
(1992) 01 AHC CK 0105
In the Allahabad High Court
Case No : Second Appeal No. 2245 of 1977

Churhu (Deceased) by LHs.

APPELLANT

Vs

Zulfeqar and Others

RESPONDENT

Date of Decision : 28-01-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10, 100
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 198, 198(4)

Citation : (1992) 2 AWC 1052

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : N.P. Pandey, A.K. Sharma, S.S. Bhatnagar, B.D. Upadhyaya and V.C. Misra, for the Appellant; S.N. Srivastava and Gyan Prakash, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—This is Plaintiff's second appeal u/s 100 of the CPC (for short Code) in a suit for demolition of constructions and for a direction to the Defendants to bring the land in dispute to its original position. The relief for possession was also sought in alternative

2. The suit was filed with the allegation that the Plaintiff was old resident of the village and has got his house and Sahan. The land in dispute was marked with letters ABCD in the plaint map. The Defendants without any authority raised some construction on the land of the Plaintiff hence the necessity to institute the suit arose.

3. The suit was contested by the Defendant Respondents denying the plaint allegations and stating that Plaintiff was not owner of the land in dispute. The land in dispute has been parti and banjar since settlement year of 1880 & 81 and after the enforcement of UP ZA & LR Act 1950 (for short Act) it has vested in the Gaon Sabha in accordance with the provisions of Section 117 and other similar provisions of the Act. The Gaon Sabha settled the land in dispute with the

Defendants by a resolution and granted a lease dated 22-2-1972 and the Defendants have raised constructions over the same since then Requisite lease was also granted by the Gaon Sabha and the same has not been cancelled after following the procedure contemplated u/s 198 of the Act Plaintiff has no right for the relief claimed particularly when the Gaon Sabha was not made party.

4. Trial court decreed the suit, lower appellate court allowed the appeal and dismissed the suit, hence second appeal has been filed.

5. Sri V. C. Mishra, learned Counsel for the Appellant urged that the extracts of Khatauni 1288 F has been erroneously rejected just on the ground that patwari has not issued necessary certificate and that Vakil Commissioner's report being a substantive evidence has not been considered as such by the lower appellate court and even the objections of the Defendants against the report of the Commissioner were rejected.

6. Sri S. N. Srivastava learned Counsel for the Respondents on the other hand urged that the extracts of Khatauni 1288 F filed by the Plaintiff does not bear the certificate of Patwari that it was a correct copy, the procedure to issue the extracts of khatauni was not followed nor it was a correct copy and the extracts of khatauni 1288 F has correctly been rejected. Vakil Commissioner's report was not a substantive evidence unless he was examined in court or the parties consented for the same in view of the provisions of Order 26 (twenty six) Rule 10 (Ten) of the Code. It is open to the Court to take the report into consideration after objection against it has been disposed of in order to assess the substantive evidence produced by the parties in the case. The land in dispute was settled with the Defendants on the basis of lease deed dated 22-2-1992 granted by the Gaon Sabha on payment of Rs. 260/- as premium and that lease deed has not been cancelled by making an application by the Plaintiff u/s 198 (4) of the Act. The Civil Court has no jurisdiction to cancel the lease granted by the Gaon Sabha The Plaintiff has no right or title over the land in dispute. The suit was liable to be dismissed. No. substantial question of law was involved and the second appeal is liable to be dismissed. Reliance was placed on Shimilesh Kumar v. Gaon Sabha Uskar Ghazipur 1977 All 360 FB.

7. Having heard learned Counsel for the parties. I perused the extracts of Khatauni 1288 F and other evidence on record. The extract of Khatauni 12158 F which was sheet anchor of the Plaintiff's case appears to be just a plain paper and there is no certificate appended by Patwari or any other authority as prescribed under rules, to the effect that it is a correct copy of some original documents hence in my opinion same has correctly been rejected by the lower appellate court.

8. Reverting to the Vakil Commissioner's report and its probative value, the provisions of Order 26 Rule 10 of the Code appear to be relevant. The report of a Commissioner is not a substantive evidence. It can, however become a substantive evidence only when the Commissioner has been examined in court.

After the objections against it have been disposed of or in other words the report of the Commissioner has been confirmed, it can be taken into consideration in order to assess the substantive evidence produced by the parties in the case. The report of the Local Investigation Commissioner is not, however, binding on the Court, simply because it has been accepted and admitted or confirmed after objections have been decided. It was open to the lower appellate court to differ from the report or to ignore it while pronouncing the judgment (See Chandrapal v. Roop Ram 1979 ALR 89). The report of the Commissioner has been considered by the lower appellate court, but it has not been relied upon. It has been considered not in isolation but in the light of other evidence on record. The view taken by the lower appellate court was. correct and there was no error much less a substantial error as suggested by Mr. Mishra, the learned Counsel for the Appellant} Other documentary and oral evidence have been considered by the lower appellate court and it has been held that the land in dispute was settled by the Gaon Sabha and the lease deed dated 22-2-1972 was executed in favour of the Defendants.

9. The lease deed has been executed by the Gaon Sabha. The procedure for cancellation of such lease has been provided u/s 198 (4) of the Act. But neither Gaon Sabha or any other person has filed an objection against, the Defendant for cancellation of lease deed. The lease deed has not been cancelled. In view of the dictum laid down in Shimilesh Kumar v. Gaon Sabha Uskar Ghazipur 1977 All. 360 FB Consolidation Authorities or Civil Court shall have no jurisdiction to cancel the lease deed that could have been done only on an application u/s 198 of the Act within the prescribed time. Findings recorded by the lower appellate court are based on appraisal of evidence on record and they are findings of fact and need not be interfered with in the second appeal. No. substantial question of law as required by Section 100 of the Code is involved. The appeal fails and is dismissed. There shall, however, be no order as to costs.