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(2014) 11 AHC CK 0056

In the Allahabad High Court

Case No : Writ-B No. 58951 of 2014

Loknath Shukla APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 15(5), 198, 229-B, 331(3), 333

Citation : (2015) 126 RD 313

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Triveni Shankar and Ajay Shankar, Advocates for the Appellant; R.B. Yadav, Advocates for the Respondent

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Triveni Shankar, for the petitioner and Standing Counsel, for State of U.P. and Standing Counsel for Gram Panchayat. The writ petition has been filed against the orders of Additional Commissioner, dated 6.10.2008 and Board of Revenue, U.P. dated 8.9.2014 passed in proceeding arising out of suit under section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act).

2. The petitioner filed a suit (registered as Suit No. 69/60 of 1989-90) under section 229-B of the Act, on 2.5.1988, for declaring him as ''bhumidhar'' of plot 77/2 (area 12-0-0 bigha) of village Nikarika, pargana Bhagwat, district Mirzapur. It was stated in the plaint that land in dispute was taken by him on patta on 30.4.1945 from the then zamindar and since then he was in cultivatory possession of it. The land in dispute was uneven land and after investing huge amount he made it cultivable. There is no forest on the land in dispute but Forest Department of State of U.P. illegally began to fix pillars over the land in dispute. It may be mentioned that Gaon Sabha filed written statement, admitting the case of the petitioner. Suit was contested of Forest Department of State of U.P. claiming that the land in dispute was reserve forest. Assistant Collector, by order

dated 29.8.1991 decreed the suit.

3. Forest Department of State of U.P. filed a revision (registered as Revision No. 140/212/122/69 of 1992 against the aforesaid decree. The revision was heard by Additional Commissioner, who by judgment dated 6.10.2008, held that land in dispute was declared as reserve forest but notifications have been ignored on the basis of report that plot 77 was not included in the notification without taking notice of the fact that at the time of the notification under Forest Act, disputed land was plot 74 and new number 77 was allotted thereafter during consolidation. The petitioner did not file any objection during consolidation claiming title over the land in dispute and in consolidation the land in dispute was recorded as East Forest Department Mirzapur and suit of the petitioner was barred under section 49 of U.P. Consolidation of Holdings Act, 1953. Alleged entry made by Supervisor Kanoongo, recording the name of the petitioner is forgery in the revenue records. The witnesses produced by the petitioner were not reliable witnesses in as much as they were not residents of the village and could not state the boundary of the land in dispute. The original patta was not filed by the petitioner as such adverse inference has to be drawn against the petitioner. The petitioner was Lekhpal and there was every chance that he would have fabricated various khasras. There is interpolation in the khasra produced by the petitioner. Rent receipts issued by zamindar was not reliable. Up to 1968, there was no sub-plot of plot 74, even then in khasra filed by the petitioner, plot 74/2 has been mentioned. All the aforesaid facts have been illegally ignored by Assistant Collector. On these findings, the revision was allowed and order of Assistant Collector was set aside and the name of the petitioner was directed to be deleted from the land in dispute. The petitioner filed a revision (registered as Revision No. 1 of 2008-09) against the aforesaid order. The revision was heard by Board of Revenue, U.P., who by order dated 9.8.2014, held that while setting aside the findings of fact, recorded by Trial Court, by the Revisional Court, the matter ought to have been remanded to Trial Court for deciding the suit afresh. On these findings the revision was allowed and order of Revisional Court as well as trial Court were set aside and the matter was remanded to Assistant Collector for deciding the suit afresh after hearing the parties and after examining the entries of the revenue records of the year 1356F and 1359F giving opportunity of evidence. Hence this writ petition has been filed.

4. The Counsel for the petitioner submitted that the petitioner filed revision against the order of Additional Commissioner dated 6.10.2008, Board of Revenue, U.P. although allowed the revision but has illegally set aside the order of Assistant Collector dated 29.8.1991 also, which was not challenged by the petitioner. Remedy of an appeal has been provided under section 331(3) of the Act against the decree of Assistant Collector in the suit and limitation of 30 days has been prescribed. No appeal was filed against the judgment and decree of Assistant Collector dated 29.8.1991 within time. The revision was filed on 18.6.1992. In view of judgment of Supreme Court in The Sahabad Co-operative Sugar Mills Ltd. v. Special Secretary 2007 AllCJ 270 (SC), the revision filed by

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the respondent before Commissioner was not maintainable and ought to have been dismissed. Under section 333 of the Act, the revisional Court has to examine as to whether order of subordinate Court was passed exercising jurisdiction not vested in it by law, or it has failed to exercise jurisdiction so vested or acted in exercise of jurisdiction illegally or with material irregularity. The Revisional Court has no jurisdiction to reassess the evidence on record and reverse the finding of fact recorded by trial Court in exercise of revisional jurisdiction. Additional Commissioner has illegally reversed the findings of fact recorded by Trial Court after reappraisal of the evidence. His judgment was illegal and liable to be set aside. Although judgment of Additional Commissioner was set aside but instead of reinstating the judgment of trial Court, it has also been illegally set aside by Board of Revenue, U.P. Diwakar Singh ex-zamindar in his statement has admitted execution of patta in favour of the petitioner, finding of fact recorded by Trial Court relying upon statement of Diwakar Singh was not liable to be set aside.

5. I have considered the arguments of the Counsel for the parties and examined the record. Section 333(1) of the Act is quoted below:--

Section 333. Power to call for cases.--(1) The Board or the Commissioner or the Additional Commissioner may call for the record of any suit or proceeding (other than proceeding under sub-section (4A) of section 198) decided by any Court subordinate to him in which no appeal lies or where an appeal lies but has not been preferred, for the purposes of satisfying himself as to the legality or propriety of any order passed in such suit or proceeding and if such subordinate Court appears to have:--

(a) exercised a jurisdiction not vested in it; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in exercise of jurisdiction illegally or with material irregularity;

The Board or the Commissioner or the Additional Commissioner, as the case may be may pass such order in the case as he thinks fit."

6. A bare perusal of the aforesaid provision shows that a revision can be filed by an aggrieved person, who could not file an appeal. The case law of The Sahabad''s case (supra) relied upon by the Counsel for the petitioner was in respect of different Act and has no application in the present case. The arguments raised in this respect is not liable to be accepted.

7. Under section 333 of the Act, the Revisional Court has been conferred with the power to examine the legality or propriety of the order impugned in the revision. Supreme Court in Rajbir Kaur and Another Vs. S. Chokesiri and Co., , held that having regard to the language of section 15(5) of the Act conferring revisional powers which include an examination of the legality or propriety of the order under revision, the High Court can, in an appropriate case, re-appreciate evidence and interfere with findings of fact. In S.F. Engineer Vs. Metal Box India

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Ltd. and Another, , it has been held that drawing inference from the facts established is not purely a question of fact. In fact, it is always considered to be a point of law insofar as it relates to inferences to be drawn from finding of fact. When inferences drawn do not clearly flow from facts and are not legally legitimate, any conclusion arrived at on that basis becomes absolutely legally fallible. Therefore, it cannot be said that the High Court has erred in exercise of its revisional jurisdiction by substituting the finding of fact which has been arrived at by the Courts below.

8. In this case, Additional Commissioner found that land in dispute was declared as reserve forest but notifications have been ignored on the basis of report that plot 77 was not included in the notification without taking notice of the fact that prior to notification under Forest Act disputed land was plot 74 and new number 77 was allotted thereafter during consolidation. The suit of the petitioner was barred under section 49 of U.P. Consolidation of Holdings Act, 1953. Alleged entry made by Supervisor Kanoongo, recording the name of the petitioner is forgery in the revenue records. The witnesses produced by the petitioner were not reliable witnesses in as much as they were not residents of the village and could not state the boundary of the land in dispute. The original patta was not filed by the petitioner as such adverse inference has to be drawn against the petitioner. The petitioner was Lekhpal and there was every chance that he would fabricated various khasras. There is interpolation in the khasra produced by the petitioner, Rent receipts issued by zamindar was hot reliable. Up to 1968, there was no sub-plot of plot 74, even then in khasra plot 74/2 has been mentioned. The Additional Commissioner rightly interfered with order of Assistant Collector.

9. Board of Revenue has only remanded the matter to Trial court. The petitioner has full opportunity to adduce evidence and redress his grievances. No interference is required by this Court in the open remand order. Arguments that Board of Revenue, U.P. although allowed the revision but has illegally set aside the order of Assistant Collector dated 29.8.1991 is not liable to be accepted as the order of Assistant Collector dated 29.8.1991 has already been set aside by the Additional Commissioner. Board of Revenue, U.P. on the premises that while setting aside findings of fact, the matter ought to have been remanded to trial Court for recording fresh findings, allowed the revision. The petitioner who has disclosed his birth of the year 1941 and also filed documents in support of his birth is not expected to obtain a patta from zamindar on 30.4.1945 of 12 bigha land, in the age of 4 years. In view of the aforesaid discussion, the writ petition has no merit and is dismissed.

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