

(2011) 09 AHC CK 0056
In the Allahabad High Court
Case No : C.M.W.P. No. 17560 of 1985

Madan Lal (Since Deceased) through his heirs and Lrs.	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 12-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 3, 151
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (2011) 114 RD 721

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—This is a very old matter of 26 years and has been shown in the cause list under the heading "Old Cases". Sri K.C. Saxena, Learned Counsel for the petitioner, at the outset, requested for adjournment. The Court declined to accept the request. The reason is evident from perusal of the order sheet. The writ petition was admitted on 1.11.1985. On 16.5.2007, it was listed before Hon"ble Tarun Agarwal, J. and was dismissed for non-prosecution. It was restored on 30.7.2008 by Hon"ble Rakesh Tiwari, J. Again it was dismissed for non-prosecution by Hon"ble Shishir Kumar, J. on 27.11.2007 and was restored on 30.7.2007. Third time, it was dismissed for non-prosecution on 18.9.2008 by Hon"ble Shishir Kumar, J. and was restored on 26.3.2009. Then Hon"ble Dilip Gupta, J., dismissed the writ petition in default on 5.10.2009 and restored on 24.11.2009. Lastly, Hon"ble S.U. Khan, J., dismissed in default on 4.7.2011 and restored on 23.8.2011.

2. Learned Counsel for the petitioner thereafter took a plea that two applications are pending and first of all, those applications should be considered.

3. The first one is Civil Misc. Impleadment Application No. 101849 of 2007 under Order I, Rule 10, Order XXII, Rule 3 and section 151, C.P.C. along with

application u/s 5 of the Limitation Act, registered as Civil Misc. Delay Condonation Application No. 101848 of 2007. It seeks impleadment of Satish Chandra Sharma, Mukesh Chandra Sharma, Radhey Govind, Rajendra Kumar Sharma, all sons of Late Kunj Bihari Lal, as petitioners in place of the sole petitioner Madan Lal, who has died, but along with Radhey Shyam who was already impleaded.

4. It appears from record that the sole petitioner Madan Lal died on 12.1.2000. A Substitution Application No. 24526 of 2000 was filed by one Rajendra Kumar Sharma, son of Late Kunj Bihari Lal, on 15.3.2000, whereon, notice was issued on 21.5.2004. Another Substitution Application No. 49007 of 2000 was filed by one Radhey Shyam, son of Madan Lal, on 5.7.2000, which was allowed on 2.1.2003 and Radhey Shyam was substituted as heir and legal representative in place of sole petitioner Madan Lal. The Court passed the following order:--

The application is allowed. Name of sole petitioner, Madan Lal be deleted from array of the parties and in his place, the name of his son Radhey Shyam be substituted as his heir and legal representative.

5. Since Madan Lal's son Radhey Shyam has already been allowed to be substituted in place of sole petitioner, I do not find any right vested in Rajendra Kumar Sharma, S/o Late Kunj Bihari, to get himself impleaded in place of Madan Lal in this writ petition, whose name is already deleted,. Hence, Substitution Application No. 24526 of 2000 filed by Rajendra Kumar Sharma, is hereby rejected.

6. Now, I come to the second Substitution Application filed along with delay condonation application by four persons. This application besides three persons, namely Satish Chandra Sharma, Mukesh Chandra Sharma and Radhey Govind, included Rajendra Kumar Sharma again who had already filed the application discussed above. All these applicants claimed to be sons of Kunj Bihari Lal. It is said that Kunj Bihari Lal had died long back. The family tree has been given showing two sons of Madan Lal, namely Kunj Bihari Lal and Radhey Shyam. Kunj Bihari Lal had four sons, i.e. the applicants of this application. Madan Lal died on 12.1.2000. This application was filed on 11.4.2007 through Sri K.C. Saxena, Advocate. Though in the application, four names have been mentioned, but in the vakalatnama, only three persons have signed, i.e. Satish Chandra Sharma, Radhey Govind and Mukesh Chandra Sharma. It is said that Radhey Shyam moved substitution application by concealing the fact that Madan Lal had other legal representatives and one application was already filed by Rajendra Kumar Sharma. In this application, title of the petition has been shown as Madan Lal (since dead), son of Radha Ballabh, though the sole petitioner's name was already deleted and substituted by Radhey Shyam. In the cause title of application, the name of Radhey Shyam has not been shown at all. No reason for filing this application after seven years has been given. This writ petition is pending since 1985. It is said that the share of the property kept by Madan Lal for himself was given to Sri Rajendra Kumar Sharma through a Registered Will

on 31.12.1993. The copy of the alleged Will or any other document, has not been placed on record. Moreover, on the one hand, it is claimed that the alleged Will was in the name of Rajendra Kumar Sharma, then how other three applicants come into the picture, has not been made clear. In any case, this writ petition does not relate to any title dispute, but here the order of Prescribed Authority under Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as "the Act") and the appellate order, is under challenge. If there is any dispute relating to title, the same has to be settled between the parties. The substitution application of Radhey Shyam was never challenged or opposed by anyone. There is no request for recall or modification of that order.

7. Considering the matter in all these perspectives, I find no justification or reason either to condone the delay in filing this application and/or to permit the applicants to be substituted. In fact, the delay has not at all been explained in the entire affidavit and no reason whatsoever has been assigned at all. The delay condonation application is accordingly rejected. Consequently, the Substitution Application No. 101849 of 2007 also stands rejected.

8. Now I come to the main case. Sri K.C. Saxena, despite repeated requests, did not address the Court on merits and said that this writ petition relates to order passed in ceiling matters and therefore, should be directed to be listed in Court No. 5 which has the jurisdiction of ceiling matters. The jurisdiction determined by Hon"ble the Chief Justice under the Rules of the Court for Court No. 5, reads as under:

Fresh, order, admission, hearing Writs relating to Ceiling Matters and all Fresh and Listed Writs relating to Consolidations Matters and Listed Writs relating to Ceiling Matters from 1st January, 2009 onwards.

9. However, with respect to Writ--B "Old Matters", the jurisdiction is only upto the year 1977 as it reads as under:--

Writ - B upto the year 1977 for Orders, Admission and Hearing.

The cases after the year 1977 have been assigned to different courts, e.g. the old rural ceiling matters have been shown in the cause list of this Court as well as Court No. 35 under the heading "Old Cases-- Group of Cases relating to Rural Ceiling Act". For this very reason, in the determination of this Court, it says "Misc. Writs (except writs arising out of suits and Educational Institutions).

10. Be that as it may, there is another aspect of the matter. The cause list is printed and published under the authority of Hon"ble The Chief Justice. Once there is no lack of jurisdiction which goes to the root of the matter, e.g. a case cognizable by a Division Bench listed before a Single Judge, if it is listed before the Court shown in the cause list, there is no reason as to why the matter should not be heard and decided. The order sheet of this Court shows that repeatedly this case has been dismissed for want of prosecution and therefore, it is evident that the objection has been raised only to linger on the proceedings and not to

allow it to be decided on merits. The objection lacks bona fide. Hence rejected.

11. Since Sri Saxena did not address the Court on merits, having no alternative," I myself perused the record.

12. The writ petition is directed against the order dated 17.12.1983 passed by Prescribed Authority, declaring 80.56 decimal land of Late Madan Lal surplus and the order dated 20.9.1985 passed by Special Additional District Judge dismissing the appeal. It is pleaded in the writ petition that there is no rubewell in existence on the plot in question, as noted in the local inspection dated 22.1.1982, hence, the land in question could not have been treated to be irrigated land. Further, that the khasras of 1377 Fasli and 1381 Fasli have been relied on which is contrary to section 4-A of the Act.

13. Section 4-A provides that the Prescribed Authority shall examine the relevant khasra for the year 1378 Fasli, 1379 Fasli and 1380 Fasli, the latest village map and such other records as it may consider necessary. In the case in hand, it appears that the khasra extract of 1378 Fasli and 1379 Fasli, were not available, but in the extract of the khasra of 1380 Fasli, it was mentioned that irrigation facilities are available to Plot No. 191 as is evident from the appellate order quoted hereunder:--

In the instant case, a perusal of the khasra extract for the fasli year 1380 goes to show that irrigation facilities are available to plot No. 191 by a tubewell and double crop had been grown on a portion of the plot in that agricultural year.

14. The reference to other khasra of the year 1377 Fasli and 1378 Fasli is only to corroborate the entries made in the kahsra of 1380 Fasli. Absence of the Khasras of the year 1378 Fasli and 1379 Fasli in effect makes no difference since one of the relevant years khasra has been seen and the entry therein stood in conformity with the entries continuing in earlier khasra of 1977 which mentions the same situation since 1975 Fasli. In view of the entries contained in the aforesaid documents, the authorities have recorded a finding of fact that Plot No. 191 had irrigation facilities and two crops were grown on a portion thereof in the relevant agricultural years. In the absence of any material to show that the said finding is perverse or contrary, I find no reason to interfere in the impugned orders in this writ petition filed under Article 226 of the Constitution of India.

The writ petition therefore lacks merit and is dismissed accordingly.