
(1979) 02 AHC CK 0047

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2055 of 1977

Lakkhpal Rai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-02-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 5(7)

Citation : (1979) AWC 501

Hon'ble Judges : R.C. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.C. Srivastava, J.—In the objection against a notice u/s 10(2) of U.P. Imposition of Ceiling on Land Holdings Act (hereinafter referred to as the Act) the Petitioner alleged that the partition had already taken place and the share of property which has been given to other co-sharer has been erroneously clubbed with holding. This contention did not find favour with the Prescribed Authority hence he rejected the objection of the Petitioner. The Petitioner went in appeal. The appellate authority held that as the partition decree has not been filed by the Petitioner hence it was not liable to be taken into consideration. He further held that although the preliminary decree was passed in the year 1969, but as the same was given "effect to by preparation of final decree after 24-1-1971 hence the same was liable to be ignored, and thereby dismissed the appeal. Aggrieved, the Petitioner has come to this Court under Article 226 of the Constitution.

2. The question involved in this writ petition is whether the preliminary decree passed before the specified date, that is, 24-1-1971, could be binding or could be ignored. It is not in dispute that for ignoring a partition decree provision is given u/s 5(7) of the Act. Section 5(7) is reproduced below:

(7) In determining the ceiling area applicable to a tenure holder; any partition of land made after the twenty-fourth day of January, 1971 which but for the

partition would have been declared surplus land under this Act shall be ignored and not taken into account; Provided that nothing in this Sub-section shall apply to

(a)

(b) a partition of a holding made in a suit or a proceeding pending on the said date; provided further that notwithstanding anything contained in the preceding proviso the prescribed authority, if it is of opinion that by collusion between the tenure-holder and any other party to the partition, such other party has been given a share which he was not entitled to, or a larger share than he was entitled to, may ignore such partition.

Section 5(7) provides that any partition of land made after 24-1-1971 shall be ignored and not taken into account. This clearly shows that the partition effected prior to 24-1-1971, is not liable to be ignored. It cannot be disputed that partition takes place when preliminary decree is passed. The shares of the parties are determined in the preliminary decree. What has to be carried out in the final decree is only to give effect to that preliminary decree. It is not open to a court while preparing the final decree to change the shares already determined in the preliminary decree. The preliminary decree itself is appealable and if any of the parties are aggrieved by the determination of the share in the preliminary decree, they have right to go in appeal against that decree. Once the matter is not taken up before the appellate court, the decree becomes final and binding between the parties. Once the preliminary decree has a binding nature, it cannot be said that determination of share is not binding between the parties. The parties cannot resile from the preliminary decree and merely because the final decree was not passed before the specified date, the decree could not be ignored.

3. There is yet another factor present in this case on account of which also the decree cannot be ignored. Proviso to Section 5(7) of the Act says that nothing in this Sub-section shall apply to a partition of holding made in a suit or proceeding pending on the specified date. Admittedly, if the preliminary decree was passed long before the specified date, and the final decree was passed subsequent to the specified date, the suit or the proceedings for partition would be deemed to be pending on 24-1-1971 and if the proceedings would be deemed to be pending on the said date, the decree was not liable to be ignored on that ground also. The appellate authority in fact did not consider the effect of provision of Section 5(7) of the Act properly. The appellate authority also did not consider the effect of the finality of the preliminary decree. As the appellate authority did not examine the case from correct legal proposition, it is necessary that the case be sent back to the appellate authority for deciding the appeal afresh in accordance with law.

4. The result is, that this writ petition is allowed and the impugned judgment of the appellate authority is quashed. The case is sent back to the appellate

authority for deciding the appeal afresh in accordance with law. In the circumstances of the case, the parties shall bear their own costs. The stay order shall stand discharged.