

(2010) 08 AHC CK 0367
In the Allahabad High Court

Guru Nam Singh and Others

APPELLANT

Vs

Addl. Commissioner (J) and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 229(B), 333

Citation : (2010) 08 AHC CK 0367

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—Heard Sri Pramod Kumar Sinha learned Counsel for the petitioners and learned Standing Counsel who appears on behalf of the respondents.

2. The petitioners are aggrieved by the order dated 15.7.2005 passed by the Additional Commissioner (Judicial), Moradabad Division, Moradabad (annexure 5 to the writ petition) whereby the Revision No. 1 of 2003/04 u/s 333 of U.P.Z.A. & L.R. Act Guru Nam Singh and Ors. v. Lukhvendra and Ors. has been dismissed as also against the order dated 15.1.2002 passed by the Sub Divisional Magistrate, Swar, District Rampur (annexure 4 to the writ petition) whereby in pursuance of the preliminary decree dated 19.4.1973 Kurra of the parties have been defined after accepting the report of the Lekhpal on which no objections were filed by any of the parties to that decree.

3. Sri Pramod Kumar Sinha learned Counsel for the petitioner has submitted that the revisional court has illegally dismissed the revision of the petitioners for the reason that no notice was required to be given to the petitioners at the time when the Kurras were made out and as such the finding recorded contrary thereto is required to be set aside.

4. The second submission is that the plot in question being Plot No. 64-M area

6.50 was not a part of the proceedings wherein the preliminary decree dated 19.4.1973 had been made and therefore while preparing the Kurra the Lekhpal has submitted a wrong report and it has been illegally accepted by the executing court in Case No. 13 of 2001/02 u/s 176 of the U.P.Z.A. & L.R. Act.

5. Sri Sinha has further submitted that the aforesaid plea of the petitioners gains support from a decree passed by the S.D.M. Swar, District Rampur u/s 229(B) of the U.P.Z.A. & L.R. Act in Case No. 31 of 1974/75 Ujagar Singh v. Diwan Singh and Ors. He has referred to the said order filed as (annexure 1 to the writ petition) to state that u/s 229(B) the petitioner's grandfather was held to be owner in possession of the land in question which was willed to the petitioners by their grandfather. He states that the plot in question in those proceedings was Plot No. 64 and therefore it could not be included in preparation of Kurra in pursuance of the preliminary decree dated 19.4.1973.

6. Having considered the submission of learned Counsel for the petitioner and perused the record the fact that a preliminary decree dated 19.4.1973 was prepared in proceedings whereby the property was partitioned amongst the owners has not been disputed. The only dispute on that decree by the petitioners is that Plot No. 64-M area 6.59 was not a part of the property so as to include it in the preparation of Kurra. This submission is based purely on the order dated 19.5.1975 passed in Case No. 31 of 1974/75 u/s 229(B) of the U.P.Z.A. & L.R. Act whereby it has been held that the petitioner's grandfather Ujagar Singh was declared owner of the land and it was willed to his grand sons i.e. the petitioners. The aforesaid Suit under 229(B) was admittedly filed in the year 1974/75 i.e. after the preliminary decree dated 19.4.1973.

7. A perusal of the judgment in the case u/s 229(B) indicates that it is based on the fact that Ujagar Singh the grandfather of the petitioner was in possession of the plot in question for more than 14 years i.e. even prior to the preliminary decree dated 19.4.1973.

8. The aforesaid decision admittedly was not passed after all the members of the family who were parties in the partition suit were impleaded. Consequently when the preliminary decree was of 1973 and the Suit u/s 229(B) was filed by Ujagar Singh grandfather of the petitioners thereafter it was not his case that the property was not a part of the family or even that it was not included in the properties mentioned in the preliminary decree dated 19.4.1973. An exparte decision against the other family members obtained u/s 229(B) would not extinguish the share of such co-owners. Moreover the order passed u/s 229(B) is a declaration only against those who were party in the proceedings. Consequently when the decree of 1973 has included the Plot No. 64-M area 6.59 as the property for which partition has been affected the reliance placed on subsequent decision u/s 229(B) filed by the grandfather of the petitioners but not against the other family members who were parties in the partition suit cannot give right to the petitioners to claim that the Plot No. 64-M was not a part of the preliminary decree dated 19.4.1973.

9. The other submission that no notice was given to the petitioners of Suit No. 13 of 2001/02 u/s 176 of the U.P.Z.A. & L.R. Act is concerned the said suit was for the purpose of division of bhumidhari in pursuance of the preliminary decree dated 19.4.1973. In the preliminary decree of 1973 the petitioners were minors and during life time of their father it was only the successor in interest of Ujagar Singh namely the father of the petitioners who could get his share by virtue thereof.

9. These proceedings were u/s 176 of the Act. The Section itself is quoted here under:

176. Holding of a bhumidhar divisible- A bhumidhar may sue for (division) of his holding.

(2) To every such suit the (Gaon Sabha) concerned shall be made a party.

10. Consequently the court issued notice to the father of the petitioners and not to the petitioners. Hence the finding recorded in the revisional order that notice was not required to be given to the petitioners who were not in the picture at the time when the preliminary decree dated 19.4.1973 was passed and a division of the bhumidhari was sought by making Kurras in the Case No. 13 of 2001/02 appears to be perfectly justified since in so far as the land in question is concerned even the grandfather of the petitioners had not willed it to the petitioners at the time when said decree of 1973 was prepared. Therefore in proceedings for division of bhumidhari as per the partition made in the preliminary decree dated 19.4.1973 no notice was required to be given to the petitioners and notice to the father of the petitioners i.e. the son of Ujagar Singh was quite sufficient. The finding of the revisional court on that score cannot be faulted and is affirmed.

11. For the aforesaid reasons there is no merit in this writ petition. It is accordingly dismissed.

12. No order is passed as to costs.