

(1982) 02 AHC CK 0079

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2586 of 1977

Ganesh Pd.

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 09-02-1982

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209

Citation : (1982) AWC 391

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

Bench : Single Bench

Advocate : G.N. Verma and R.R.K. Trivedi, for the Appellant; S.D. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Singh, J.—This writ petition is directed against the order of the Board of Revenue dated 22nd Feb. 1977 dismissing the Second Appeal of the Plaintiff-Petitioner.

2. The facts of the case in brief are that a suit was filed by the Plaintiff-Petitioner against Defendants-Respondent Nos. 3 and 4 u/s 209 U.P. Zamindari Abolition and Land Reforms Act for the ejectment on the allegation that the Plaintiff was hereditary tenant of the land in dispute before the enforcement of U.P. Zamindari Abolition and Land Reforms Act and has become Sirdar. The Defendants trespassed in the year 1370F and are liable for ejectment. The suit was contested by the Defendant-Respondents on the allegation that the land in dispute was let out to them by the Zamindar through a sale deed dated 16-5-1981 (?). They were in cultivatory possession from 1359F and, therefore, they are the sirdars of the land in dispute. Hence, they are not liable for ejectment. The suit was decreed by the trial court but on appeal filed by the Defendants, the decree of the trial court was set aside and the suit was dismissed. The Petitioner preferred a Second Appeal, which was dismissed by the Board of Revenue. The Petitioner has challenged the aforesaid orders of the

appellate courts in the present writ petition before this Court.

3. It has been contended by the learned Counsel for the Petitioner that the alleged lease deed relied upon by the Defendant-Respondents was ferzi. Further, the Petitioner was tenant-in-chief of the land in dispute. Therefore, the lease, if any, amounts to superimposition of tenancy and it cannot create any right in favour of Defendants-Respondents.

4. According to the case of the Petitioner, he was originally hereditary tenant of the land in dispute and the Defendants trespassed in the year 1370F but according to the case of the Respondents, they were in possession in the year 1359F and they led evidence to the effect that they have been in possession for the last 19-20 years. The trial court believed the case of the Plaintiff but the lower appellate court recorded a finding that the Respondents were in possession right from 1359F and also accepted the case of the Defendants that they have been in possession for the last 19-20 years. The second appellate court has also affirmed this finding and held that the Plaintiff-Appellant lost his possession in the year 1359F and Respondents acquired possession in the same year with the consent of the Zamindar. It has been further held that the Plaintiff-Appellant did not, however, lead any evidence as to how he acquired tenancy rights nor he filed any lease in his favour. With these findings, the Board of Revenue dismissed the appeal of the Petitioner.

5. The learned Counsel for the Petitioner contended that the Petitioner has been proved to be tenure-holder of the land in dispute as he was recorded from 1359F with a duration of 7 years. According to him, the finding recorded by the Board of Revenue is erroneous in law.

6. From the perusal of the order of the Board of Revenue, it appears that the finding was recorded on the facts and circumstances of the case and the observation of Board of Revenue to the effect that:

...Plaintiff-Appellant did not however, produced any evidence to show how he acquired the tenancy rights. He did not file any lease in his favour...

has not been shown to be wrong by the learned Counsel for the Petitioner except relying on the Khatauni entry of 1359F. There is no presumption of correctness of the revenue entry of 1359F and it is also well settled that mere revenue entry does not confer tenancy rights. The tenancy can be acquired by contract or prescription or by any other mode provided by law. Therefore, in absence of any such evidence of contract of tenancy or payment of rent or any other mode, it cannot be said that the Board of Revenue has committed any mistake. The learned Counsel for the Petitioner has not been able to point out any such error in the order of the Board of Revenue which may justify interference in the writ jurisdiction.

7. In the result, I find no force in the writ petition, which is accordingly dismissed without any order as to costs.