.

8. The respondent Nos. 1 and 2 also filed their cross-objections.

9. I have perused the record.

10. Having regard to the material on record, there does not appear to have been committed any illegality or perversity in the findings recorded and the conclusions drawn by the lower appellate court in the said judgment and order dated 23.9.1972.

11. The present second appeal filed by the plaintiffs-appellants, as also the cross-objections filed by the respondents Nos. 1 and 2 are, therefore, liable to be dismissed.

12. The second appeal filed by the plaintiffs-appellants is, accordingly, dismissed.

13. The cross-objections filed by the respondent Nos. 1 and 2, are also dismissed.

14. On the facts and in the circumstances of the case the parties are left to bear their own costs in the second appeal and in the cross-objections.