

(2017) 01 AHC CK 0060
In the Allahabad High Court
Case No : Writ B. No. 3408 of 2017

Kamal Singh

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 131

Citation : (2017) 4 ADJ 456 : (2017) 135 RD 122

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Madan Mohan and Prem Sagar Verma, Advocates, for the Petitioner;
C.S.C. and Ashish Kumar Srivastava, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.— Heard learned Counsel for the petitioners and learned Standing Counsel for the State-respondents.

2. The instant writ petition arises out of a suit for partition and is directed against the order dated 22.07.2016 passed by the Additional Commissioner and the order dated 21.09.2016 passed by the Board of Revenue.

3. It appears that the trial Court passed an order accepting the kurras, submitted by the Lekhpal, for preparation of the final decree in the suit for partition.

4. Against this order, an appeal was preferred before the Additional Commissioner. The Additional Commissioner allowed the appeal vide order date 22.07.2016 and remitted the matter back to the Trial Court for preparing the kurras in such a manner that all the parties were allotted land abutting the road.

5. The consequential revision filed by the petitioner, against this order, has been dismissed holding that it is directed against an order of remand and since the matter has been remitted back, the parties shall have every opportunity of making their submissions before the Trial Court, where the matter has been

remanded back.

6. The contention of learned counsel for the petitioner is two fold.

7. The first submission is that in fact, the order passed by the Commissioner was not an order of remand because only a ministerial act is to be performed, in pursuance of his order. Therefore, technically, an order, which is to be complied with without taking any evidence of the parties, is not an order of remand.

8. This Court is unable to accept this contention.

9. The matter has been remitted back to the trial Court for preparing a final decree in accordance with the directions contained in the appellate order. It necessarily follows, that once the matter is before the trial Court, it will have to call for a fresh report from the Lekhpal regarding Kurras, to be prepared in pursuance of the directions contained in the appellate order itself. Thereafter considering the objections, if any, that may be filed, the trial Court will have to pass a final decree in the partition suit.

10. It is therefore, to be held that the order of the appellate Court is clearly an order of remand. The first contention of learned counsel for the petitioner is without merit and is repelled.

11. The second contention raised is that the appellate has carved out a new case. He submits that the kurras had been prepared as per the possession of the parties and therefore, it was in accordance with law, especially in view of Rule 131 (1) (e) of the U.P. Zamindari Abolition and Land Reforms Act.

12. Rule 131 (1) (e) and the other sub rules, lay down the principles to be observed, while preparing the final decree. These provisions have to be read as a whole. One Sub-rule cannot be read in exclusion of the other sub-rules.

13. Moreover, the various clauses of sub Rule 1 of Rule 131, are guidelines, to be borne in mind for adjusting the equities between the parties, while drawing up the final partition decree. Even Clause-c of Rule 131(1) is equally important and reads as follows -

"(c) As far as possible no party shall be given all the inferior or all the superior classes of land"

14. It is this provision which has been ordered to be enforced by the appellate Court because it has directed that all the parties be allotted land in the final decree, abutting the road.

15. It is not in issue that road side land is invariably more valuable as compared to land which is away from the road.

16. Under the circumstances, I am not convinced by the argument that the appellate authority had carved out a new case, not pleaded by the parties and decided the suit on its basis.

17. It is settled law that no party is required to plead the law. The directions that have been issued by the appellate Court, are directions, which are in consonance with specific legal provisions, which were, in any case, not required to be pleaded.

18. It is also sought to be contended that a defence was taken in this suit for partition that a family settlement had already taken place between the parties and they were in possession as per this family settlement.

19. It is also submitted that a categorical finding in this regard has been returned by the trial Court.

20. Even this contention, in my considered opinion, cannot be accepted. In case, the trial Court had recorded a finding that a family partition had already taken place between the parties, there was no justification for passing a fresh partition decree.

21. The trial Court has however, proceeded to pass a final decree for partition. Moreover, this Court does not find any finding in the order of the trial Court, as is sought to be conveyed by counsel for the petitioner. The only finding recorded is that the kurras have been prepared as per the possession of the parties. This by itself was not enough. The enquires between the parties were necessarily required to be adjusted, in accordance with the legal provisions, provided under the Rules and this is precisely what has been done by the appellate Court.

22. In view of the aforesaid discussion, this writ petition is found to be devoid of merits and is dismissed.