

(1981) 01 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10405 of 1975

Bideshi and Another

APPELLANT

Vs

Board of Revenue and Another

RESPONDENT

Date of Decision : 22-01-1981

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 28(2), 4, 52

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 229B

Citation : (1981) AWC 356

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : S.K. Verma, for the Appellant; G.P. Bhargava, A.N. Bhargava and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—By means of this writ petition the Defendants-Petitioners have prayed for quashing of the judgment of Sri S. Mubarak Hasan, Member, Board of Revenue, U.P., Allahabad, dated 30-6-1975, in Second Appeal No. 836 of 1971-72 Ghazipur, Mahabir Appellant v. Bideshi and others.

2. Necessary facts giving rise to the present writ petition are that the Plaintiff opposite party Mahabir filed a suit u/s 229-B/209 of the UP ZA and LR Act against the Defendants and had alleged that he was Bhumidhar of the disputed land and that the Defendants had no concern with the disputed land and that they had been litigating since long and they have lost their claim with regard to the disputed land, hence the suit for declaration of the Plaintiffs Bhumidhari right and in the alternative for recovery of possession.

3. The claim of the Plaintiff opposite party was contested by the Defendants on various grounds and one of the pleas raised on behalf of the Defendants was that the Plaintiff's suit was barred by time and the Plaintiffs had no concern with the disputed land and that the Defendants had become Sirdar of the disputed land due to their continuous possession for more than statutory period. The trial Court

and the first appellate Court negated the claim of the Plaintiffs opposite parties on the ground of limitation whereas the second appellate Court has allowed the second appeal and has decreed the Plaintiff's suit holding that the Plaintiffs claim was well within time. Aggrieved by the judgment of the second appellate Court the Defendants-Petitioners have approached this Court under Article 226 of the Constitution.

4. It has not been disputed before me -that the Plaintiff had filed the suit on 30-5-1970. The denotification u/s 52 of the U.P. Consolidation of Holdings Act (hereinafter referred to as the Act) had taken place regarding the disputed land on 12-11-1963. The title of the Plaintiff opposite party No. 2 in dispute has been recognized by the consolidation authorities much prior to June, 1960. It appears that C. H. Form 23 had been issued by that time indicating that the Plaintiff was tenure-holder of the disputed land. The finding of fact has been recorded in this case to the effect that Subba, Petitioner No. 2, has been in possession since 1954.

5. Counsel for the parties have joined issues before me on the question whether Subba, Petitioner No. 2 was a party in litigations during the Consolidation operation. However, the second appellate Court has not decided the question of limitation taking into account an important aspect whether the Petitioner Subba was a party in the proceedings before the Consolidation authorities which finally terminated due to the decision in the writ petition between the parties on 21-12-1967 and whether his dispossession remained stayed due to orders passed by the authorities. I also do not express any opinion on this aspect of the matter as the parties' counsel are at variance on the question whether Subba, Petitioner No. 2, was a party in the proceedings before the consolidation authorities or even this Court in the earlier litigation.

6. The trial Court computed the period of limitation in the present case from June, 1960 as the consolidation proceedings had finished according to it by that time, hence it held that the suit was barred by time in May, 1970. The first appellate Court has computed the period of limitation from 2-11-1963 (date of denotification u/s 52 of the Act) and held that the Plaintiff's claim was barred by time. The first appellate Court has mentioned in its judgment that there is no evidence as to when the Plaintiff's predecessor Ram Dhari and Smt. Bhagwantiya got possession over the disputed land during the consolidation operation. The second appellate Court has held the Plaintiff's suit within time by computing the period of limitation from the date of denotification u/s 52 of the Act. The second appellate Court has observed in its impugned judgment that the Plaintiff had option to file suit after preparation of C. H. Form 23 or after the denotification u/s 52 of the Act and that limitations remained suspended till denotification u/s 52 of the Act.

7. The learned Counsel for the Petitioners has contended before me that the second appellate Court has patently erred in computing the period of limitation from the date of denotification u/s 52 of the Act. According to the learned

Counsel for the Petitioners the denotification u/s 52 of the Act is only a formality and the limitation should have been computed from July next the date of illegal occupation of the disputed land by the Defendants Petitioners. It has also been emphasized that when the second appellate Court came to the conclusion that the Plaintiff has a right to file a suit after the preparation of C. H. Form 23, it should have computed the period of limitation from July following the date of the order when the Plaintiff's or his predecessor's title to the disputed land was determined by the consolidation authorities.

8. The learned Counsel for the contesting opposite parties has tried to refute the contentions raised on behalf of the Petitioners and has tried to support the judgment of the second appellate Court. He has submitted that between the date of notification u/s 4 and notification u/s 52 of the Act, a tenure holder could not bring a suit u/s 229 read with Section 209 of the UP ZA and LR Act hence the second appellate Court rightly computed the period of limitation and the impugned judgment should not be interfered with by this Court.

9. None of the rulings cited at the Bar has considered the point under my consideration in the present writ petition, hence I do not think necessary to deal with the cases cited at the Bar. The learned Counsel for the parties placed reliance upon *Badal v. D. D. C.*, 1970 Rule D. 240 and *Smt. Krishna Devi v. Joint D. C.*, 1973 RD 196 (1) and various other cases. The cited cases have only indicated that on the issuance of notification u/s 4 of Act the running of limitation u/s 209 UP ZA and LR Act against the trespasser stands arrested as a tenure holder could not litigate his right under the provisions of the UP ZA and LR Act.

10. In the present case the real question is when the consolidation authorities have recognized the claim of a tenure holder with regard to the disputed land and a trespasser continues in possession over the disputed land even after delivery of possession by the consolidation authorities to the tenure holder whether the limitation would run from July following a date of such dispossession or from the date of denotification u/s 52 of the Act. Serial No. 30 of Appendix 3 to the UP ZA and LR Rules 1952 provides the period of limitation in a suit u/s 209 of the UP ZA and LR Act and mentions the time from which the period begins to run as below:

from 1st July following the date of occupation.

Under Section 28(2) of the U.P. Consolidation of Holdings Act it has been provided as below :

On the expiry of six months from the date on which a tenure-holder or Land Management Committee became entitled to enter into possession of the Chak or lands allotted, whether before or after the coming into force of the Uttar Pradesh Consolidation of Holdings (Amendment) Act, 1963, or on the expiry of six months from the date of the coming into force of that Act, whichever, is later, the tenure holder or the Land Management Committee, as the case may be shall, unless possession has been obtained earlier, be deemed to have entered into actual

physical possession of the allotted Chak or land.

11. In view of the provisions of Section 28(2) of the Act read with Serial 30 Appendix 3 attached to the UP ZA and LR Rules I think that the second appellate Court has committed an error apparent on the face of the record in observing as below:

Plaintiff had the option to file suit after the preparation of C. H. Form 23 or after the denotification u/s 52 of the U.P. CH. Act and the limitation remained suspended till denotification u/s 52 of the C. H. Act.

12. To my mind, the second appellate Court should have computed the period of limitation from July following the date of dispossession of the tenure holder in the present case. The computation of period of limitation from the date of denotification u/s 52 of the Act in the present case appears to me erroneous and on this ground the impugned judgment deserves reversal.

13. It is noteworthy that if Subba, Petitioner No. 2, was a party in the proceedings before the consolidation authorities and he was a party in the writ petition before this Court which was decided on 2-11-1967 its impact on the claims of the parties even on question of limitation should be re-examined by the second appellate Court. Since the counsel for the parties are at issue on the question whether Subba was a party before the Consolidation Authorities and before the Court I refrain from expressing any concluded opinion and leave this question to be canvassed before the second appellate Court.

14. In view of the discussions above, the writ petition succeeds and the impugned judgment of the second appellate Court dated 30-6-1975 in Second Appeal No. 836 of 1971-72 Ghazipur, Mahabir v. Bideshi is hereby quashed and the second appellate Court is directed to decide the claims of the parties afresh in the light of the observations made above. Parties are directed to bear their own costs.