
(2011) 09 AHC CK 0484
In the Allahabad High Court
Case No : Writ B No. 55563 of 2011

Lalji and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2011) 09 AHC CK 0484

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Judgement

Amreshwar Pratap Sahi, J.—Sri Vibhav Dutt Ojha has accepted notice on behalf of Respondent No. 4. Issue notice to Respondent No. 5. Learned Standing Counsel has appeared for Respondent Nos. 1 to 3. Sri D.D. Chauhan has appeared for Respondent No. 6 Gaon Sabha. All the Respondents may file counter-affidavit within 3 weeks. Rejoinder-affidavit may be filed within a week thereafter. List thereafter.

2. Sri H.N. Shukla, learned Counsel for the Petitioner, submits that in a Suit instituted by the Petitioner u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act, a plea was taken that the disputed land was ancestral property and in support thereof long standing entries in the Khatauni were filed to demonstrate that the property was succeeded by Mahipal and the same being ancestral all three sons of Mahipal were entitled to succeed to the same. On this plea having been set up, the Defendant in the Suit (since deceased) and now represented by Respondent No. 4 took a plea that the property was self acquired through a sale-deed.

3. After the evidence was let, the trial court recorded a clear finding to the effect that No. sale-deed was ever executed in favour of Jageshwar, father of Lahur, nor any such sale-deed was produced. The trial court decreed the Suit.

4. In Appeal, the learned Commissioner without reversing the said finding has

proceeded to give a declaration in favour of the contesting Respondent on the ground of alleged long standing entry. Sri Shukla submits that the order of the first appellate court, therefore, suffers from manifest error as it is against the weight of evidence on record and even otherwise the first appellate court could not have reversed the decree of the trial court without having appreciated the aforesaid evidence and the facts indicated herein above. He relies on the judgment of the Apex Court in the case of Vishwa Nath Vs. State of Jammu and Kashmir, , to substantiate his submission. He further contends that the second appellate court also failed to appreciate this substantial question of law that had arisen and has simply affirmed the finding of the first appellate court hence the order of the Board of Revenue is also vitiated. Prima faice, the contention of the learned Counsel for the Petitioner appears to be correct.

5. Until further orders of the Court, the operation of the order dated 27.2.2007 as well as the impugned order of the Board of Revenue dated 28.6.2011 shall remain stayed and parties are directed to maintain status-quo with regard to possession as existing on today during the pendency of the writ petition.