
(1991) 01 AHC CK 0026

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8377 of 1990

Devi Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 10-01-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 145, 17, 21, 22
Transfer of Property Act, 1882 — Section 41, 43
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (1991) 1 AWC 225 : (1991) RD 113

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

Bench : Single Bench

Advocate : K.B.L. Gaur, for the Appellant; S.N. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

B.L. Yadav, J.—The present petition under Article 226 of the Constitution of India is directed against the order dated 20-3-90 passed by the Hoard of Revenue dismissing the second appeal tiled by the petitions, and the order dated 8-7-87 passed by the Additional Commissioner in a suit u/s 229-B of the UP ZA and LR Act filed by Mohan Lai, Defendant no 4 and Jagannath, Defendant no 5 agamst Ram Chandra and others for declaration as bhumidars alleging that Deep Chand, father of Sureshi and Smt. Savitri died in 1975 and Sureshi and Smt. Savitii both were married at the time of his death, hence they could Dot inherit, rather the Plaintiffs being sons of Tugal real brother of Deep Chand and sons of Ram Swaroop, the other brother of Deep Chand and Ram Chand the fifth brother inherited the plots of bhumidhar.

2. The suit was contested by Smt. Savitri, Respondent No. 14, daughter of Deep Chand that she was unnamed and minor at the time when Deep Chand died. Consequently being unmarried daughter she was inherited the plot from Deep Chand, her father and thereafter executed the sale deed. She executed the sale

deed in favour of Ram Swaroop Singh Defendant No. 6 and the vendees also executed another sale deed in favour of other Defendants, and in any case as Smt. Savitri being minor and unmarried was recorded over the plots, hence the vendees were entitled to the provisions of Sections 41 and 43 of the Transfer of Property Act. The trial court by order dated 8-4-87 dismissed the suit (Annexure-2). The Plaintiffs preferred an appeal before the Additional Commissioner which was allowed by Judgment dated 8-7-88. Petitioners second appeal was dismissed by the order dated 20-3-90.

3. Sri K.B.L. Gaur, learned Counsel for the Petitioner urged that the statement of Jagannath, Respondent No. 5, the son of Tugal, real brother of Mohan Lai, the Plaintiff, made a statement in mutation proceedings to the effect that Smt. Savitri was minor and unmarried at the time when Deep Chand died in 1975. A true copy of the statement has been filed as Annexure 2 to the petition. But that statement of Jagannath, real brother of the Plaintiff was not considered which was an important piece of evidence. The other important documentary evidence including the rent receipts of 1387 F, (sic) slips, order dated 3-10-77 in proceedings u/s 145 and the order dated 5-7-77 passed by the Civil Judge, Roorkee etc. were not considered. The findings have been recorded by Respondent Nos. 1 and 2 in complete disregard of the important documentary and oral evidence on record and consequently those findings are not binding. Reliance was placed on *Bishwanath Prasad and Others Vs. Dwarka Prasad and Others*, *Bharat Singh and Another Vs. Bhagirathi*, and *Sonawati and Others Vs. Sri Ram and Another*, .

4. Sri S.N. Srivastava, on the other hand, urged that all the material evidence on record has been considered and as the statement was made by Jagannath in mutation proceedings, hence that has no probative value and the findings recorded by Respondent Nos. 1 and 2 are finding of facts.

5. Having heard the learned Counsel for the parties the point that falls for determination is whether the findings recorded by the first appellate court in disregard of material evidence on record including admission of a party would be binding or not? Suffice it to say that the statement contained in Annexure-2, the statement of Jagannath, even though was made in mutation proceedings, but nevertheless it happens to be an admission of a party to the case and it need not have been put in cross-examination to Jagannath, as he was not examined in the suit giving rise to the present petition. The admission in view of the provisions of Sections 17 and 22 of the Evidence Act are binding on the party making them. Even though the same is not the conclusive proof of the matter admitted and even if the person making the statement or admission was not examined, that is immaterial. Their statement need not be put in the cross-examination to the witness. In the present case Jagannath, the maker of the admission was not examined by the Plaintiff, hence there was no possibility of that statement being certified to him. Further as the admission was clear, consequently, there was no option but to consider the same.

6. In *Bharat Singh v. Smt. Bhagirathi* (supra), it was held that an admission to be binding against the person making it must be clear. Such admissions are substantial evidence admissible in evidence irrespective of the fact whether the party making them was examined or not or in case the parties are examined whether he was confronted with that statement or not.

7. In, *Vishwanath Prasad v. Dwarika Pd.* (supra), it was held that there was a distinction between the party who is the author of a prior statement and a witness who is examined and is sought to be discredited by use of his prior statement. In the former case an admission by a party is substantive evidence if it fulfils the requirements of Section 21; in the latter case a prior statement is used to discredit the credibility of the witness and does not become substantive evidence. In the former there is no necessary requirement of the statement containing the admission having to be put to the party because it is evidence *pro prio vigore*.

8. In the present case as the statement of Jagannath was clear and it was an admission, the same need not be put to him while he could have been in the witness box. As a matter of fact Jagannath was not examined in the suit, but nevertheless his admission fulfils the requirement of Section 21 of the Evidence Act. It was not necessary in my opinion that the admission Annexure-2 must have been put in cross-examination either to the witness making them in case he was examined or otherwise. As such the admission was substantive evidence, hence it can be relied upon and taken into account even though the person making them has not been examined. An admission may not be a conclusive proof of the matter admitted as an admission can be explained also. But in the present case the admission could not have been explained as the person making them was not examined before the trial court. Such admission was admissible in evidence irrespective of the fact whether the party making them appeared in the witness box or not and whether such party has appeared in the witness box and was confronted with those statement in the case. The admission has been proved. To contradict a witness, the procedure u/s 145 of the Evidence Act is to be followed. This is with a view to contradict or discredit a witness and a statement after its use. The weight to be attached to an admission is different from its use as admissible evidence. Apart from admission there are other number of documentary evidence which were considered by the trial court but were not considered by the Additional Commissioner.

9. In *Sonawati and Others Vs. Sri Ram and Another*, , it was held that in case a material evidence has been ignored, the findings recorded either by the first appellate court or the last court of fact would not be binding. In the instant case also as the admission of Jagannath was ignored and there were other evidence which could have been considered, but were not considered, consequently I am of the opinion that the findings recorded by Respondent Nos. I and 2 in disregard of the material important documentary and oral evidence on record is not binding.

10. In view of the premises aforesaid, the petition succeeds and is allowed. The

impugned orders dated 20-3-90 and 8-7-87 are hereby quashed. The result is that the case is remanded back to Additional Commissioner, who shall admit the appeal to its original number and decide the same in the light of the observations made above, within a period of three month from the date a certified copy of this judgment is produced before him. There shall, however, be no order as to costs.