
(2016) 07 AHC CK 0123

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 31977 of 2016

Haider Ali Kazim @ Asad Kazim

APPELLANT

Vs

Mohammad Iqbal Mahmood Kazim

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Citation : (2016) 7 ADJ 683 : (2016) 5 AllWC 4999 : (2016) 118 ALR 712 :
(2016) 132 RD 533

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Javed Husain Khan, Gulrej Khan and W.H. Khan, Advocates, for the Appellant; C.S.C, Diwakar Singh and Surendra Bahadur Singh, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri W.H. Khan, Senior Advocate, assisted by Sri Gulrej Khan, for the petitioner and Sri Gajendra Pratap, Senior Advocate, assisted by Sri Surendra Bahadur Singh, for the contesting respondents.

2. This writ petition has been filed against the order of Member, Board of Revenue, U.P., dated 30.06.2016, allowing the revision and directing Trial Court to implead Haider Ali Kazim as defendant in the suit and frame an issue as to whether Haider Ali Kazim @ Asad Kazim is one person or not; in the suit under Section 229-B of U.P. Zamindari Abolition And Land Reforms Act, 1950 (hereinafter referred to as the "Act") and for mandamus for directing Assistant Collector to decide the suit expeditiously.

3. Mohammad Iqbal Mahmood Kazim (respondent-1) filed a suit (registered as Suit No. 134/155) under Section 229-B of the Act, for declaring that various sale deeds executed by Shamim Kazim (father of defendant-1) as null and void, declaring the plaintiff as "bhumidhar with transferable right", recording his name

in revenue records and for deleting name of Asad Kazim from the land recorded in khata 00026 of village Raxwara, pargana Karari, district Kaushambi. The plaintiff took plea that land in dispute was ancestral property. In family settlement, it came in share of Asad Kazim and recorded in his name. Asad Kazim died in the age of 11 years and was inherited by the plaintiff. Shamim Kazim (father of defendant-1) executed various sale deeds of the land in dispute on the basis of forged Power of Attorney of Asad Kazim. His transferees also executed sale deed. These sale deeds are null and void.

4. The petitioner filed an application dated 03.11.2012, for his impleadment as the defendant in the suit. The impleadment application was contested by the plaintiff, who filed his objection and stated that Haider Ali Kazim was his younger brother and he had no objection in his impleadment in the suit. But by adding his alias names as Asad Kazim, he wants to grab the land of Asam Kazim, who had already died as such he cannot be impleaded as Haider Ali Kazim @ Asad Kazim.

5. Assistant Collector, by order dated 10.12.2012, allowed the impleadment application. Respondent-1 filed a Revision (registered as Revision No. 40 of 2012-2013) from the aforesaid order. Board of Revenue U.P. allowed the revision by order dated 13.11.2014, giving liberty to the plaintiff to file a recall application before Assistant Collector, who was directed to pass fresh order after hearing the parties on impleadment application. Thereafter, the plaintiff filed an application dated 16.12.2014 before Assistant Collector to recall the order dated 10.12.2012. Assistant Collector by his order dated 31.01.2015 again allowed the impleadment application. The plaintiff again filed another application dated 10.02.2015 for recalling order dated 31.01.2015, and decide impleadment application after giving opportunity of evidence to the parties. Trial Court, after hearing the parties, by order dated 25.04.2016 held that the issue which are being raised by the plaintiff are matter of evidence, which can be decided after taking evidence of the parties and not at the time of deciding impleadment application. On these findings, recall application was rejected.

6. The plaintiff filed an revision (registered as Revision No. 760 of 2016) from the aforesaid order. Member, Board of Revenue, U.P., by order dated 30.06.2016, allowed the revision and directed Trial Court to implead Haider Ali Kazim as defendant in the suit and frame an Issue as to whether Haider Ali Kazim @ Asad Kazim is one person or not? Hence this writ petition has been filed.

7. The counsel for the petitioner submitted that order dated 10.12.2012 has become final. Assistant Collector has not committed any illegality in rejecting recall application filed by the plaintiff by order dated 31.01.2015. Subsequent recall application was also not maintainable. Assistant Collector rightly rejected subsequent recall application, by order dated 25.04.2016. There was no jurisdictional error, either in allowing impleadment application or in rejecting successive recall applications. Board of Revenue, U.P. has illegally interfered with the discretion exercised by Trial Court. Suit has been malafide filed to grab the property of the petitioner, who is living at abroad, showing him as dead. In the

notice under Section 80 C.P.C., existence of Asad Kazim has been denied and Haider Ali Kazim was shown as "not heard". In childhood, at the time of "Aqeeqa" ceremony, the name of the petitioner was given as Asad Kazim as such the father of the petitioner executed sale deed dated 09.10.1956 of the disputed land in the name of Asad Kazim. Due to which, his name was recorded as Asad Kazim in revenue record. However in school records and other places, his name was recorded as Haider Ali Kazim. There are litigation in this respect in Civil Court and in Criminal Court also. Impugned order is illegal and liable to be set aside. He placed reliance upon judgment of Supreme Court on Razia Begum v. Sahebzadi Anwar Begum, AIR 1958 SC 886, in which it has been held that question of addition of a party in the suit a question of judicial discretion, which has to be exercised in view of all the facts and circumstances of the case.

8. I have considered the arguments of the counsels for the parties and examined the record. Supreme Court in Udit Narain Singh Malpaharia v. Addl. Member, Board of Revenue, Bihar, AIR 1963 SC 786, held that a party whose interests are directly affected is, therefore, a necessary party. In U.P. Awas Evam Vikas Parishad v. Gyan Devi, (1995) 2 SCC 326, held that the law is well settled that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the proceeding.

9. A perusal of the plaint shows that the plaintiff has shown Haider Ali Kazim and Asad Kazim as his separate brothers and stated that Asad Kazim had died in the age of 11 years. According to the petitioner, Haider Ali Kazim and Asad Kazim is one and same person. Board of Revenue, U.P., by order dated 30.06.2016, directed Trial Court to implead Haider Ali Kazim as the defendant in the suit and frame an Issue as to whether Haider Ali Kazim @ Asad Kazim is one person or not? By the order of Board of Revenue, U.P., the petitioner will be impleaded as the defendant in the suit and will have every opportunity to contest the suit and prove that Haider Ali Kazim and Asad Kazim is one and same person. In effect, impleadment application has been allowed and controversy between the parties, in respect of existence of Asad Kazim was directed to be decided by framing issue and taking evidence of the parties. Thus no prejudice is being caused to the petitioner, by the impugned order so as to warrant interference by this Court, in exercise of writ jurisdiction.

10. So far as the arguments that recall applications were not maintainable, is concerned, Board of Revenue U.P. allowed Revision No. 40 of 2012-2013, of the plaintiff, by order dated 13.11.2014 and gave liberty to him to file a recall application before Assistant Collector, who was directed to pass fresh order after hearing the parties in impleadment application. The petitioner has not filed copy of the order dated 13.11.2014. After rejection of recall application, the plaintiff filed fresh revision, which has been decided by impugned order.

11. In view of the aforesaid discussion, there is no illegality in order of Board of

Revenue, U.P. The writ petition has no merit, it is dismissed.