
(1981) 05 AHC CK 0035
In the Allahabad High Court
Case No : Second Appeal No. 1921 of 1974

Jaoardeo Shukla and others

APPELLANT

Vs

Chandradeo Singh and others

RESPONDENT

Date of Decision : 11-05-1981

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4(2), 5

Citation : (1981) 05 AHC CK 0035

Hon'ble Judges : V.K.Mehrotra, J

Final Decision : Allowed

Judgement

V. K. Mehrotra, J.

The plaintiffrespondents filed the suit, giving rise to the present second appeal, on the allegation that they were bhumidhars of plot No. 374 which was in the nature of a grove. To the west of this plot lay the house of the defendantappellants. The defendantappellants, it is alleged, encroached over a portion of plot No. 374 by building a dalan. Further, the defendants were threatening to fix a pumping set in the well of the plaintiffs on this plot. With the other allegations made in the plaint, we are not concerned now. The plaintiffs, inter alia, prayed that the defendants be restrained by means of a permanent injunction from fitting any pumping set in the well or taking any electrical line across plot No. 374. Also that the defendants be required to hand over possession of the portion of plot No. 374 which had been encroached upon by them after removal of that part of the dalan which was located over it.

The defence that the appellants took primarily was that plot No. 374 was not the bhumidhari of the plaintiffs and that they were themselves in possession over a part thereof for a long time and had perfected their title to it by adverse possession. Some other pleas were also taken.

The trial Court framed the first issue in the case to be "whether the plaintiffs are the bhumidhars of plot No. 374 in suit" and third issue as "whether the

defendants have become owners by adverse possession of the property in suit. If so, its effect ?" Under the first issue, the trial Court concluded that the plaintiffs were bhumidhars of plot No. 374 while under issue No. 3 it came to the conclusion that the defendants had failed to establish that they were in hostile possession over the land in suit, to the knowledge of the plaintiffs, and had thus become owners by adverse possession, it decreed the suit in part. It directed demolition of that portion of the disputed dalan of the defendants which lay on the plaintiffs' plot No 374 and also restrained the defendants from installing pumping set or making any change in the well situate in plot No. 374. This well, under issue No. 2 framed by the trial Court, had been found by it to belong to the plaintiffs. The decree of the trial Court was affirmed by the lower appellate Court, without any modifications. Consequently, the defendants came to this Court in the present second appeal which was admitted by this Court to hearing on September 17, 1974.

On March 30, 1979 the defendants filed application No 745 of 1979 alleging therein that during the pendency of the second appeal, the area to which the suit related became subject to a notification under Section 4 of the U. P. Consolidation of Holdings Act and as such it was prayed that the suit as well as the appeal be ordered to be abated under Section 5 (2) (a) of that Act. The averment about the issuance of the notification under Section 4 of the Act has not been controverted on behalf of the plaintiff respondents. The question that needs determination is whether on the assertion contained in the plaint and the relief sought by the plaintiff respondents in the suit, the suit and the proceedings thereafter deserve to be directed to have abated. Considerable arguments have been advanced by the learned counsel for the parties about the applicability of the provisions of Section 5 (2) (a) of the Act to a controversy of the present nature. The submission on behalf of the appellants is that before the appellants can be held entitled to the relief sought by them in the suit it has to be determined as to whether they are the bhumidhars of plot No. 374 or not. It is argued that in case the conclusion on this question is against the plaintiffs, they would not be entitled to seek the relief either of injunction or of possession over a portion of plot No. 374 over which stands a part of the dalan of the defendants. As such, proceeds the submission, it has to be held that the suit out of which the present appeal arises, was in respect of declaration of rights or interest in land lying in an area which is covered by the notification under Section 4 of the Act. It, therefore, has to be abated.

On behalf of the plaintiff respondents, on the contrary, it has been stressed that the relief sought in the suit being for an injunction and for demolition of constructions, was not such which could be granted by the consolidation Courts so that irrespective of the fact that the grant of relief to the plaintiffs involved a declaration of rights or interest in plot No. 374 which is covered by a notification under Section 4 (2) of the Act, the suit or the proceedings arising therefrom and pending in the Court in the present second appeal cannot be directed to be abated.

In Jagarnath Shukla v, Sita Ram Pande and others 1969 A.L.J. 768, a Division Bench of this Court observed (at page 772) that "the language of the amended Section 5 (2) is very wide. It provides for the abatement of suits not only for declaration of rights or interests in any land", but also for suits in respect of declaration of rights or interests in any land. In consolidation proceedings, the question whether a sale deed is binding or not arises during the course of adjudication upon the rights of parties in the land.....In substance, the suit is in respect of declaration of rights or interests in the land..... The form of relief however, is, to our mind, immaterial if the consolidation authorities hold that the sale deed has been obtained by fraud etc and is inoperative, the party will get substantially all the relief which he wants. He will be declared to be still the tenure holder of the plots and will be entitled to a chak in lieu of them. Therefore the mere fact that the consolidation authorities cannot grant relief in the form in which the Civil Court can, does not affect the question. The suit remains a suit in respect of the declaration or adjudication of the rights of parties in the land."

In M. M. Raza v. Hasan Faza A.I.R. 1978 S.C. 1398 it was held by the Supreme Court that in a suit for recovery of possession of land which comes to be included in an area under Section 4 of the Act, the matter becomes cognizable by consolidation authorities where the parties to the suit claim rights to it under the Zamindari Abolition and Reforms Act. Such a suit shall stand abated under Section 5 (2) (a) of the Act.

In Hasrat and another v. Harindwar and another 1973 A.L.J. 278, a Single Judge of this Court took the view that where the consolidation authorities are not competent, to go into the real controversy involved in the suit, it cannot be abated, and that in a suit seeking mandatory injunction for demolition of constructions, the only effective relief would be to direct their removal of the constructions, so that the relief being beyond the competence of the consolidation authorities that suit could not be abated, and must be decided by the Civil Court. In that case, the plaintiffs had filed a suit for mandatory injunction directing the defendants to remove the disputed constructions raised by them in the plaintiffs land. The plaintiffs claimed to be the bhumidhars of the disputed plot whereas the defendants denied the plaintiffs' title and claimed that the constructions in dispute were old and had been raised on their own sehan land. They did not claim any title in respect of the plots.

In Banwari Lal and others v. Tuhi Ram and others 1979 A.L.J. 675 a Bench of the Court held that in a suit where the relief sought was an injunction and the plaintiff wanted an encroachment to be removed and possession over the site of encroachment restored, it was not a suit for possession simpliciter or of the kind which necessitated adjudication of rights before the relief could be granted. The suit was held not liable to be abated. In that case, the Bench found that title had already been adjudicated by the revenue Court as well as the consolidation authorities and the cause of action for the suit was the alleged trespass by the

defendant. The plaintiff had sought relief upon the decree of the revenue Court and did not desire adjudication of rights in relation to the grove plot.

In *Mukteshwari Prasad Tewari and another v. Ram Wall and others* 1965 A.L.J. 1137, the question as to whether Civil Court could take cognizance of a suit for possession of agricultural land and for demolition of unauthorised construction standing thereon or of a suit merely for demolition of unauthorised construction made on an agricultural land was answered by saying that a Civil Court could not take cognizance of a suit for possession of agricultural land and for demolition of unauthorised construction standing thereon but could take cognizance of the suit merely for demolition of unauthorised construction made on the agricultural land. In that case, the Bench was considering the question of jurisdiction in such matters being of the Civil Court or of revenue Court on account of the provisions of the U. P. Zamindari Abolition and Land Reforms Act. It was observed by the Bench (at page 1139) that "in a case where the plaintiff merely asks for demolition, the Court may have further to see whether the relief for demolition is really the relief which the plaintiff claims or the plaintiff has framed his relief as one for demolition when he really wants possession over the land. If upon the allegations in the plaint, the Court comes to the conclusion that the plaintiff really wants possession over the land and the relief for demolition has been so framed merely to oust the purview of the Civil Court, even then the suit would be cognizable by the revenue Court and would be barred from the jurisdiction of the Civil Court. But in a case where it is clear that the relief for demolition alone will satisfy the plaintiff and that is his real grievance, in such a case the suit will lie in the Civil Court and the revenue Court will have no jurisdiction to entertain such a suit."

Dealing with the provisions of Section 5 of the Act, after its amendment in the year 1966, the Supreme Court observed in *Ram Adhar Singh v. Ramroop Singh and others* A.I.R. 1968 S.C. 714 (at page 716) that "the expression "every suit and proceeding in respect of declaration of rights or interest in any land..." are comprehensive enough to take in suits for possession of land, because, before a claim for possession is accepted, the Court will have necessarily to adjudicate upon the rights or interest of the plaintiff, in respect of the disputed property, taking into account the claim of the opposite party. Therefore, in our opinion, the suit, instituted by the respondent, is covered by the amended Section 5 of the Act."

It has been noticed earlier that the various assertions in the plaint relate to the plaintiffs' claim that they are the bhumidhars of the plot in dispute over which is located the disputed well. The stand taken by the defendants/appellants is that the plaintiffs are not the bhuoiiidhars and further that they are entitled to the disputed portion of the land also under Section 9 of U. P. Act No. 1 of 1951. On the pleadings of the parties, it has to be held that the basic issue between them relates to a declaration about their right or interest in the land in suit. The relief of possession, after demolition of the offending portion of the dalan, could only

be granted after holding that the plaintiffs were the bhumidhars of the plot and that the defendants had no right therein. Similarly, grant of relief of injunction claimed by the plaintiffs was dependent squarely upon the conclusion that they were the bhumidhars of the plot. The determination of the question as to whether the plaintiffs were bhumidhars or not as claimed by them has been left to the authorities constituted under the Consolidation of Holdings Act, for admittedly the plot lies in an area which is covered by a notification issued under Section 4 (2) of the Act. In these circumstances, notwithstanding the form in which the relief is couched in the plaint, the conclusion is inescapable that the principal relief sought by the plaintiffs is one of declaration of their interest in the plot in suit as bhumidhars. Such a suit, according to the clear provisions of Section 5, has to be abated even while pending in a second appeal without, of course, prejudice to the rights of the parties to seek determination of their claim proceedings under the U. P. Consolidation of Holdings Act. Learned counsel for the defendantappellants has stated that according to his instruction, the matter relating to the plot in dispute has already been dealt with by the Consolidation Officer in the first instance and is now pending in an appeal.

As a consequence of the discussion aforesaid, it is declared that the suit, out of which the present second appeal arises, stands abated along with the appeal itself.