
(1998) 04 AHC CK 0059
In the Allahabad High Court
Case No : C.M.W.P. No. 10339 of 1998

Mahabir Singh and others

APPELLANT

Vs

District Judge, Fatehpur and others

RESPONDENT

Date of Decision : 07-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 10, 104, 47, 9
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4(2), 5(2), 6(1), 6(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143(1),
176, 331

Citation : (1998) 2 AWC 1459 : (1998) RD 540

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : A.C. Verma, for the Appellant;

Judgement

D.K. Seth, J.—A suit being Civil Suit No. 795 of 1994 was initiated before the learned Munsif. Fatehpur. On the basis of the pleadings several issues were framed. Issue Nos. 2, 3 and 4 were taken up for decision as preliminary issues and were overruled by the learned Munsif by an order dated 20.9.1996. Civil Revision No. 104 of 1996 arising there out was also dismissed by an order dated 9.12.1997. These two orders have been challenged before this Court by means of this writ petition.

2. Mr. Akhilesh Chandra Varma, learned counsel for the petitioner assails the said orders on the ground that both the Courts have acted illegally in overruling the preliminary objections Inasmuch as though the prayer was couched as a relief seeking cancellation of a sale deed in respect of 1/45 share of the plaintiff, it is in effect a relief for declaration of a share in disguise which is cognizable by a revenue court under Serial No. 16 of Schedule II inasmuch as such division can be obtained u/s 176 of the U. P. Zamindari Abolition and Land Reforms Act. 1950 (hereinafter called as the U.P.Z.A. and L.R. Act). His second ground, according to him, was that admittedly proceeding for declaration of share are pending before the revenue court and, therefore, the proceedings cannot proceed further in the

civil court which was instituted subsequently between the parties claiming the relief, in view of Section 10 of the Code of Civil Procedure. His third contention is that the suit is liable to be abated by reason of Section 5 (2) of the U, P. Consolidation of Holdings Act.

3. I have heard Mr. Varma at length.

4. The Issue Nos. 2, 3 and 4 are as follows : Issue No. 2--whether the suit is liable to be stayed u/s 10 of C.P.C. ; Issue No. 3--whether the suit is liable to be abated u/s 5 (2) of Consolidation of Holdings Act ; and Issue No. 4--whether the suit is barred u/s 331 of U.P.Z.A. and L.R. Act.

5. So far Issue No. 4 is concerned, Section 331 of U.P.Z.A. and L.R. Act provides as follows :

"331. Cognizance of suits, etc. under this Act.--(1) Except as provided by or under this Act no Court other than a Court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in Column No. 3 thereof, or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application :

Provided that where a declaration has been made u/s 143 in respect of any holding or part thereof, the provisions of Schedule II in so far as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.

(1A) Notwithstanding anything in sub-section (1), an objection that a Court mentioned in Column 4 of Schedule II, or, as the case may be, a civil court, which had no jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the Court of first Instance at the earliest possible opportunity and in all cases where Issues are settled, at or before such settlement, and unless there has been a consequent failure of justice ;

(2) Except as hereinafter provided no appeal shall lie from an order or decree passed under any of the proceedings mentioned in Column No. 3 of the Schedule aforesaid ;

(3) An appeal shall lie from any decree or from an order passed u/s 47 or an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908) or in Order XLIII, Rule 1 of the First Schedule to that Code passed by a Court mentioned in Column No. 4 of Schedule II to this Act in proceedings mentioned in Column No. 3 thereof to the Court or authority mentioned in Column No. 5 thereof ;

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree,

passed in an appeal under sub-section (3) to the authority. If any, mentioned against it in Column No. 6 of the Schedule aforesaid."

6. Section 331 prohibits cognizance of a suit by a civil court in respect of cases which are to be decided by the authorities mentioned in Column 4, Schedule II in respect of the reliefs mentioned in Column No. 3 thereof. According to Mr. Varma, the relief which has been sought for falls in Serial No. 16. Serial No. 16 refers to suit for division of a holding by bhumidhari u/s 176 of the said Act which can be entertained by Assistant Collector. 1st Class.

7. Admittedly, the suit is one for cancellation of the sale deed in respect of 1/45 share. A copy of the plaint has been produced by Sri Varma. The prayer that has been made appears to be in respect of cancellation of the sale deed in respect of 1/45 share of the plaintiff. It does not pray for declaration of such share. Therefore, the relief is confined to the cancellation of the sale deed in respect of 1/45 share. Since no prayer for declaration of 1/45 share is made, therefore, the Court has to proceed on the basis of only when plaintiff is able to establish trial he is owner of 1/45 share only then decree or order of cancellation can be passed. So far as the relief as claimed, there is no prayer for declaration of such share. Therefore, unless it is established that the plaintiff is owner of 1/45 share, no relief can be had by him. Whether he is the owner of 1/45 share or not is not subject-matter of decision by the trial court. Learned counsel for the petitioner has not been able to show from Schedule II that the relief in respect of cancellation of sale deed is cognizable by any of the authority mentioned in the said Schedule II.

8. Therefore, as provided in Section 331 of the U.P.Z.A. and L.R. Act, the present relief is excepted from Schedule II. Only in respect of those reliefs which are mentioned in Schedule II and cognizance of suit by a civil court is barred but those which have not been mentioned in Schedule II are not barred for being taken cognizance by the civil court. Therefore, I am in agreement with the finding of both the Courts below with regard to the said issue and I do not find any infirmity in respect thereof.

9. So far as Issue No. 3 is concerned with regard to the abatement of a suit by reason of Section 6 (2) of the U. P. Consolidation of Holdings Act is concerned, it appears that sub-section (2) of Section 5 of the U. P. Consolidation of Holdings Act provides as follows :

"(2) Upon the said publication of the notification under sub-section (2) of Section 4 the following further consequences shall ensure in the area to which the notification relates, namely :

(a) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration of adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an

order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending stand abated :

Provided that no such order shall be passed without giving to the parties notice by post or in any manner and after giving them an opportunity of being heard.

Provided further that on the issue of a notification under subsection (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part, as the case may be, shall stand vacated :

(b) such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate Consolidation Authorities under and in accordance with the provisions of this Act and the rules made thereunder."

10. It appears that the proceedings mentioned in Clause (a) of subsection (2) are to abate. Those are suit or proceeding in respect of correction of records, declaration of right or interest in land. In the present case, no prayer for correction of records or declaration of any right in respect of 1/45 share or interest in land has been sought for. Therefore, the present case does not come within the purview of Section 5 (2) of the U. P. Consolidation of Holdings Act and as such I do not find any reason to interfere with the preliminary issue to that extent as decided by both the Courts below.

11. So far as Section 10 of the CPC is concerned. It provides stay of subsequently instituted suit where the parties are same and the relief claimed can be granted by the said Courts. Admittedly. In the present case, the parties are same and the subject-matter of the litigation is also same but the reliefs are different. Admittedly, the authority which is proceeding with the proceeding u/s 176, has no jurisdiction to grant relief with regard to the cancellation of the sale deed. At the same time, the civil court has no jurisdiction to grant the relief with regard to declaration of share which is pending before the revenue court. Therefore, the relief being altogether different and the two Courts having no jurisdiction with regard to the two separate reliefs in two separate proceedings. Section 10 of C.P.C. has no application.

12. Therefore, I am not inclined to Interfere with the orders passed by the Courts below.

13. The decision relied upon by the learned counsel for the petitioner in the case of Maluk Singh v. Niranjana Singh and others 1997 RD 438, is distinguishable on facts and has no manner of application in the present facts and circumstances of the case. Therefore, the ratio decided therein cannot be attracted in the present case in view of distinguishable facts and circumstances of the case at hand.

14. For all these reasons. I am not Inclined to Interfere with the orders. The writ petition fails and is accordingly dismissed.