
(2006) 01 AHC CK 0073

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5407 of 2004

Hasmat Ali and Anr.

APPELLANT

Vs

Zakir Husain & Anr.

RESPONDENT

Date of Decision : 02-01-2006

Acts Referred:

Citation : (2006) 01 AHC CK 0073

Hon'ble Judges : Janardan Sahai, J

Final Decision : Dismissed

Judgement

Janardan Sahai, J.—A suit under Section 176 of the U.P.Z.A. and L.R. Act was filed by the respondent Zakir Husain claiming 1/4th share in the property in dispute. The defendants in the suit were the petitioners Hashmat and Saukat and respondent No. 2, Rashid Khan. In the plaint it was alleged that there has been a previous partition between the parties and the parties are in possession on the basis of that partition. The plaintiff claimed that the kuras be made in the manner provided in the map annexed to the plaint (Annexure 1 to the writ petition) in which every party has been given a share in each of the Khasras No. 8/1, 760, 880Ka and 767. The suit was decreed for 1/4th share. There is no dispute about the share. In the final decree the kuras were prepared by the Lekhpal. Objections were filed by the defendants. The trial Court passed a final decree by its order dated 188 2000 in terms of the kuras prepared by the Lekhpal and dismissed the objections, filed by the defendants. Aggrieved, the petitioners preferred a revision before the Additional Commissioner, Meerut Division, Meerut, who by his order dated 24 12002, allowed the revision and directed that Kuras be prepared afresh. Against that order a revision was filed by the plaintiff Zakir Husain before the Board of Revenue. The said revision has been allowed by the Board of Revenue by its order dated 1012 2003 and the Board of Revenue has maintained the order of the trial Court.

2. I have heard Counsel for the petitioner Sri M. Islam and Sri Rohit Agarwal for the respondents.

3. It is submitted by Sri M. Islam that it was the admitted case in the plaint that there has been a previous partition between the parties and they have been in possession of their respective shares. Sri Islam also placed reliance on the site plan annexed to the plaint referred to above and submitted that kuras ought to be prepared in the manner claimed by the plaintiff. The Board of Revenue has held that the kuras prepared by the Lekhpal which were otherwise according to rules be maintained. Sri Islam has taken a stand in this writ petition that as the plaintiff is claiming that kuras be prepared in the manner provided in the site plan annexed to the plaint, referred to above, the petitioners defendants are agreeable to have the same prepared accordingly Counsel for respondents has no objection in such a division and in the remand of the case to the trial Court for fresh allotment of the kuras according to the site plan of the plaint.

4. Accordingly, in view of the stand taken in this writ petition by the learned Counsel, the writ petition is allowed. The order of the Board of Revenue dated 10122003, dated 2412002 of the Additional Commissioner, Meerut Division, Meerut and dated 188 2000 of the Up Ziladhikari, Garh Mukteshwar, Ghaziabad are set aside and the case is remanded to the trial Court for fresh preparation of the kuras according to the site plan in the plaint which is being added on the basis of statement made by the Counsel for the parties recorded in this order.