

(2010) 02 AHC CK 0230
In the Allahabad High Court
Case No : Writ Petition No. 3981 (M/S) of 1982

Ghanshyam and others

APPELLANT

Vs

Board of Revenue and others

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331(4)

Citation : (2010) 02 AHC CK 0230

Hon'ble Judges : Shri Narayan Shukla, J

Final Decision : Allowed

Judgement

Shri Narayan Shukla, J.—As per office report dated 27th of August, 2009, the service of notice to the opposite parties 2 to 4 is deemed sufficient under Chapter VIII Rule 12 of the Rules of the Court, 1952, but none appears on their behalf.

2. Heard Mr.S.K.Mehrotra, learned counsel for the petitioners as well as learned Standing Counsel.

3. The indisputed facts of the case are that the petitioners" filed a suit for partition of the land in dispute before the court of Sub Divisional Officer. During the course of hearing opposite parties 2 to 4 came with a case of compromise allegedly entered into between the parties in Panchayat. However, the petitioners denied the same. The Sarpanch, who is the head of the Nayay Panchayat, was also examined, who also denied from any compromise entered into between the parties. However, on the basis of the compromise, the Sub Divisional Officer dismissed the suit. Being aggrieved with which the petitioners filed an appeal before the Additional Commissioner, who allowed the same. Then the opposite parties filed a Second appeal before the Board of Revenue, who decided the same by means of order dated 21st of May, 1982.

4. Without raising any factual dispute at this stage Mr.S.K.Mehrotra, learned counsel for the petitioners raised a sole question of law and challenged the order

passed in the Second appeal by the Board of Revenue on the ground that the Board of Revenue decided the Second Appeal without framing substantial question of law, whereas Section 33(1) (4) of the U.P.Z.A. & L.R.Act, 1950 provides that the second appeal shall lie on any grounds specified in Section 100 of the Civil Procedure Code, 1908 from the final order or decree passed in an appeal under subsection (3) of the authority, if not categorized against it in Column 6 of the Schedule aforesaid. He further submits that this court in the case of Ram Sanehi (deceased) of LR's versus Board of Revenue, U.P., Allahabad and others, reported in 1993 (2) A.W.C., page 822 has held that the Board of Revenue committed no error of law in holding that the Second appeal can be heard and decided only on substantial question of law.

5. Upon perusal of the order passed by the Board of Revenue in the Second appeal, I do not find any substantial question of law framed by the Board of Revenue, therefore, I am of the view that the matter requires a fresh decision by the Board of Revenue after framing the substantial question of law in the matter, therefore, I hereby quash the order impugned dated 21st of May, 1982 and remand the matter to the Board of Revenue to decide the Second Appeal afresh after framing substantial questions of law and noticing to the opposite parties 2 to 4.

6. In the result the writ petition is allowed.