

(2011) 11 AHC CK 0305
In the Allahabad High Court
Case No : Writ B No. 64500 of 2008

Khushi Ram

APPELLANT

Vs

Board of Revenue And Others

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (2011) 11 AHC CK 0305

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Amreshwar Pratap Sahi,J.

1. Heard learned counsel for the petitioner Sri Dharam Vir Singh, Sri V.S. Rajpoot for the respondent no. 3, learned Standing Counsel for the respondent Nos. 1 and 2 and the learned counsel for the Gaon Sabha respondent no. 4.

2. A suit for partition was filed u/s 176 of the U.P. Z.A. & L.R. Act, 1950 between the petitioner and the father of the respondent no. 3. The said suit was decreed on the basis of an alleged compromise and the decree was drawn up on 17.8.2002.

3. Soran Singh @ Sobran Singh is stated to have been murdered on 14.4.2004. The respondent no. 3 being his son, moved a restoration application in the said suit alleging that no notice had ever been served on his father nor had he entered into any compromise and that his signatures in the shape of Sobran Singh @ Soran Singh are forged. This application was moved on 16.5.2007. The restoration application was allowed on 27.8.2007 and the judgment and decree of the year 2002 was set aside.

4. The petitioner preferred a revision against the same which has been dismissed by the learned Member, Board of Revenue holding that since the order was ex-

parte, no prejudice has been caused to the petitioner and the petitioner can still raise his objections. It was further held that the order of restoration being interlocutory in nature the revision was not maintainable.

5. Learned counsel for the petitioner submits that the order passed by the Sub Divisional Officer restoring the suit is erroneous in law, inasmuch as, it was without putting the petitioner to notice and even otherwise no finding has been recorded in relation to the service of notice on Sobran Singh @ Soran Singh. He further contends that the compromise was genuine and in the absence of any specific finding with regard to the compromise being forged the restoration could not have been allowed. It is further urged that the Board of Revenue has casually taken it to be an order of interlocutory nature and has therefore committed a manifest error by dismissing the revision summarily.

6. Sri Rajpoot learned counsel for the respondent no. 3 submits that as a matter of fact there was no service of notice on his father and later on the answering respondent was falsely implicated in the murder case of his own father. This background is further fortified by the fact that the father of the answering respondent never signed as Sobran Singh @ Soran Singh therefore the compromise is apparently forged hence the trial court has not committed any error in restoring the suit.

7. Having heard learned counsel for the parties and perused the affidavits, what appears is that the restoration was filed by the respondent no. 3 almost three years after the death of his father. No restoration had been filed by the father inspite of the fact that he was alive till 2004. Nonetheless the application which was moved by the respondent no. 3 narrates that there was no service of notice on Sobran Singh @ Soran Singh and further his signatures were forged on the alleged compromise.

8. The trial court while proceeding to dispose of the said application has observed that the compromise appears to be doubtful and even otherwise the murder of the defendant in the suit is also a circumstance to be taken note of as the respondent no. 3 appears to have been falsely implicated in the said case and has been later on acquitted. The trial court has further observed that in the interest of justice, it would be appropriate to set aside the order which was based on an alleged compromise. The trial court has further expressed a doubt that Sobran Singh @ Soran Singh had moved an application on 17.8.2002 for filing objection to the lots prepared as such there was no occasion to have set up a compromise dated 12.8.2002 prior in point of time, which fact itself proves that there was no valid compromise and it had not been filed under the signatures of the father of the respondent no. 3.

9. The revising authority has not considered any of the objections on merits.

10. In the opinion of this Court, the trial court ought to have first recorded a finding on the issue of service of notice on Sobran Singh @ Soran Singh. It should have further recorded a finding as to whether he was represented through

a counsel in the proceedings or not and thereafter the court ought to have proceeded to record its firm findings on the allegation that the compromise was forged. The trial court did not undertake any such exercise and has proceeded to draw inferences which in the opinion of the Court amounts to surmises and conjectures without there being any substantive proof to dislodge the factum of service of notice on Sobran Singh @ Soran Singh. The trial court therefore has failed in its duty to record specific findings and therefore in the light of the conclusions drawn herein above the order of the trial court dated 27.8.2007 is unsustainable.

11. The revising authority has also summarily dealt with the matter without recording any reasons. In the result the writ petition succeeds and is hereby allowed. The orders dated 27.8.2007 and the order of the respondent Board dated 4.9.2008 are quashed. The matter is remitted to the trial court, namely, Sub Divisional Officer, Etah, who shall now proceed to deal with the restoration application in the light of the observations made hereinabove and pass appropriate orders within six months of the date of presentation of a certified copy of this order before him.