
(2009) 12 AHC CK 0340
In the Allahabad High Court

Mahabir Jute Mills Ltd.

APPELLANT

Vs

Addl. District Judge and Others

RESPONDENT

Date of Decision : 22-12-2009

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 3(14)

Citation : (2010) 2 AWC 1773

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—The present writ petition is directed against the order of the Additional District Judge, Court No. 8, Gorakhpur, dated 8.9.2009, passed in Civil Revision No. 158 of 2008, filed against the order of the Civil Judge (Junior Division), Gorakhpur, dated 10.1.1996.

2. The brief facts of the case are that the plaintiff-respondents filed a Suit No. 94 of 1988 claiming relief for the decree of possession over the property in dispute. The defendant-petitioner filed a written statement in the year 1995. The trial court has framed 12 issues, out of which issue No. 8 was framed as a preliminary issue to the effect as to whether the Court has jurisdiction to try the suit. When the trial court proceeded to decide issue No. 8, referred hereinabove, it was felt that it is necessary to decide whether the property in dispute is the land as defined u/s 3(14) of the U.P. Zamindari Abolition and Land Reforms Act (called "the U.P.Z.A. and L.R. Act" only) because the same could not be decided by the civil court and could only be decided by the revenue court. The trial court, vide order dated 10.1.1996, instead of deciding issue No. 8, framed a fresh issue No. 13 to the effect that as to whether the land in suit is the land as defined u/s 3 (14) of the U.P.Z.A. and L.R. Act and referred the matter to the Assistant Collector, Gorakhpur, for giving the finding in this regard and it has been observed that issue No. 8 will be decided after receipt of finding on issue No. 13. Against the said order, the respondents filed revision on 9.11.2001 alongwith an

application u/s 5 of the Limitation Act, which was registered as Case No. 499 of 2001. The case was transferred to the Additional District Judge, Court No. 11, Gorakhpur, for disposal. The petitioner filed a detailed objection against the application u/s 5 of the Limitation Act. The Additional District Judge allowed the application and condoned the delay, vide order dated 2.8.2008 and sent back the record to the District Judge, Gorakhpur, for hearing on admission. On receipt of the record, the case has been registered as Civil Revision No. 158 of 1988 in the Court of District Judge, Gorakhpur, and the hearing for admission was fixed. The said revision has been admitted on 12.1.2009 after hearing both the parties. After admission the revision was listed for hearing on merit. The said revision was again transferred to the Court of Additional District Judge, Gorakhpur, for hearing and disposal.

3. The Additional District Judge has allowed the revision, vide impugned order dated 8.9.2009 and set aside the order dated 10.1.1996. The revisional court has held that the nature of the property was not land, inasmuch as the building of the factory has been constructed. It is further held that the Allahabad High Court in a proceeding relating to the eviction and recovery of arrears of land revenue has held that the property in dispute consists of mill and buildings and its nature is not land and, therefore, there was no question of referring the matter to the revenue court for decision.

4. Being aggrieved by the order the petitioner filed the present writ petition.

5. Heard Sri Arvind Srivastava, learned Counsel for the petitioner and Sri A.K. Gupta, learned Counsel, appearing on behalf of the respondents.

6. Learned Counsel for the petitioner submitted that the revision itself was not maintainable against the order dated 10.1.1996 as by the said order the case has not been decided. He further submitted that the land was recorded as agricultural land in a revenue record and unless a declaration is made u/s 143 of the U.P.Z.A. and L.R. Act changing the land use, it continues to be agricultural land and to adjudicate the issue it was necessary to consider whether the nature of the property is the land as defined under the U.P.Z.A. and L.R. Act and the trial court has rightly referred the matter to the revenue court for the decision. He submitted that the revisional court has not considered whether the revision against the order dated 10.1.1996 is maintainable or not. In respect of the contention he relied upon the decision of this Court in the case of Alauddin Vs. Hamid Khan, and the case of Shri Chandrika Singh and others Vs. Raja Vishwanath Pratap Singh and another, .

7. Sri A.K. Gupta, learned Counsel for the respondents, submitted that the property has been leased out on 15.2.1935 for manufacturing purposes. He submitted that when the suit was filed for eviction and arrears of rent, a dispute has been raised by the present petitioner that the civil court had no jurisdiction to entertain the suit as the land was for agricultural purposes. The plea of the petitioner has been rejected in the suit. The first appeal filed by the petitioner

has been rejected and thereafter the petitioner filed Second Appeal No. 302 of 1953 before this Court. This Court, vide order dated 7.1.1964, has rejected the plea of the petitioner. The said order has become final between the parties and, therefore, it was not open to the petitioner to raise the same plea in the present suit. He further submitted that at no stage the petitioner has raised any plea that the revision against the order dated 10.1.1996 is not maintainable. The petitioner has been heard at the stage of admission and at the stage of final hearing of the revision. In both the stages this plea has not been taken. This plea has also not been taken in the memorandum of revision and, therefore, it is not open to the petitioner to raise such plea and the same cannot be entertained. He submitted that the nature of the property ceases to be land in the year 1935 itself prior to the commencement of the U.P.Z.A. and L.R. Act and, therefore, the provision of the U.P.Z.A. and L.R. Act does not apply.

8. Having heard learned Counsel for the parties, I have considered the rival submissions and perused the impugned order. I do not find substance in the argument of learned Counsel for the petitioner. It is not in dispute that the property in dispute has been given on lease on 15.2.1935 for manufacturing purposes and it authorised the petitioner to put up a mill or a factory on a land, if so desired. On the said land the factory and the building was constructed. When the rent was not paid for the period from January, 1950 to 15.1.1951, the suit was filed in the year 1951. In the suit it was pleaded by the petitioner that the suit was not maintainable as the nature of the property was agricultural land and the civil court has no jurisdiction to entertain the suit. Such plea has been rejected by the trial court, in the first appeal and in the second appeal by this Court. This Court in the order dated 7.1.1964 has observed that the land was leased out for manufacturing purposes and the land in dispute was not "land" as the lease was obviously not for agricultural purposes, the suit was properly filed in the civil court. The order of this Court is between the same parties and, therefore, binding upon the petitioner. In the circumstances, it is not open to the petitioner to raise the same plea, viz. that the suit is not maintainable as the property in dispute is the land for agricultural purposes. The revisional court has recorded a categorical finding that in the land a factory and buildings have been constructed and it is no more land. It ceases to be the land prior to the commencement of the U.P.Z.A. and L.R. Act and, therefore, the provision of the U.P.Z.A. and L.R. Act does not apply and in the circumstances the revisional court has rightly held that the nature of the property was not the land for agricultural purposes and, therefore, there was no question of referring the matter to the revenue court for deciding the nature of the land.

9. So far as the question of maintainability is concerned, I find that no ground has been taken in the memorandum of revision in this regard. The petitioner has not taken this plea at the time of admission of the revision and even at the time of hearing of the revision and, therefore, such plea cannot be entertained at this belated stage and is, accordingly, rejected.

10. For the reasons stated above, I do not find any merit in this writ petition. In the result the writ petition fails and is dismissed. However, the trial court is directed to decide the suit preferably within one year from the date of presentation of a certified copy of this order.