

(1981) 05 AHC CK 0008

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 3789 of 1977

Harbans and Another

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 22-05-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

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

Citation : (1981) AWC 539 : (1981) RD 51

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : Sripat Narain Singh, for the Appellant; S.K. Subedar and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—By means of this writ petition the Plaintiffs-Petitioners have prayed for quashing the judgments of the second appellate Court and the first appellate Court and have prayed for reminding the case to the First Appellate Court to decide the claims of the parties on merits.

2. The Plaintiffs-Petitioners had filed a suit for ejectment u/s 209 of the UP ZA and LR Act (hereinafter referred to as the Act) against the contesting Defendant-opposite party Gur Charan Singh alias Gur Bachan Singh on the allegations that they were Sirdars of the land in suit and that the Defendant had no concern with the same and was a trespasser, hence he was liable to ejectment. In the suit, State of U.P. was also impleaded and was a necessary party.

3. The claim of the Plaintiff-Petitioner was resisted by the contesting defendant on the allegations that he was Sirdar of the disputed land and that the Plaintiffs had no concern with it. U.P. State had also contested the claim of the Plaintiffs and had denied the title and light of the Plaintiffs in the disputed land and had asserted that notice u/s 80 CPC was not properly given and that the suit was not properly valued.

4. On the pleadings of the parties a number of issues were struck by the trial Court and the trial Court gave judgment against the Plaintiffs-Petitioners and found that the Plaintiffs had not succeeded in proving their claim of Sirdari right in the disputed land and the Defendant had also failed to prove his claim of Sirdari right in the disputed land. However, the trial Court had held that the notice u/s 80 CPC given by one of the Plaintiffs was sufficient notice (See Annexure "A" attached with the writ petition). Aggrieved by the judgment of the trial Court the Plaintiffs-Petitioners had preferred an appeal which was dismissed by the appellate Court on the ground that the notice u/s 80 CPC was not a proper notice as one of the Plaintiffs had not served the notice u/s 80 CPC (See Annexure "B" attached with the writ petition). Thereafter the Plaintiffs-Petitioners preferred a second appeal which was also dismissed by the learned Member in charge of the Division through his judgment dated 3-10-1969 (See Annexure "C" attached with the writ petition). Against the judgment of the second appellate Court a review petition was also filed which was also dismissed through the judgment dated 31-8-1977 on record (See Annexure "D" attached with the writ petition). Now the Plaintiffs-Petitioners have approached this Court under Article 226 of the Constitution.

5. The learned Counsel for the Petitioners has contended before me that one of the Plaintiffs could bring a suit u/s 209 of the Act against the Defendant trespasser hence the notice on behalf of one of the Plaintiffs u/s 80 CPC was a proper notice and the first appellate Court as well as the second appellate Court have patently erred in dismissing the Plaintiff's suit due to alleged defective notice u/s 80 C. P. C.

6. The learned Counsel for the contesting opposite party has tried to refute the contentions raised on behalf of the Plaintiffs-Petitioners and has submitted that the appellate courts have correctly dismissed the Plaintiff's suit as the notice u/s 80 CPC on behalf of one of the Plaintiffs was bad in law. In rejoinder the learned Counsel for the Petitioners has reiterated the contentions and has emphasised that since the suit on behalf of one of the tenure-holders u/s 209 of the Act was maintainable it was obligatory on the part of the appellate courts to have examined the claim of the Plaintiffs on merits.

7. In my opinion, one of the tenure-holders can bring a suit against a trespasser u/s 209 of the Act. In this view of the matter the dismissal of the plaintiffs' suit due to improper notice u/s 80 CPC in the circumstances of the present case appears to me patently erroneous. In a suit u/s 209 of the Act the real contest is between the Plaintiffs and the contesting Defendants. State of U.P. is a necessary party due to statutory provision. The relief sought in the suit is mainly against a trespasser but it cannot be lost sight of that in a suit for ejectment, declaration of plaintiffs' title to the disputed land is involved. The finding on the question of plaintiffs' title in a suit u/s 209 of the Act will be binding between the parties hence the contention of the learned Counsel for the Petitioners that in the circumstances of the present case notice u/s 80 CPC on behalf of one of the

Plaintiffs was proper notice is not acceptable to me. To my mind, it was proper for the Plaintiffs to have apprised the State of U.P. with correct facts that the notice giver along with other was tenure holder of the disputed land. In this view of the matter I find that the notice u/s 80 CPC was a defective notice and the State of U.P. was within its powers to challenge the claim of the Plaintiffs by asserting that one of the Plaintiffs was not alone tenure-holder.

8. In *The State of Madras Vs. C.P. Agencies and Another*, their Lordships of the Supreme Court have observed that the object of Section 80 is manifestly to give the Government or the public officer sufficient notice of the case which is proposed to be brought against it or him so that it or he may consider the position and decide for itself or himself whether the claim of the Plaintiff should be accepted or resisted." Their Lordships of the Supreme Court have further quoted the following observation in Paragraph 6 of their judgment:

We are constrained to observe ... divorced from common sense.

9. In *Beohar Rajendra Sinha and Others Vs. State of Madhya Pradesh and Others*, their Lordships of the Supreme Court have made the following observation in para 4 of their judgment:

The object of the notice u/s 80.... If on a reasonable reading of the notice the Plaintiff is shown to have given the information which the statute requires him to give, any incidental defects or irregularities should be ignored.

10. In the present case I think that the notice given u/s 80 of the CPC to the State of U.P. was not a proper notice as the notice was not given on behalf of both the Plaintiffs but it cannot be ignored that one of the Plaintiffs can bring a suit u/s 209 of the Act against the Defendant- trespasser. In the present case even if the plaint is treated as filed by one of the Plaintiffs it is to be seen whether the suit can be dismissed due to defective notice to the State of U.P. Since the contesting Defendant is a trespasser in a suit u/s 209 of the Act and the State of U.P. is only a statutorily necessary party the defect in the notice is not such which may entail the dismissal of the suit. Since the claim of the Plaintiffs has been negated by the first appellate Court and the second appellate Court only on the ground that the notice u/s 80 of the CPC was not a proper notice, I think their judgments deserve to be quashed. The first appellate Court should examine the claim of the Plaintiffs in the light of the pleadings and evidence on record whether the Plaintiffs can get a decree of ejectment against the contesting Defendant in the present case or not. Due to defect in notice u/s 80 CPC the plaint may be treated on behalf of one of the Plaintiffs who had given the notice and it should be examined whether a decree against the Defendant trespasser can be passed. Since the appellate Court and the second appellate Court have negated the plaintiffs' claim on technical ground, I think it proper to quash the judgment of the second appellate Court and that of the first appellate Court and ask the first appellate Court to examine the claim of the Plaintiffs in the light of the observations made above as well as in accordance

with law ignoring unimportant defect in the notice u/s 80 of the CPC to the State of U.P. in the circumstances of the present case.

11. According to the views of the Board of Revenue U.P. as well as this Court a tenant-holder can bring a suit for ejectment against a trespasser hence to cut short the litigation between the parties I think it proper to ask the first appellate Court to examine the question whether any of the Plaintiffs can get a decree for ejectment against the Defendant-trespasser in the circumstances of the present case. Since the appellate courts have failed to examine the controversy between the parties on merits their judgments need be quashed.

12. In the result, the writ petition succeeds and the impugned judgments of the second appellate Court and that of the first appellate Court are hereby quashed and the first appellate Court is directed to decide the claims of the Plaintiffs-petitioners in accordance with law and in the light of the observations made above. Parties are directed to bear their own costs.