

(1968) 07 AHC CK 0015

In the Allahabad High Court

Case No : Civil Revision No. 469 of 1965

Chandra Kishore Shukla

APPELLANT

Vs

Mohammad Husain and others

RESPONDENT

Date of Decision : 08-07-1968

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229(B)(3),
240(H)(2)(b)

Citation : (1968) 38 AWR 601

Hon'ble Judges : J.N. Takru, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.N. Takru, J.—Chand Kishore Shukla has filed this revision against the order of the learned Civil Judge, Deoria in Revenue Reference No. 13 of 1963.

2. It appears that some plots in village Shukla Patti Tippa Chaura Baragon, Tahsil Padrauna were the subject matter of objections filed by the Applicant and opposite parties Nos. 2 to 7 u/s 240(G) of the UPZA and LR Act—hereinafter called the Act. The case of the Applicant and-opposite parties Nos. 2 to 7 was that before the coming into force of the Act the said plots were their sir and thereafter they became their Bhumidhars. Khedu, the father of opposite-party No. 1 was never in possession of, nor had he any concern with those plots, but his name was wrongly entered against those plots in the revenue papers. The Applicant and opposite parties No. 2 to 7, therefore, prayed for the removal of the name of Khedu and for the withdrawal of the notices issued in respect of those plots. Khedu filed objections to the objections filed by the Applicant and opposite parties Nos. 2 to 7 and his case was that his name was correctly recorded over the said plots and that he was the Adhivasi thereof. The objections of the Applicant and the opposite parties Nos. 2 to 7 were dismissed by the Judicial Officer Padrauna. Thereupon the latter filed an appeal in the court of the Commissioner Gorakhpur and it was contended there on their behalf as issue No.

1 raised a question of title the learned Judicial Officer did not have the jurisdiction u/s 240(H)(2)(b) to decide that issue and it should have been referred to the District Judge. This contention found favour with the learned Addl. Commissioner, Gorakhpur who allowed the appeal and remanded the case to the court below with the direction that he should decide the case afresh in accordance with law and the observations made in his judgment. Pursuant to that order the learned Judicial Officer Padrauna submitted the file to the court of the District Judge, Gorakhpur u/s 240(H)(2)(b) of the Act for a finding on issue No. 1. The learned District Judge transferred the reference to the learned Civil Judge Deoria for disposal. The learned Civil Judge, after considering the evidence adduced by the parties held that the Applicant and opposite parties Nos. 2 to 7 had failed to prove that they were Bhumidhars in possession of the disputed plots. He, therefore, decided the issue against the Applicant and opposite parties Nos. 2 to 7. Feeling dissatisfied with this order the Applicant has preferred the aforesaid revision to this Court.

3. On behalf of the Applicant five grounds have been taken against the order in question. It is unnecessary to, consider all those grounds as the first ground in my opinion is sufficient for the disposal of this revision. That ground reads as follows:

Because the compensation Officer had no jurisdiction to refer the issue of Bhumidhari to the District Judge after the amendment in Section 240(H) of the UP ZA and LR Act.

4. It will be noticed that this ground is the exact reverse of what had been argued on behalf of the Appellant before the Additional Commissioner and it is very doubtful if I would have entertained it if it had not involved a question of jurisdiction. Now in order to appreciate this ground it is necessary to state that u/s 240(H)(2)(b) of the Act, as it stood before its amendment by the UP Land Laws 2nd Amendment Act No. 28 of 1961, where the objection filed u/s 240(G) involved a question of title and such question had not already been determined by a competent court the compensation officer was, except in cases, to which Section 240(HH) applied, required to refer that question for determination to the District Judge and Under Sub-section (3) of Section 240(H) the District Judge was required to determine the question referred to him and his decision thereon was final. We are not concerned with Section 240(HH) in this case. The UP Laws 2nd Amendment Act No. 28 of 1961, however, introduced a change in Sub-section (2)(b) of Section 240(H), in that it substituted the words "court of competent jurisdiction" in place of the words "District Judge" though obviously by inadvertence a corresponding change was not made in Sub-section (3) of Section 240(H) with the result that the words "District Judge" continue to exist in that sub-section till today. I have already held in Mohd. Usman and Ors. v. Syed Mohd. Hashim and Ors. C.R. No. 89 of 1965 decided on 26-4-1968 that the said omission was inadvertent and the word "court of competent jurisdiction" should be read in place of the words "District Judge" in Section 240(3). During the

course of arguments in this case my attention was invited to the decision in *Sadho Saran v. Chedi and Ors.* C.R. No. 382 of 1967 decided on 14-2-1968 in which Singh, J. had taken the same view earlier. As the instant reference was made on 23-11-1963, i.e. long after the UP Land Laws 2nd Amendment Act of 1961, had come into force, the question to be considered is as to which court can be held to be the court of competent jurisdiction for deciding the question of title involved in this case. Sri Radhey Shyam Dwivedi, the Applicant's Learned Counsel contended that the court of competent jurisdiction on the date of the Reference i.e. the 23-11-1963, was the revenue court and not the District Judge as u/s 229(B)(3) of the Act, the question of title fell to be considered by it. In my opinion this contention is fully supported by the language of Section 240(H)(2) (b) and Section 229(B)(3) of the Act. Under the latter section any person claiming to be a Bhumidhar of a holding or any part thereof whether exclusively or jointly with any other person can sue for a declaration of his right as a Bhumidhar in such a holding or part thereof, in the revenue court and no other court. I am, therefore, satisfied that the reference to the District Judge was invalid and neither he, nor the learned Civil Judge to whom the reference was passed on, had any jurisdiction to decide the reference. The result, therefore, is that the order of the learned Civil Judge is set aside and this revision is allowed and the case remanded to the Judicial Officer for disposal in accordance with law and the observations made above. As however no one appeared to contest this revision I make no order as to costs.