

(2016) 09 AHC CK 0217
In the Allahabad High Court
Case No : Writ-C No. 30672 of 2016.

**Kallu Khan And 6 Others - Petitioners @HASH Commissioner Chitrakoot
Dham Division Banda And 3 Others**

Date of Decision : 12-09-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Constitution of India, 1950 — Article 226

Citation : (2016) 133 RD 375

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Ram Kishore Pandey, Advocate, for the Petitioner; C.S.C., Anuj Kumar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J. - Heard Sri Ram Kishore Pandey, learned counsel for the petitioners, Sri Anuj Kumar for the respondent no.4, Gaon Sabha and learned Standing Counsel for the State-respondents.

2. This writ petition has been filed seeking a writ of certiorari for quashing the orders dated 29.03.2016 and 19.05.2016 passed by the respondent nos.2 and 1 respectively.

3. It appears that the father of the petitioners filed a suit No.9 of 2009-10 under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act seeking a declaration regarding plot no.2992/2 area 3 bigha situated in village Ladaka Purwa, Pargana and District Banda. This plot was recorded in the revenue records as Bihad. It was the plaintiff case that the land in suit was sirdar land of the plaintiff, but due to a mistake, the same was recorded as "bihad" in 1384 Fasali and therefore the suit.

4. It appears that the Trial Court vide judgment and order dated 05.04.2010 decreed the suit holding the plaintiff to be bhumidhar thereof.

5. It is alleged that the original plaintiff died and thereafter his heirs, the

petitioners were mutated over the plot in question in the year 2010 itself.

6. On 28.03.2016, an application under Order 9, Rule 13 CPC along with a delay condonation application was filed by the State/Gaon Sabha. This application was allowed on 29.03.2016. The said order dated 29.03.2016 has been affirmed, when the revision filed by the petitioner was dismissed on 19.05.2016.

7. The contention of the learned counsel for the petitioner is that the judgment and decree passed by the Trial Court was set aside without any notice or information to the petitioners. There was no affidavit in support of the delay condonation application. The original plaintiff was dead and no notice were issued to the petitioners, the recorded tenure holders duly mutated on the death of their father, the original plaintiff.

8. It has additionally been submitted that the State had filed its written statement in the suit and had been heard prior to the passing of the judgment and decree. The same was therefore not ex parte and could not have been recalled. On the grounds mentioned above, the petitioners preferred a revision which has been dismissed, hence this writ petition.

9. Even before this Court, the submissions noticed above have been reiterated by learned counsel for the petitioners.

10. In view of the submissions made, the record of the suit was summoned and the same was produced and has been perused.

11. Perusal of the original record of the suit reveals that summons were issued to the Gaon Sabha and State of U.P. fixing 15.10.2009. Written statement filed on behalf of State of U.P. is also available on record. It appears to have been filed on 28.10.2009. It appears that on the very same day as many as six issues were framed in the suit.

12. It appears from the perusal of the record that the plaintiff filed certain documents namely the Khataunis of 1360-61F, 1375-77 Fasali, 1378-80 Fasli, 1381-83 Fasali. Subsequently, on 03.11.2009 an application was filed that these documents were not readable and therefore the original record pertaining to 1359 F-1384F and 1386F be summoned.

13. It appears that on this application, relevant records were summoned and the Assistant Record Keeper appeared with these records on 25.11.2009 and his statement was recorded. Thereafter the suit was decreed vide judgment dated 05.04.2010. This judgment and decree was sought to be recalled at the instance of the State/Gaon Sabha on the ground that it was ex parte and this recall application has been allowed and the order affirmed by the Revisional Court.

14. In this connection, it would be relevant to note that the order sheet of 29.08.2010, the date on which, the suit is said to have been heard finally, records that only the plaintiff was present. The order sheet is categorical in this regard. Even the final order passed does not mention that either the counsel for

the Gaon Sabha or the State was actually heard.

15. After hearing the plaintiff, the order sheet indicates that 05.04.2010 was fixed for delivery of judgment, on which date, the order has actually been passed.

16. It would be relevant to note that 6 issues have been framed consequent to the written statement filed by the State of U.P. Although, the Trial Court by its order dated 05.04.2010 decreed the suit, it did not refer to any of the issues framed. This order does not refer to any submissions made on behalf of the State or the Gaon Sabha. It is therefore clear that the order dated 05.04.2010 is clearly ex parte against the Gaon Sabha and the State of U.P.

17. Besides this order does not fulfil the requirements of the judgment as provided under the Civil Procedure Code. The case being decided, was a regular title suit under Section 229-B of the Act. The judgment therefore, was necessarily required to comply with the provisions of the Civil Procedure Code and a finding on each and every issues framed was necessarily required to be recorded. No such exercise has been done. The issues framed have not yet been referred to in the judgment of 05.04.2010. On the contrary in the last line, the Trial Court observed that it is a case of correction of papers.

18. In view of the above discussion and since this Court is of the firm view that the order dated 05.04.2010 was ex parte, I do not consider it a fit case for interference on technicalities.

19. The contention of learned counsel for the petitioner is that the State was heard and that the statement of the Revenue Records Keeper had been recorded at the instance of the State is not borne out from the record. As noticed above, the Revenue Record Keeper was summoned on the application filed by the plaintiff and when he appeared with the record his statement was recorded. It therefore cannot be said that the Revenue Record Keeper was produced on behalf of the State or the Gaon Sabha. He having been summoned on the application of the plaintiff, his deposition would necessarily be termed as one on behalf of the plaintiff.

20. The above noted hearing illegalities and irregularities in the judgment dated 05.04.2010 is sought to be blast over on the ground of technicalities first that the judgment was recalled without notice to the plaintiff or his heirs and that the decree was not condoned and that the order was against a dead person.

21. These grounds raised may have merit, but this Court in exercise of equity jurisdiction under Article 226 of the Constitution of India does not propose to interfere with the impugned orders on such technicalities. These technicalities may render the orders impugned, illegal yet this Court refuses to set aside these so called illegal orders because any interference would amount to restoring an equally illegal order passed by the Trial Court which as already noticed herein in above was clearly ex parte against the State and the Gaon Sabha it also failed to comply with the provisions of the Civil Procedure Code and therefore cannot be

termed a judgment in the eye of law.

22. Accordingly and for the reasons given above, the writ petition merits no interference. It is therefore dismissed.

23. The parties may appear before the Trial Court and contest the matter on its merits. The original records of Suit No.9 of 2009-10 produced by learned Standing Counsel be returned for its transmission to the Trial Court.