
(2016) 10 AHC CK 0063
In the Allahabad High Court
Case No : Writ C. No. 45395 of 2016

Deotanand Mishra

APPELLANT

Vs

Addl. Commissioner (Judicial) Azamgarh Div.

RESPONDENT

Date of Decision : 19-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 133 RD 820

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Abhishek Kumar, Advocate, for the Petitioner; C.S.C., Rajiv Kumar Mishra and Ramesh Chandra Upadhyay, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.- Heard learned counsel for the petitioners, Shri S.C. Verma, learned counsel for the respondent Nos. 3, 4 and 5 in the writ petition Shri Ramesh Chandra Upadhyay, learned counsel for the Gaon Sabha-respondent No. 14 and learned Standing Counsel for the State-respondents.

2. This petition has been filed seeking a writ of certiorari for quashing the order dated 20.11.1991 passed by the respondent No. 2 and the order dated 8.7.2016 passed by the respondent No. 1.

3. The facts of the case briefly stated are that as many as four suits for partition were filed under Section 176 of the UP ZA & LR Act before the Judicial Officer, Bansdih, Ballia. These suits were decreed in terms of a compromise on 13.3.1961.

4. It has been stated that consolidation operations commenced by means of a notification under Section 4 of UP CH Act on 31.5.1975.

5. Restoration applications were filed for setting aside the compromise decree, alleging therein, that the applicants had no knowledge of the proceedings and

never put in appearance therein. They had not entered into any compromise. It appears that an allegation was also raised that no final decree for partition have been drawn up in pursuance of the compromise recorded.

6. The restoration applications were allowed by the Sub-Divisional Officer on 20.11.1991 and consequently, as the unit was under consolidation operations, the suits were ordered to abate under Section 5 of UP CH Act.

7. Against the order, allowing the restoration applications and abating the suits for partition, the petitioner preferred four revisions. During the pendency of the revisions, consolidation operations were closed by issuance of notification under Section 52 of the UP CH Act, on 28.6.1993. The revisions, filed by the petitioners, have been dismissed vide order dated 8.7.2016. Hence this writ petition.

8. The submission of learned counsel for the petitioners is that the impugned orders have been passed mechanically and without application of mind. The second contention is that the compromise decree had been passed long before the commencement of consolidation operations and the same had been duly implemented in the Revenue records. On the start of consolidation operations, the notices issued, at various stages of the consolidation operations, must necessarily have alerted the respondents about the compromise decree. Yet, they failed to prefer any objection under Section 9 of the UP CH Act, therefore, any claim to the contrary is now barred by Section 49 of the UP CH Act.

9. On the merits of the impugned orders, it has been submitted that the restoration applications for setting aside the compromise decree had been filed, more than two decades after it was passed and were not accompanied by any application under Section 5 of the Limitation Act. The courts below have not condoned the delay in filing the same and, therefore, also the impugned orders are vitiated.

10. In rebuttal, Shri S.C. Verma, learned counsel for the respondents has submitted that the compromise decrees were set aside by the Trial Court after the applicant respondents had proved by their oral testimony, that they were not signatories to the compromise nor had put in appearance or filed their vakalatnama in the suit. A finding was also returned that no notice had been issued to the defendants in the suit.

11. He further submits that since the suits were ordered to abate, and subsequently, the consolidation operations have intervened, the final consolidation records, will necessarily prevail.

12. He also submits that since, it is case of the petitioners that the compromise decree had been implemented in the Revenue records prior to start of consolidation operations, the petitioners have no reason to be aggrieved. Their objection to the impugned orders is, in the facts and circumstances, rendered purely academic.

13. I have considered the submissions made by learned counsel for the parties and have perused the record.

14. In view of the submissions made, the first point, which arises for consideration, is whether the respondents were necessarily required to file an objection under Section 9-A (2) of the UP CH Act and the effect of no such objection having been filed by them.

15. The contention of learned counsel for the petitioners is that this objection should have necessarily been filed.

16. I do not agree with this contention of learned counsel for the petitioner because on the start of consolidation operations a decree of the Revenue Court was in existence. Even if, an objection had been filed, the consolidation authorities would have been bound by the said judgment and decree, even if it was ex parte or fraudulent.

17. The respondents, if aggrieved, necessarily had to proceed against the compromise decree. This was precisely what was done by them. They filed applications for setting aside the compromise decree on the ground that they were not parties to the compromise and the same was fraudulent.

18. It is settled law that a restoration application does not abate on the start of the consolidation operations because no question of right, title and interest in land is involved in a restoration application. Once, a restoration application is allowed, the proceedings, wherein the question right, title and interest of the parties, is involved, revive and at this stage, if, the unit is under consolidation operations, the said proceedings are liable to abate under Section 5 (2) of the UP CH Act. This is precisely what has transpired in the case at hand.

19. Contention of learned counsel for the petitioners that an objection under Section 9 of the UP CH Act should necessarily have been filed, therefore, cannot be accepted and is hereby repelled. For the same reason, it cannot be accepted that merely because no objection under Section 9-A (2) was filed by the respondents, they would be deemed to have acquiesced to the compromise decree.

20. Insofar as the plea of learned counsel for the petitioners that the application for setting aside the compromise decree should have been accompanied by an application, under Section 5 of the Limitation Act, is concerned, perusal of the said application reveals that it has been stated therein that the applicants acquired knowledge of the compromise decree on 21.12.1980. The application itself was filed on 23.12.1980. It is, therefore, clear that the application was within time from the date of knowledge.

21. I, therefore, do not find any illegality in Trial Court having allowed the same, without condoning the delay, as in the facts and circumstances alleged and accepted by the Courts below, the application for setting aside the compromise decree had been filed within the period of limitation, if computed from the date

of knowledge.

22. Besides, in view of the findings returned in the impugned orders, no equity lies in favour of the petitioners, which is an additional ground for repelling the plea raised by the petitioners.

23. I also do not find any merit in the submission of learned counsel for the petitioners that the impugned orders have been passed mechanically or without application of mind.

24. In my considered opinion, the orders are reasoned orders, which cannot be held to be mechanical or non-speaking.

25. As regards, the submission of learned counsel for the respondent that the writ petition is purely academic, inasmuch as, the suit for partition had been ordered to abate, and since, consolidation operations have already drawn to a close, the final Revenue entries existing upon close of consolidation operations shall prevail, has substance.

26. The contention of learned counsel for the petitioners is that the respondents are seeking to get Amaldaramad of the impugned orders made in the Revenue records, which will create unnecessary complications. The petitioners would be satisfied, in case, directions are issued that the Amaldaramad of the impugned orders is not incorporated in the Revenue records.

27. This prayer, made by learned counsel for the petitioners, cannot be accepted. Every order passed by the Revenue Courts is required to be incorporated in the Revenue records. The Writ Court cannot issue directions that their Amaldaramad be not made as any such direction would be contrary to the legal mandate. The Writ Court cannot issue directions, which are contrary to law.

28. In view of the foregoing discussion, I find substance in the contentions of learned counsel for the respondent that the instant writ petition has purely academic connotations. No dispute of any consequence is required to be determined therein.

29. In view of the above, the writ petition lacks force and is, accordingly, dismissed.