
(2013) 10 AHC CK 0146
In the Allahabad High Court
Case No : Writ-B No. 55751 of 2013

Lallu Ram and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2014) 102 ALR 329 : (2013) 121 RD 784

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Mansoor Ahmad and Atiqur Rehman Siddiqui, for the Appellant;
Manoj Kumar Yadav and Ramesh Singh, for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Mansoor Ahmad, learned Counsel for the petitioners. The petitioners are stated to have filed a suit u/s 229B of the U.P.Z.A. & L.R. Act, 1950 which was pending. The defendants in the suit filed an application for an interim injunction. The interim injunction in favour of the defendants was granted in 1992 and the plaintiffs filed an application for vacating the said interim injunction. The same was disposed of and the interim injunction continued to operate in favour of the defendants.

2. The suit remained pending till 1999 and was ultimately dismissed in default on 30.8.1999.

3. The plaintiffs then filed a restoration application, copy whereof has been filed as Annexure 3 to the writ petition, wherein the entire blame was put on a wrong information being given by the Reader of the Court of the Sub-Divisional Officer concerned. The said application for restoration was rejected on 9.11.2004 against which an appeal was filed which was allowed and the revision filed against the same by the defendants was dismissed. The defendants approached this Court by filing Writ Petition No. 68291 of 2005 and the same was ultimately allowed by this Court on 31.3.2010 setting aside the impugned orders and

remanding the matter back to the Appellate Court for deciding the appeal keeping in view the issues that were raised between the parties. The Appellate Court has now dismissed the appeal and has upheld the rejection of the restoration against which a revision was filed by the petitioners that has also been dismissed, hence this writ petition.

4. Sri Ahmad, learned Counsel for the petitioner contends that the High Court while proceeding to remand the matter had directed to hear the appeal on three issues, namely, carrying out of the substitution of one of the deceased parties, the question of the availability of the counter-affidavit filed on record and thirdly the sufficiency of cause in relation to the explanation given by the plaintiffs in order to get the suit restored. Sri Ahmad submits that the Appellate Court has, without complying with the aforesaid directions of the High Court, proceeded to dismiss the appeal and has upheld the restoration order, as such the same deserves to be set aside as it is not in compliance of the direction of the High Court. The revisional order also suffers from the same infirmity and hence the prayer has been made to quash the orders impugned.

5. Sri Ramesh Singh has put in appearance on behalf of the contesting respondents No. 2 to 4 and he submits that the orders of the High Court have been complied with. The petitioners-plaintiffs having failed to provide any evidence or cogent explanation showing the sufficiency of the cause for restoring the case, no error has been committed and hence the appellate order as well as the revisional order does not call for any interference. Sri Manoj Kumar Yadav, learned Counsel for Gaon Sabha and the learned Standing Counsel have also adopted the same arguments.

6. Having considered the submissions raised instead of proceeding to further investigate the matter the primary question is with regard to the sufficiency of cause shown by the petitioners-plaintiffs seeking restoration. As noted above, the restoration application rests its entire cause on the ground of the information rendered by the Reader of the Sub-Divisional Officer. The plaintiffs have nowhere indicated as to how, when, and in what manner did they contact their Counsel who had been pursuing the suit on their behalf and had been doing pairvi on their behalf. There is not even a single sentence as to why and how the Counsel, who are the agents of the plaintiffs, performed their duty in pursuing the matter before the Trial Court. In the opinion of the Court, the petitioners made a lame excuse to put the blame on the Reader of the Court concerned, instead of making any averment in their affidavit about the role of their Counsel. This was necessary inasmuch as the High Court while remanding the matter has categorically noted the following facts which are extracted herein under:--

It may be noticed that it is the admitted case of the parties that during the pendency of the suit, the petitioners who were defendant in the suit prayed for and was granted interim injunction order restraining the plaintiff-respondent not to forcibly evict them from the property in question. In paragraph 6 of the writ petition, it has been stated that after the death of Mahangi (the father of the

petitioners) an injunction application in the suit on 23.11.1992 was filed by the defendants and the Court passed an interim order restraining the plaintiff-respondent from interfering in the peaceful possession over the plot in question. On 18.6.1993, an application by the respondent herein for vacating the interim stay order was filed wherein 6.7.1993 was the date fixed for further hearing on the injunction application. As none appeared on behalf of the plaintiff-respondent on 6.7.1993, the interim order granted in favour of the petitioner was made absolute. Since 6.7.1993, the plaintiff-respondent never appeared to prosecute the suit, as averred in paragraph 8 of the writ petition. The reply of the said paragraph has been given in paragraph 32 of the counter affidavit. In paragraph 32 of the counter affidavit only this much has been stated that the contents of paragraphs 6, 7 and 8 are not admitted. However, the filing of the injunction application, passing of the interim injunction order dated 23.11.1992, filing of the application for its vacation before the Trial Court etc. have not been denied. Only this much has been stated that the said stay vacation application was pending and several dates were fixed. In paragraph 33, it has been stated that the Trial Court wrongly and illegally dismissed the suit on 30.8.1999 and the contesting respondents came to know about the afore stated order only on 7.11.2004.

7. The aforesaid facts, therefore, leave no room for doubt that as a matter of fact the plaintiffs had become casual and had not pursued their suit itself since 1993 and the suit came to be dismissed in default after six years in 1999. They then invented a cause putting the blame on the Reader of the Court concerned and then filed an application for restoration after almost five years. The explanation, in the opinion of the Court, was absolutely flimsy unsupported by any material and did not amount to a sufficient cause in view of the aforesaid background.

8. In the circumstances, the plaintiffs themselves failed to come out with any plausible reason giving an explanation for the delay not only for five years for filing the restoration application, but also the lapse on their part in not pursuing the suit itself since 1993 onwards. Apart from this, as noted above, there is no explanation about the conduct of the lawyers who were conducting the suit on behalf of the plaintiffs. Needless to mention that under Order III of the CPC the Counsel of the litigant acts as an agent and is fully responsible for conducting the case. It is the Counsel who ought to have either informed the petitioners or the petitioners should have contacted their Counsel for any such lapse. In the absence of any explanation having been given, it is clear that the petitioners invented a cause on the head of the Reader of the Court which does not appear to, be a plausible explanation at all.

9. Consequently, neither the Appellate Court nor the Revisional Court have committed any error in upholding the rejection of the restoration application. There is no merit in the petition. Rejected.