

(1965) 08 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 191 of 1961

Darshan

APPELLANT

Vs

Sheoratan and Others

RESPONDENT

Date of Decision : 03-08-1965

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 177A

Citation : (1965) 35 AWR 544

Hon'ble Judges : S.N. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Singh, J.—This writ petition Under Article 226 of the Constitution arises out of a suit u/s 209 of the UPZA and LR Act. The Plaintiff claiming himself to be the sirdar instituted the suit against the Petitioner and some other treating them as trespassers. The suit of the Plaintiff was decreed by all the three revenue courts and the Petitioner has now come up to this Court challenging the decisions of those courts. Learned Counsel for the Petitioner has submitted the following four points:

1. That the name of the Petitioner was recorded as an occupant in the Khatauni of 1359F therefore, he was entitled to the benefit of Rule 177A of the UPZA and LR Rules and the courts below have wrongly refused to give that benefit to him.
2. That the Board has wrongly not admitted certain documents sought to be produced by the Petitioner without passing any order on the application for the admission of those documents.
3. That according to the findings of the trial court that the Plaintiff was entitled to possession over a major portion of two plots and not all the plots, the suit could not be decreed because of unidentifiability of those plots, and
4. That the Revenue Courts have wrongly relied upon a compromise to which the

Petitioner was not a party.

I have considered all these submissions, but in my opinion none of them have any force.

2. Taking the first submission of the learned Counsel about the applicability of Rule 177A, a bare reading of the said rule shows that it applies to the land of the zamindar wherein there was no tenant, that is to say, it does not apply to the tenants' land. Here is a case where the Plaintiff claimed to be the Sirdar, being previously a tenant of the plots in suit. Rule 177A reads as follows:

177A. All persons recorded in khatauni 1359 F. as occupiers of laud (other than land mentioned in Section 212), when there is no one already recorded in Col. 5 of the khasra who have not acquired the rights of a sirdar in accordance with Section 16, read with Section 19 of the Act, shall-

(a) if the land belongs to any of the classes mentioned in Section 132, be deemed to be Asamis of the Gaon Samaj, liable to pay rent equal to an amount computed at hereditary rates, and

(b) in other cases, be deemed to be sirdars, liable to pay land revenue at an amount equal to the amount computed at hereditary rates.

It shows that if a person is recorded as an occupier in 1359 Fasli in the khatauni of that year, but at the same time there is nobody recorded in column No. 5 of the khasra of that year, it is in that eventuality that the occupier will be deemed to be a sirdar or an Asami as the case may be. The very mention of the words "where there is no one already recorded in column 5 of the khasra" shows that it cannot relate to the tenants' land for invariably tenants are bound to be recorded in column 5 and the trespassers or persons in occupation other than the tenants will be recorded in column 6. It is in case of zamindar's parti or Banjar land where nobody is recorded and the land is brought under cultivation and is occupied by anyone then he gets the benefit of Rule 177A. The facts of the present case clearly show that the land in suit is tenant's land and on the admitted case of the parties no benefit could be had by the Petitioner. The Petitioner wrongly averred in the original affidavit that there was no entry in column No. 5 of the khasra. This averment of the Petitioner was challenged by the opposite parties and thereafter a rejoinder-affidavit was filed wherein the Petitioner admitted that over some of the plots there was an entry in column No. 5 of the khasra but not in respect of all the plots which obviously appears to be a wrong averment. In respect of tenants' land it is not conceivable that there would be no entry in column No. 5. This submission of the learned Counsel, for the reasons given above, cannot be accepted. It is not necessary to mention the finding of the lower appellate court on this point when even accepting the entire submission of the learned Counsel I have found that there is no substance in this submission of the learned Counsel.

3. Now coming to the second submission of the learned Counsel about the

admission of documents Under Order 41 Rule 27 Code of Civil Procedure, it was a discretionary with the Board to accept the documents or to reject them. When the appeal itself was not worthy of being admitted, it was not incumbent on the Board to accept the documents only for the satisfaction of the Petitioner. The main purpose which the Petitioner has shown before me for producing these documents was to show that the decision of the Commissioner about his possession was not correct for in subsequent years his name did find place in the revenue papers. The Commissioner could not be said to be wrong because these papers were not on the record and the finding of the Commissioner was based on the evidence on record. Simply in order to show that the observation of the Commissioner about the possession of the Petitioner was wrong these documents were sought to be filed without any justification and were rightly rejected by the Board or even if the Board did not pass any order, it will be deemed to have been rejected.

4. Coming to the third point about the identifiability of the plots, the opposite party No. 6 has rightly said that this plea had not been raised before the courts below and it was fully justified in refusing to allow this point to be raised. Learned Counsel submitted that this point was necessitated because of the judgment of the trial court in which it had only granted relief to the Plaintiff in respect of a major portion of two plots and not the whole. The question of identifiability can be determined in the Execution Department. The plaintiff has got a relief in respect of the area of which he was the sirdar. On this ground the decision of the revenue courts cannot be challenged.

5. The last point urged was about the compromise to which the Petitioner was not a party. It is true that this compromise cannot bind the Petitioner but at the same time the learned Counsel is not right in saying that this has no evidentiary value. It could be admitted u/s 13 of the Indian Evidence Act and could be taken into consideration by the courts. The revenue courts have not relied on any inadmissible evidence and on a consideration of the evidence on record when they rejected the claim of the Petitioner, they cannot be said to have committed any mistake much less a mistake apparent on the face of the record.

6. This petition lacks force and is hereby dismissed with costs.