
(1982) 08 AHC CK 0007

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1220 of 1974

Binayak Singh

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 13-08-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 131

Citation : (1982) AWC 709 : (1983) RD 38

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

Bench : Single Bench

Final Decision : Allowed

Judgement

K.P. Singh, J.—This writ petition arising out of a suit u/s 176 of the UP ZA and LR Act of partition of 1/3rd share filed by Adya Singh, opposite party No. 4 in the present petition.

2 The allegations in the plaint are that the disputed plots are joint property and that the Plaintiff had 1/3rd share therein. In a partition separate quras were prepared by the Defendant Vinayak Singh who got better quality of land in his qura, hence the Plaintiff is at a disadvantageous position and claims partition of his share.

3. The defence in the ease on behalf of Binayak Singh Petitioner was that the parties were transferree of the disputed area from the original tenure holder and at the time of mutation of their names a private partition took place to which different quras were prepared and the names of the parties were recorded in accordance therewith. Land revenue was also apportioned. In short, the Plaintiff's suit for partition was asserted as not maintainable.

4. It is noteworthy that Sangram Singh, the other Defendant, accepted the claim of the Plaintiff opposite party.

5. The trial court through its judgment dated 28-9-72 accepted the claim of the Plaintiff and declared his 1/3rd share in the disputed property. Against the judgment of the trial court the Petitioner went in appeal but remained unsuccessful as is evident from the judgment of the appellate court dated 29-9-73. Thereafter the Defendant Petitioner preferred a second appeal which has also been dismissed by the second appellate court through its judgment dated 17-12-1973. Aggrieved by the judgment of the revenue courts the Defendant Petitioner has approached this Court under Article 226 of the Constitution.

6. The main grievance of the learned Counsel for the Petitioner before me is that when there was a private partition between the parties, it should have been respected by the revenue courts and the proceedings should have ended in accordance with the private partition. Second contention raised on behalf of the Defendant Petitioner is that he has made improvements in the plots allotted to him hence with dishonest motives the Plaintiff has filed the present suit for partition and wants to take the land in possession of the Defendant Petitioner. If the impugned judgments are not quashed, the Plaintiff opposite party shall succeed in his move in collusion with the other Defendant opposite party No. 7 in the present writ petition.

7. In reply, the learned Counsel for the Plaintiff opposite party has contended that the revenue courts have taken correct view that the Bhumidhari plots can be divided only through courts. It has also been stressed that court of fact has recorded a finding to the effect that the Defendant Petitioner has failed to prove private partition alleged by him, hence it is not a fit case for interference in writ jurisdiction.

8. I have considered the contentions raised on behalf of the parties and I have gone through the impugned judgments of the revenue courts. I find that the appellate courts have recorded a finding to the effect that there cannot be a private partition regarding Bhumidhari land. In this connection it is proper to quote the finding recorded by the second appellate court as below:

...The ruling reported in AIR 1946 relates to partition by private arrangement between co sharers of a Patti while in the present case the partition relates to tenancy land which can be done only u/s 176 UP ZA and LR Act. If the cotenure holders have by private arrangement divided their land between themselves any one of the co-tenure holders can raise claim for allotment of the particular portion of land in his possession at the time of the preparation of final decree as provided Under Rule 131 (e) of ZA & LR Rules.

9. The first appellate court has also recorded the following finding:

Is kanoon ke paripekshya men namantaran ka adesh yahan takhi manya ho sakta hai ki jo bhukitand jis paksh ke khata me ha us par uska adhipatya raha. Parantu swatwa pratyek paksh ka pratyek bhukhand men hota hai. Vibhajannki Digree ho jane par hi ek paksh ko di gai Bhumi men dusare paksh ka swatwa

samapt hota hai aisi dasa men purn vibhajan ke liye dhara 176 U.P. adhiniyam 1 san 1951 ka vad iana avashyam ho jata hai.

10. To my mind, the appellate courts are under wrong notion that Bhumidhari plots can be divided by the cotenure holders only through the aid of the court. In this connection the attention of the appellate courts is invited to the ruling reported in Smt. Lachhmina v. The Board of Revenue, U. P. Allahabad 1964 R.D.47 wherein the principle of law laid down in Abdul Haq Vs. Mohd. Hashim and Another, regarding private partition has been accepted.

11. In Brahma Dev Singh v. Chandra Dev Singh 1964 AWR 69 (Revenue) a Division Bench of the Board of Revenue has observed as below:

...In Abdul Haq v. Mohd. Hashim (1) it has been held by a Division Bench of the Hon"ble High Court that the co-sharers in a mahal have a right to effect a partition by private arrangement and partition among the co-sharer once effected either through court or by private arrangement puts an end to the joint ownership of the parties and thenceforward the parcels of land allotted to different co-sharers are absolutely distinct in the eye of law and one has nothing to do with other. This ruling has been followed by the Hon"ble High Court in Smt. Lachhmina v. Board of Revenue (2). In view of these rulings it is clear that private partition of Bhumidhari land can be effected...

12. In view of the above, it is clear that in the present case the appellate courts are patently wrong in holding that Bhumidhari plots cannot be partitioned without taking recourse to proceedings u/s 176 of the UP ZA and LR Act.

13. To me it appears that recourse to a suit u/s 176 of the UP ZA and LR Act in the case of private partition would depend upon the facts and circumstances involved in each case. Suppose that a private partition has taken place between co-tenure holders but the Gaon Sabha and the State of U.P. do not accept the same and regarding apportion of the rent in private partition they raise objections, in that circumstance a suit u/s 176 of the UP ZA and LR Act despite private partition might be necessary but in the present case the State of U.P. and the Gaon Sabha have not filed any objection and it appears that the parties are in separate possession over separate quras, hence the question of maintainability of the present suit should have been examined by the appellate courts from correct angle.

14. No doubt, there are conflicting views of the Board of Revenue that Sir right and Bhumidhari right cannot be partitioned without the aid of the Court but I think that taking recourse to law courts in cases of private partition in each case is not necessary. It all depends upon the facts and circumstances of a particular case.

15. As regards the contention of the learned Counsel for the opposite party that there is a finding that the Defendant Petitioner has failed to prove private partition alleged by him, I think that there is no categorical finding by the first

appellate court in this regard. Moreover the first appellate court has not taken into account an important circumstances that over separate quras parties are in separate possession and probably they are paying land revenue in accordance with the entries in revenue records. The effect of this important circumstance should have been taken into account by the first appellate court. The second appellate court has only observed that there is no perversity of any kind in the findings. If the first appellate court has ignored any important aspect regarding the conduct of the parties and the evidence regarding separate possession and payment of rent, its finding would suffer from illegality and the second appellate court has not addressed itself to this aspect of the matter.

16. As regards the suggestion that the Petitioner can claim the land in his possession at the time of the preparation of final decree, I think that if on the facts of the present case it is held that the Plaintiffs' suit is not maintainable, the Defendant Petitioner would be saved from further litigation and harassment involved in the preparation of final decree. If on facts it is found that the Defendant Petitioner has made improvements in the plots allotted to him and he has been paying land revenue in respect of the land allotted to him for quite a large number of years and when the State of U.P. and the Goan Sabha have not objected to the receipt of land revenue from the Defendant Petitioner, it would be a great injustice to the Petitioner to be under suspense and to contest the proceedings for preparation of final decree any more. To my mind, the impugned judgments of the appellate courts suffer from patent error of law and deserve to be quashed.

17. In the result, the writ petition succeeds and the impugned judgment of the second appellate court is only hereby quashed and the second appellate court is directed to decide the second appeal in the light of the observations made by me above and the ruling cited above. Parties are directed to bear their own costs.