
(1956) 02 AHC CK 0014
In the Allahabad High Court
Case No : Special Appeal No. 217 of 1955

Laljit Singh and Others

APPELLANT

Vs

Pyarelal and Others

RESPONDENT

Date of Decision : 08-02-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 4

Citation : AIR 1956 All 714

Hon'ble Judges : Mootham, C.J;Agarwala, J

Bench : Division Bench

Advocate : B.S. Darbari, for the Appellant;

Final Decision : Dismissed

Judgement

Agarwala, J.—This is an appeal against an order of a learned single Judge of this court rejecting a petition which was directed against an order made by a member of the Board of Revenue.

2. The facts, in brief, are these. "The appellants filed a suit against one Bhup Singh u/s 175, U. P. Tenancy Act. That suit was dismissed by the Assistant Collector. An appeal against the order of the Assistant Collector was dismissed by the Additional Commissioner. Then there was a second appeal before the Board of Revenue which came up for hearing before a member of the Board namely Sri Abdul Rauf. He was of opinion that the appeal should be allowed, but under the rules of the Board no appeal can be allowed by one member unless the order is concurred in by another member.

The record was therefore sent to another member of the Board namely Sri T. N. Srivastava for concurrence. Sri T. N. Srivastava considered that he should hear the parties before recording his concurrence and so he sent notices to the parties and fixed 17-2-1954 for the purpose. On that date it so happened that none of the parties appeared before him and so he passed the order "None present, I agree".

A little later on the same day on behalf of Bhup Singh an application was made to the learned member praying that the order made in the absence of the parties may be cancelled. The learned member set aside his order and directed that notice shall issue to the other party and the case will be heard in the presence of both the parties.

3. The date fixed for hearing both the parties was 29-3-1954. Before the matter could be heard by the learned member of the Board the writ petition which has given rise to this appeal was presented before this Court for quashing the order dated 17-2-1954. An application for staying the hearing of the appeal on 29-3-1954 was also made but was rejected, with the result that the matter was heard by the learned member of the Board and after hearing both the parties he did not concur with the opinion of the other member and dismissed the appeal.

4. The writ petition in this Court was then amended, a prayer being added that the Order of dismissal of the appeal be quashed. The contention of the appellants was that having concurred with his brother member of the Board, Sri T. N. Srivastava had no jurisdiction to set aside his own order of 17-2-1954 and to issue notice to the parties for the case being reheard.

The learned single Judge rejected this contention on the ground that the member of the Board was not bound to hear the appellants before he set aside his own order of 17-2-1954. He relied upon the provisions of Order 41, Rule 21, Civil P. C.

5. Against this order of dismissal the appellants have come up in special appeal and have urged two points before us, first, that Sri T. N. Srivastava had no jurisdiction to set aside his order of 17-2-1954 by which he concurred with the order of Sri Abdul Rauf and, secondly, in any case even if he had jurisdiction he erred in law in not giving notice to the appellants before he set aside his order.

6. In our opinion there is no force in these contentions. Sri T. N. Srivastava had ordered that he would hear both the parties before he made an order of either concurrence or of disagreement. He therefore issued notice to both the parties, On the date of the hearing none of the parties was present and so he passed an order of concurrence with his colleague.

Soon after the counsel for the respondent Bhup Singh appeared and by means of an application, which has been read to us by learned counsel for the appellants, pointed out that he was not informed when the case was called on for disposal, that he was present in the premises and that the order of concurrence was in the teeth of a Full Bench decision of the Board of Revenue. On this being pointed out to the learned member he set aside his order and fixed a date for hearing both the parties on the merits.

7. In our opinion the procedure followed by the Board of Revenue calls for no interference by this Court. We have not been shown any authority which lays down that when both parties are absent, and an order is made against one of them the Court has no jurisdiction to set that order aside without hearing the

other party. Our attention has been drawn to the provisions of Order 9. Rules 9 and 14, which provide that no order made under Rules 8 and 13 of that Order shall be set aside without notice to the other side; but these rules apply to a case in which an order has been passed against one party in the presence of the other party.

On the other hand Rule 4 of the same Order provides that where a suit has been dismissed because neither party had appeared when it was called on for hearing the order may be set aside without notice. We are of opinion that the order by Sri T. N. Srivastava was a fair and proper order which he had jurisdiction to make. We hold there-fore that there is no force in this appeal, and it is accordingly dismissed.