

(1988) 11 AHC CK 0065
In the Allahabad High Court
Case No : Second Civil Appeal No. 760 of 1978

Hari Har Prasad and Others	Vs	APPELLANT
Brij Bahadur Singh and Others		RESPONDENT

Date of Decision : 15-11-1988

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 49
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (1989) 1 AWC 680

Hon'ble Judges : D.S. Bajpai, J

Bench : Single Bench

Advocate : Vishal Singh and R.P. Singh, for the Appellant; H.S. Sahai, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Bajpai, J.—This is a Plaintiffs' second appeal against the judgment and decree dated 29-5-1978 passed by the District Judge, Gonda dismissing Plaintiffs' appeal being Civil Appeal No. 120 of 1977 confirming the judgment and decree dated 30th August, 1977 by which Original Suit No. 14 of 1968 filed by the Plaintiffs was dismissed with costs.

2. Brief facts giving rise to the second appeal are that the Plaintiffs filed a suit for permanent injunction for restraining the Defendants from disturbing the Plaintiffs possession on the land in suit detailed fully at the foot of the plaint. On the pleadings of the parties the trial Court framed as many as ten issues. Relevant issues were issues 2 and 10. Issue No. 2 was to the effect as to whether the Plaintiffs were owner of land in dispute while issue No. 10 was to the effect as to whether the land in dispute i.e. plot No. 2527 was an abadi land or was being used for agricultural purposes.

3. The trial Court recorded a finding after examination of oral and documentary evidence in detail that the Plaintiffs having failed to adduce any evidence whatsoever, he could not be held to be the owner of the land in suit. On issue

No. 10 the trial Court went on, to record a finding to the effect that the suit was barred u/s 49 of the CH Act. This finding was apparently recorded after holding that the land in suit was not an abadi land, but an agricultural land, since it was used for agricultural purposes; in pursuance to the primary object of agriculture i.e. for khaliyan, for tying catties and for fixing cattle pegs and such other purposes. A finding was recorded on examination of plethora of documentary evidence which included khasra extracts and khatauni extracts of various years placed on record by the Plaintiffs as also the Defendants. On a consideration of evidence the trial Court dismissed the suit with costs. Concurring with the findings of the trial Court, the lower appellate Court affirmed its judgment and decree.

4. I have heard the learned Counsel for the parties and perused the record. Learned Counsel for the Appellants has contended that the crux of the matter was that the suit of the Plaintiffs-Appellants was not barred u/s 49 of the UP CH Act since consolidation operations started in 1963 and the village denotified after completion (?) 1963 itself. Learned Counsel further submitted that it was on 15-4-68 that he filed an application for correction of the consolidation scheme in which though the land in suit was shown to be an abadi land, it had been wrongly entered in the name of the Defendants and that only after the concerned authority had rejected the application that he approached the Civil Court by way of the suit giving rise to the present second appeal. Learned Counsel submitted that in any case the order having been passed rejecting the application for correction, he had no other forum but to take recourse to file a suit in the Civil Court. I am unable to uphold the submission that the suit could be filed and that the Plaintiffs had no other remedy but to approach the Civil Court and in any case Section 49 of the CH Act was a bar to the filing of a suit since this Court in the case of *Alauddin v. Hamid Khan* 1970 RD 160 pursuant to the case of *Jagdeo v. Lauhar* 1970 AWR 532 held that even if a land is wrongly recorded as agricultural land in consolidation proceedings the entry in revenue papers, as long as not corrected, no suit could be filed on the basis of this wrong entry to correct and that Section 49 of the CH Act barred it." Learned Counsel for the Respondents placed reliance on a Full Bench case in *Dalel v. Baroo* 1963 AWR 230 in which it has been held as follows:

....there is no escape from the conclusion that Section 49 bars the jurisdiction of the Civil Court to take cognizance of a suit involving the question of title to grove land, as that would be a matter in regard to which an application could be filed under the provisions of the Act viz. Section 12.

On the above reasoning the Court held that the Plaintiffs suit was barred by Section 49 of the CH Act. In this case also the contention of the learned Counsel cannot be sustained, since otherwise also even if it be assumed, that there is no evidence to indicate that the village had been denotified, the Plaintiffs had a remedy before appropriate Courts other than the Civil Court for the correction of any wrong entry in the revenue records. Subject matter of declaration about a

title Under Sub-clause (2) of Section 143 of the U.P. Zamindari Abolition and Land Reforms Act has to be obtained in a Court other than a Civil Court as here-in-above indicated. This aspect of the matter also does not support the Appellants' contention that there was no bar to filing of suit u/s 49 of the CH Act. I do not find any misreading of evidence much less any perversity in appraising the evidence. The concurrent findings of fact cannot be disturbed in this second appeal and evidence reappraised.

5. For the reasons recorded above the appeal is dismissed. The judgments and decree of the Courts below are affirmed. No order is made as to costs.