

(1992) 01 AHC CK 0048

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10102 of 1981

Bishambhar and another

APPELLANT

Vs

IIIrd Additional District Judge, Azamgarh and others

RESPONDENT

Date of Decision : 08-01-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226

Citation : AIR 1992 All 178 : (1992) 2 AWC 770 : (1992) 65 FLR 888

Hon'ble Judges : Dr. R.R. Misra, J

Bench : Single Bench

Advocate : U.K. Misra, for the Appellant; M/s. A.R.S. Dewakar, P.R. Maurya, K.S. Kushwaha and R.G. Padia, for the Respondent

Final Decision : Dismissed

Judgement

1. The plaintiff-petitioner had filed Original Suit No. 50 of 1980 before the trial court praying for a relief of injunction directing the defendants to remove the tube well fixed in the plot in dispute and also for permanent injunction restraining the defendants from interfering with the plaintiffs possession over a number of plots mentioned in the plaint on the ground that by playing fraud on the plaintiff the defendants have got fictitious entries made over the disputed plots during the consolidation proceedings. The relief of possession was also asked for in the alternative. The said suit was contested by the defendants-respondents on the ground that the Civil Court had no jurisdiction to try the suit, which according to the defendants was cognizable only by the revenue courts. On the pleas of the parties although the trial court framed a number of issues but the issue regarding the jurisdiction of the Civil Court was tried as a preliminary issue. After scrutiny of the evidence led by the parties before the trial court, the trial court found that in substance the suit was for declaration of the rights over the agricultural land and, therefore, no relief for injunction could be granted. It also held that the plaintiff was out of possession. It accordingly passed an order returning the plaint for presentation before the revenue court. Aggrieved, the

plaintiff filed an appeal which has been dismissed by the lower appellate court by the impugned order dated 15-5-1981. Still aggrieved the plaintiff-petitioner has filed the present writ petition in this Court. Counter and rejoinder affidavits have been exchanged in this case.

2. Learned counsel for the parties have been heard. During the pendency of the writ petition in this Court an application has also been moved by the petitioner for amending the plaint. The said application has been stoutly opposed by Sri Kameshwar Nath Tripathi, learned counsel for the respondents on the counts. Firstly, that the writ petition in this court is not continuation of original suit and consequently since both the courts below have taken the view that the aforesaid suit is cognizable by the revenue court alone and an order has also been passed for returning the plaint for presentation before the revenue court, therefore, in the eyes of law, no suit is pending in the civil court and in the absence thereof no application for amendment is maintainable.

3. To examine the above submission, we have to consider the scope of writ jurisdiction under Article 226 of the Constitution of India. It has been held by the Supreme Court in the case of *State of U.P. v. Dr. Vijay Anand Maharaj* AIR 1983 SC 946 : (1962 All LJ 819) in paragraph 3, and in the case of *Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others*, that the writ jurisdiction under Article 226 of the Constitution of India of the High Court is in exercise of its extraordinary original civil jurisdiction. When a writ petition is filed challenging a decision in a suit for proceeding declaring or adjudicating rights or interest in any land the High Court calls for the relevant record of the suit or proceeding and if it is found that the impugned order is without jurisdiction or suffers from a manifest error of law or an error of law apparent on the face of the record, all that the High Court does and has to do is to quash the impugned order but at the same time the High Court will not substitute its own order or decree for the impugned order or the decree passed by the Civil Courts below. All that the High Court can do in such a situation is that it must send back the matter to the lower court concerned for deciding the case in accordance with the law declared by the High Court. After doing so when the lower court passes an order in compliance with the law declared by the High Court. The executable order with regard to the rights of the parties in dispute in such a case is not the order of the High Court in the writ petition but is the ultimate decision given by the Court below and it cannot be said that the order passed by the High Court in the exercise of its Writ jurisdiction is the executable order. In case the petition is dismissed by this Court again the consequence that will follow will be that the order of the subordinate Court is the order which decides the rights of the parties in dispute.

4. Further in the case of *Ramesh v. Gendalal Motilal Patel* (supra), it has also been held by the Supreme Court that a writ petition to the High Court is a proceeding quite independent of the original controversy. Upon filing of a writ petition the controversy which arises for determination before the High Court in a writ petition is as to whether the decision or a proceeding before a court or

Tribunal or authority should be allowed to stand or should be quashed for want of jurisdiction or on account of errors of law apparent on the face of the record. Thus from the above it is abundantly clear that a decision in a writ petition is not a decision about the merits of the rights of the parties in issue in a proceeding giving rise to it. It follows, therefore, that a proceeding under Article 226 of the Constitution of India is not a continuation of the suit or proceeding giving rise to it and there exists a clear-cut distinction between an original suit proceeding or appeal or revision and a writ petition directed against orders passed therein. The above scope of writ jurisdiction under Art. 226 of the Constitution of India has not been only affirmed by a Full Bench of this Court in the case of *Udai Bhan Singh and Others Vs. The Board of Revenue, U.P., Allahabad and Others*, The Full Bench has further clarified its finding with regard to scope of a writ petition as follows :--

".....Writ petitions are original proceedings in this court distinct from and independent of the suit or proceeding out of which it emanates."

5. In view of the above settled position of law regarding the scope of writ jurisdiction of this Court, in my opinion, both the objection advanced on behalf of the respondents have got force. After an order has been passed by the trial court for return of the plaint for presentation to the revenue court and its affirmance by the lower appellate Court, it cannot be said that there is any suit pending in the Civil Court and that, therefore, no application for amendment of the plaint is maintainable. The other objection that writ petition is not a continuation of the original suit proceeding appears to be correct. In this view of the matter it is held that the amendment application for the amendment of the plaint moved in the present case is not maintainable and is rejected as such.

6. Coming to the main controversy involved in the present case as to whether the courts below were right in law in holding that the plaint was liable to be returned for presentation before the revenue court, I find that both the courts below have on a consideration of evidence on record in the case arrived at a finding that in the record of rights necessarily the plaintiffs are called upon to seek a declaration of their rights. The Courts below have, therefore, held that in pith and substance the suit is for declaration of plaintiffs' right over the disputed agricultural land. As regards the possession the courts below have found that there is no revenue paper showing that the plaintiffs were ever recorded in possession. They have further recorded a finding that the plaintiffs are not in possession. On this finding it is relevant to consider the following observation made by another Full Bench of this Court in the case of *v Ram Padarath v. Second Addl. District Judge, Sultanpur 1989 RD 21* :--

".....If a person claims relief of injunction and in the alternative for possession if he is found to be out of possession and his name is not on the record then without declaration that in fact he is the tenant or he is in possession of the tenancy rights no further relief can be granted and the suit is cognizable by the revenue court notwithstanding the relief for injunction is to be granted by the

Civil Court."

7. In view of the above declared law by the Full Bench of this Court and the two findings recorded by the both the courts below, in my opinion, there is no error of law apparent on the face of the record in the impugned orders which may entitle the petitioner to claim any interference with the orders passed by the courts below.

8. In the result, the writ petition fails and is hereby dismissed with costs. The interim order dated 19-8-81 is hereby vacated.

9. Petition dismissed.