
(2014) 04 AHC CK 0133
In the Allahabad High Court
Case No : Writ-B No. 10608 of 1996

Jahid Hussain

APPELLANT

Vs

Ibrahim

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 27(2), 42A, 52(2)

Citation : (2014) 123 RD 585

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

Bench : Single Bench

Advocate : K.R. Sirohi, A.A. Ansari, A.R. Ansari, R.R. Ansari and S.P. Ansari, Advocate for the Appellant; D.K. Tiwari, M.M. Lal Srivastava, M.M.L. Singh, Manoj Srivastava, R.C. Sinha, R.C. Srivastava, Rachna Srivastava, Rajeev Singh, Rajiv Gupta, S.K. Khare, S.K. Singh, V.K. Singh and Vinod Sinha, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri A.A. Ansari for the petitioners and Sri Vinod Sinha for the contesting respondents. This writ petition has been filed against the order of Revenue Court dated 21/24.9.1991, dismissing the suit u/s 229B of U.P. Act No. 1 of 1951 and orders dated 30.10.1992 and 14.3.1996, dismissing the appeals of the petitioner from the aforesaid orders.

2. The petitioner filed a suit (registered as Suit No. 82 of 1990) u/s 229B of U.P. Act No. 1 of 1951, for recording his name as bhumidhar with transferable right over plot No. 134 (area 3-9-18 bighas) situated in village Chilkana, pargana Sultanpur, district Saharanpur. It has been stated that the land in dispute was the property of the petitioner. During consolidation, it was recorded in his name and a chak was carved out in his name, but by making a forgery, the name of Jainath was recorded over it by the alleged order dated 8.2.1967. On the basis of that forged entry, Jainath executed a sale-deed dated 12.8.1971 of the land in dispute, in favour of defendant-1.

3. The suit was contested by the defendants on various grounds in their written statements. The suit was tried by Additional Sub-Divisional Officer, who by the judgment dated 31.9.1991, held that the plaintiff has not given any notice u/s 80 C.P.C. to State of U.P., as such, the suit was not maintainable. He further held that in view of provision of section 52(2) of U.P. Consolidation of Holdings Act, 1953, the petitioner has remedy for getting the entry corrected by consolidation authorities and the suit is not maintainable. On these findings, the suit was dismissed. The appeal filed by the petitioner against the aforesaid order was also dismissed by Additional Commissioner by order dated 30.10.1992 and Second Appeal was dismissed by Board of Revenue by order dated 14.3.1996. Hence this writ petition has been filed.

4. I have heard Counsel for the parties and examined the record. Section 27(2) of U.P. Consolidation of Holdings Act, 1953 provides that all entries in the record of right prepared in accordance with the provisions of sub-section 1 shall be presumed to be true, until contrary is proved. Therefore, entries made in final consolidation record can be proved to be incorrect in the proceedings under U.P. Land Revenue Act, 1901 or under U.P. Act No. 1 of 1951. In this case there is allegation that the name of Jainath was entered by making forgery in consolidation record. On such allegations, the suit was maintainable and the plaintiff is entitled to prove that final consolidation records have been forged. Suit u/s 229-B of U.P. Act No. 1 of 1951 was maintainable.

5. The Courts below held that the petitioner has remedy before the consolidation authorities for getting the forged entry corrected in view of provisions u/s 52(2) of U.P. Consolidation of Holdings Act, 1953 as such suit is not maintainable. Section 52(2) of the Act, 1953 has no application in this case. Forged entry can be corrected by consolidation authorities in exercise of powers u/s 42A of the Act, 1953. But remedy available under Act, 1953 does not bar the remedy of suit u/s 229-B of U.P. Act No. 1 of 1951. When remedy is available in different statutes and no bar has been created under any of such statute, then the remedy can be availed by the aggrieved person in any of the statute. The suit filed by such person under one statute cannot be rejected on the ground that the remedy is also available in other statute. In such circumstances, the order of Revenue Court dismissing the suit of the petitioner on the ground that remedy is available under the provisions of U.P. Consolidation of Holdings Act, 1953, is illegal and liable to be set aside.

6. So far as dismissal of the suit on the ground that notice u/s 80 C.P.C. was not served, is concerned, the plaintiff in paragraph-8 of the plaint has stated that notice u/s 80 C.P.C. was served upon State of U.P. In the written the respondents have not specifically denied this fact. State of U.P. has not filed any written statement. Trial Court did not frame any issue nor gave opportunity of evidence to the parties. It is only in the final judgment, this point was raised and decided against the petitioner.

7. In order to appreciate this controversy, section 80 C.P.C. is quoted below:

80. Notice.--(1) Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of--

(a) in the case of a suit against the Central Government, except where it relates to a Railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to a Railway, the General Manager of that Railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;

(c) in the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice--

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.

8. Supreme Court in State of A.P. and Others Vs. Pioneer Builders, A.P., , held knowing fully well about non-issue of notice u/s 80 C.P.C. the State had not raised such a plea in the written statement in the suit and, therefore, deemed to have waived the objection. It has been further held that Amendment Act No. 104 of 1976, mitigates the rigours of sub-section (1) and empowers the Court to allow a person to institute a suit without serving any notice under sub-section (1) in case it finds that the suit is for the purpose of obtaining an urgent and immediate relief against the Government or a public officer. But, the Court cannot grant relief under the sub-section unless a reasonable opportunity is given to the Government or public officer to show cause in respect of the relief prayed for. The proviso to the said sub-section enjoins that in case the Court is of the opinion that no urgent and immediate relief should be granted, it shall return the plaint for presentation to it after complying with the requirements of sub-section (1).

9. Thus, plea regarding notice u/s 80 C.P.C. was not served was available to State of U.P. If State of U.P. does not raise any objection in this respect, the plea is deemed to have been waived. In any case, after 1976 amendment, the suit cannot be dismissed for not giving notice u/s 80 C.P.C. At the most the Court can return the plaint for serving notice u/s 80 C.P.C. and file suit again after expiry of two months period after service of notice.

10. In the result, the writ petition succeeds and is allowed. The order of Additional Sub-Divisional Officer dated 21/24.9.1991 and order of Additional Commissioner dated 30.10.1992 and order of Board of Revenue U.P. dated 14.3.1996, are quashed. The matter is remanded to Sub-Divisional Officer to decide the suit afresh, in accordance with law, as well as observations made above, after hearing the parties concerned. Since the matter is pending for a long time, Sub-Divisional Officer may proceed with the suit expeditiously and conclude the trial within a period of one year, from the date of producing the certified copy of this order. It is made clear that this Court has not gone into the merit of the case and it shall be decided on the basis of evidence of the parties.