

(2015) 01 AHC CK 0157

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 2780 of 2015

Mahant Ramashankar Bharti

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229-B

Citation : (2015) 4 ADJ 337 : (2015) 2 AWC 2089 : (2015) 127 RD 646

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Praveen Kumar Giri and A.K. Dwivedi, for the Appellant; Devendra Kumar Tiwari, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—Heard Shri A.K. Dwivedi holding brief of Shri P.K. Giri, learned counsel for the petitioner and Shri Devendra Kumar Tiwari, who has filed a caveat on behalf of respondent No. 3. This petition arises out of a suit under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act and is directed against the order dated 20.10. 2009 passed by the Board of Revenue in Second Appeal No. 10 of 2012-13. By this order, the Board of Revenue has set aside the judgments passed by the trial and the first appellate Courts and has remanded the matter to the trial Court for a fresh decision of the suit, on merits, after framing issues.

2. The contention of learned counsel for the petitioner is that the parties had earlier litigated before the mutation Courts on the basis of wills in their favour. This matter traveled up to the High Court and was finally decided by means of the order dated 12.3.2008 passed in the writ petition No. 13257 of 2008 filed by Smt. Shubhawati, who is arrayed as respondent No. 4 in the instant writ petition. The will dated 21.2.1994 in favour of the petitioner, Mahant Ramashanker Bharti, was accepted by the mutation Courts, which orders were challenged by means of the writ petition aforementioned.

3. In the last paragraph of the order of this Court in writ petition No. 13257 of 2008, it has been observed that "it is always open to the petitioner to file a civil suit or to take proceedings under the Indian Succession Act to declare the will dated 21.2.1994 was not executed in accordance with law or that it is forged document. This writ petition against the order passed in summary proceedings in which the findings do not operate as estoppel or res-judicata in a suit in the competent Court does not call any interference".

4. Relying upon the above quoted observations, the trial Court as also the first appellate Court, dismissed the declaratory suit filed by the contesting respondent holding it to be not maintainable before the revenue Court.

5. The Board of Revenue in Second Appeal, set aside these orders and remanded the matter to the trial Court to decide the suit afresh, after framing issues, as already noticed above.

6. Insofar as the first submission of learned counsel for the petitioner that the declaratory suit before the Revenue Court was barred in view of the observations of this Court in writ petition No. 13257 of 2008, it may be observed that the High Court while deciding the writ petition No. 13257 of 2008 was not called upon to decide the question as to what was the proper forum which could grant the relief claimed by the petitioner therein. The observations made were mere passing observations and appear to have been made only with a view to show that there was no necessity of entertaining the writ petition as the findings recorded in the orders passed by the mutation Courts do not operate either as estoppel or res-judicata. It is the settled legal position that mutation proceedings are purely fiscal in nature and do not determine the title of the parties. Besides, such proceedings are summary in nature.

7. As regards the observation in the judgment dated 12.3.2008 that a civil suit or proceedings under the Indian Succession Act may be drawn for declaring the will to be a forged and fabricated document, it may be pointed out that a will can always be proved in collateral proceedings. There is no dispute that the will pertains to agricultural land and, therefore, its legality or otherwise can be examined in a suit for declaration, filed under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act.

8. It has been held in the judgment reported in *Saiyada Mossarrat Vs. Hindustan Steel Ltd., Bhilai Steel Plant, Bhilai (M.P.) and Others*, AIR 1989 SC 406 : (1988) 4 JT 243 : (1988) 2 SCALE 1208 : (1989) 1 SCC 272 : (1988) 3 SCR 690 Supp : (1989) 1 UJ 20 , that an observation on a question, which did not arise for consideration in a case is only obiter dicta and not binding.

9. In *State of Haryana Vs. Ranbir @ Rana*, AIR 2006 SC 1796 : (2006) 102 CLT 215 : (2006) CrilJ 2142 : (2006) 3 CTC 48 : (2006) 4 JT 350 : (2006) 4 SCALE 113 : (2006) 5 SCC 167 : (2006) SCC(L&S) 1012 : (2006) 1 UJ 515 : (2006) AIRSCW 2022 : (2006) 3 Supreme 358 , it has been held that observations that are in the nature of an expression of a viewpoint or sentiment have no binding

effect.

10. Again in the case *Girnar Traders Vs. State of Maharashtra and Others*, AIR 2007 SC 3180 : (2007) 10 SCALE 391 : (2007) 7 SCC 555 : (2007) 9 SCR 383 : (2007) AIRSCW 5782 : (2007) 6 Supreme 25 , it has been laid down that "only the ratio decidendi can act as the binding or authoritative precedent and reliance placed on a mere general observations or casual expressions of the Court, is not of much avail."

11. In *Amar Nath Om Prakash and Others Vs. State of Punjab and Others*, AIR 1985 SC 218 : (1984) 2 SCALE 769 : (1985) 1 SCC 345 : (1985) 2 SCR 72 : (1986) 62 STC 130 , it has been held that judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may be necessary for judges to embark into lengthy discussions, but the discussion is meant to explain and not to define??.... they interpret words of statutes; their words are not to be interpreted as statutes."

12. It is, therefore, clear that the observations made in the order of the High Court in writ petition No. 13257 of 2008 are obiter dicta and do not lay down any binding ratio.

13. There is yet another aspect of the matter. In the case of *A.R. Antulay Vs. R.S. Nayak and Another*, AIR 1988 SC 1531 : (1988) CriLJ 1661 : (1988) 2 Crimes 753 : (1988) 2 JT 325 : (1988) 2 SCC 602 : (1988) 1 SCR 1 Supp , the Apex Court has held that the jurisdiction or power to try and decide the case is conferred on the Court by the law of the land enacted by the legislature or by the provisions of the Constitution.

"The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away at right of appeal. Parliament alone can do it by law and no Court, whether superior or inferior or both combined, can enlarge the jurisdiction of a Court or divest the person of his rights of revision or appeal."

14. On the basis of the aforesaid pronouncements, it can be held that the observations made by the High Court in the judgment dated 21.9.1994 were not made while dealing with the question of jurisdiction and, therefore, the observations in this regard were of no consequence. The trial Court as also the lower appellate Court, therefore, wrongly dismissed the suit of the contesting respondents, relying upon the aforesaid observations and this illegality has been corrected by the Board of Revenue in second appeal.

15. I, therefore, find no merit in the submissions made by learned counsel for the petitioner and the order impugned in this regard calls for no interference. Since the suit sought a declaration regarding agricultural property, it was clearly maintainable under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act and the judgments to the contrary have rightly been set aside by the impugned order. The second submission made is that the suit had been

preferred by four plaintiffs. The first appeal as also the second appeal had been filed by only one of the four plaintiffs, while the other plaintiffs had been arrayed as respondents and, therefore, the appeal as also the second appeal was incompetent on account of non-joinder and mis-joinder of parties and were liable to be dismissed on this ground alone. This submission of learned counsel for the petitioner has been made only to be rejected. Admittedly, the other plaintiffs had been arrayed as respondents before the second appellate Court, and, therefore, the second appeal was neither incompetent nor it suffered from non-joinder or mis-joinder of parties. In this connection, it would also be relevant to note that the plea of non-joinder or mis-joinder which is being raised has not been raised before the second appellate Court. Learned counsel for the petitioner, despite a pointed query by the Court, could not point out anything either from the judgment impugned or from the writ petition that this plea had ever been raised earlier. It is, therefore, clear that an altogether new plea is being raised for the first time before the Court, which cannot be permitted.

Accordingly and for the reasons given above, I find no illegality in the impugned order. The writ petition is wholly devoid of merits and is dismissed.