

(2025) 11 AHC CK 1830
In the Allahabad High Court
Case No : WRIT C No. 38410 Of 2025

Mahaveer Singh

APPELLANT

Vs

State Of Up And 27 Others

RESPONDENT

Date of Decision : 27-11-2025

Acts Referred:

Constitution of India, 1950 — Article 32, 226
Income Tax Act, 1961 — Section 144(B), 147

Citation : (2025) 11 AHC CK 1830

Hon'ble Judges : Manjive Shukla, J;Shekhar B. Saraf, J

Bench : Single Bench

Advocate : Alok Kumar Gupta, Pradeep Agrawal, Kushagra Dikshit

Final Decision : Dismissed

Judgement

Dr. Yogendra Kumar Srivastava, J

1. Heard Sri Punya Sheel Pandey, learned counsel for the petitioner, Sri Anand Bhaskar Srivastava, learned Standing Counsel for the State-respondents and Sri Avinash Chandra Srivastava, learned counsel for the respondent-Gram Sabha.

2. The present writ petition under Article 226 of the Constitution of India has been filed assailing the order dated 12.12.2002 passed by the respondent no.3-Sub Divisional Magistrate, Etmadpur, District Agra in Case No. 20 of 1995-96 (Munshi Lal vs. Bhagwan Singh and others), a suit for division of holding under Section 176 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "the Act, 1950"), and the subsequent revisional order dated 28.04.2005 passed by the respondent no.2-Additional Commissioner (Judicial), Agra in Revision No. RST/34/2001-2002 (Mahaveer Singh vs. Rampal Lal and others).

3. The facts, as borne out from the record, indicate that a suit under Section 176 of the Act, 1950 was instituted, in which the court of the Sub Divisional Magistrate, Etmadpur, passed a preliminary decree determining the shares of the

parties by order dated 29.02.1996. The determination of shares at that stage was made with the consent of the parties and the petitioner's consent stood reflected in his written statement and in the order of the court. Pursuant to the preliminary decree, the Lekhpal submitted a kurra report on 28.06.1996 in furtherance of the process of partition by metes and bounds.

4. Thereafter, the petitioner moved an application on 07.12.2002 before the trial court raising objection to the determination of his share and seeking to reopen the issue of shares already settled at the stage of the preliminary decree. The trial court noted that the preliminary determination of shares had been made on the basis of consent and that no statutory challenge had been raised to the preliminary decree in appeal or revision. Holding that the objection seeking re-determination of shares was not maintainable at that stage, the trial court rejected the application by order dated 12.12.2002.

5. In the meantime, the proceedings for preparation of the final decree continued. A modified kurra report was submitted by the Lekhpal on 27.12.2002. The petitioner filed objections to the modified kurra report on 03.01.2003, which were considered by the trial court in the course of final decree proceedings. Upon consideration of the material on record, the trial court accepted the modified kurra report by order dated 07.01.2003 and, thereafter, passed the final decree on 15.01.2003. The final decree was duly implemented, and necessary amaldaramad was carried out in the revenue records, as is evident from the report dated 18.01.2003 of the Registrar Kanungo on the parwana amaldaramad.

6. The petitioner carried the order dated 12.12.2002 in revision before the Additional Commissioner (Judicial). The revisional court took note of the above subsequent developments, namely: submission of the modified

kurra report on 27.12.2002; filing of objections by the petitioner on 03.01.2003; acceptance of the modified kurra report by the trial court on

07.01.2003; passing of the final decree on 15.01.2003; and the consequential amaldaramad in the revenue records on 18.01.2003. It further recorded that the petitioner-revisionist could not produce any material to establish any irregularity or illegality in the order dated 12.12.2002 rejecting his belated objection to the determination of shares. The revision was accordingly dismissed.

7. The challenge of the petitioner essentially is to the determination of his share at the stage of the preliminary decree. According to the petitioner, his share has been wrongly determined, and therefore, the trial court ought to have entertained his objection and modified the preliminary decree accordingly. The petitioner claims that the earlier determination was not binding and could be reopened at a later stage.

8. Section 176 of the Act, 1950 enables a bhumidhar to institute a suit for division of his share in a joint holding, and in such a suit the revenue court is mandated to determine and declare the rights and shares of all the co-tenure

holders in the holding. The procedure is in two stages: first, the court passes a preliminary decree declaring the respective shares; second, the final decree is prepared after effecting partition by metes and bounds in accordance with the U.P. Zamindari Abolition and Land Reforms Rules, 1952, particularly Rules 157 to 164, which deal with preparation and confirmation of the kurra and effecting actual partition. This scheme broadly corresponds to the concept of preliminary and final decrees in partition suits under Order 20 Rule 18 and Order 26 Rules 13–14 of the Code of Civil Procedure, 1908.

9. In law, a preliminary decree in a partition suit is a substantive adjudication of the rights and shares of the parties and is binding on them, subject to appeal, revision or other statutory remedies; it is not open to collateral challenge at the stage of final decree except in circumstances recognised by law. Where such a preliminary decree is passed with the consent of the parties, it partakes the character of a consent decree, which has the force of a contract with the seal of the court and, in the absence of plea and proof of fraud, misrepresentation, or lack of authority, is ordinarily not open to being re-agitated in collateral proceedings.

10. The scheme in this regard is analogous to Order 20 Rule 18 read with Order 26 Rules 13 and 14 of the Code of Civil Procedure, 1908, where a preliminary decree in a partition suit determines the respective shares of the parties, and the final decree implements such declaration by actual division of property. The preliminary decree is, therefore, a substantive adjudication of rights and is binding on the parties unless set aside in appropriate proceedings.

11. From the record, it emerges that in the suit filed under Section 176 of the Act, 1950, the court of the Sub Divisional Magistrate proceeded to determine the shares of the parties and passed a preliminary decree by order dated 29.02.1996. It is not in dispute that at the time of passing of the preliminary decree, the parties, including the present petitioner, had given their consent to the determination of shares, and the petitioner's consent was specifically recorded in his written statement filed on 05.10.1995 and in the order sheet.

12. Subsequently, at a later stage of the proceedings, the petitioner moved an application on 07.12.2002 before the trial court raising objection that his share had been wrongly determined and praying that the preliminary decree be suitably modified. The trial court noticed that the determination of shares at the time of the preliminary decree was consent-based and that no challenge had been laid to the preliminary decree in appeal or revision within the prescribed time. Treating the consent preliminary decree as binding, the trial court held that the subsequent objection to the determination of shares was not entertainable at that stage and dismissed the application by order dated 12.12.2002.

13. The rejection of the petitioner's application by the trial court on 12.12.2002 as not maintainable was thus in consonance with the statutory scheme of Section 176 of the Act, 1950 and the principles governing preliminary decrees in partition

matters. The subsequent conduct of the petitioner, in participating in the final decree proceedings by filing objections to the modified kurra report on 03.01.2003, which objections were considered and rejected while accepting the modified kurra report and passing the final decree on 15.01.2003, further underscores that the challenge is essentially to the correctness of the preliminary decree itself, which had already been worked out and implemented in the revenue records.

14. The revision preferred by the petitioner under the Act, 1950 was dismissed by the Additional Commissioner (Judicial) on 28.04.2005. The revisional court held that once the suit for partition under Section 176 had culminated in a preliminary decree determining the shares and the proceedings for final decree were underway, there was no scope for reopening the determination of shares in collateral proceedings. It further held that the order of the trial court was in conformity with the statutory scheme of the Act, 1950 and the Rules, and therefore, required no interference.

15. Law is well settled that a preliminary decree in a partition suit is a definitive adjudication of the rights and shares of the parties, though the suit continues till the final decree is drawn. In partition suits, the court first declares the rights and shares of the parties by a preliminary decree, and thereafter the property is actually partitioned in final decree proceedings; the preliminary decree binds the parties and the authorities implementing it, who are required to effect partition in accordance with the shares declared in such preliminary decree.

16. In the context of suits for partition under Section 176 of the Act, 1950, it has been consistently held that the revenue court must first pass a preliminary decree determining and declaring the rights and shares of the parties in the holding, and only thereafter proceed under the relevant rules to prepare the final decree. Once such preliminary decree has attained finality, the parties cannot, in the guise of objections at the stage of final decree or in collateral proceedings, seek to reopen the determination of shares, except by taking recourse to appropriate statutory remedies.

17. Further, where a decree is passed on consent of parties, the law recognises such decree as a contract with the imprimatur of the court, which is binding on the parties, and ordinarily, the only remedy to challenge a consent decree is to approach the same court which recorded the compromise, on grounds recognised by law such as fraud, misrepresentation, or want of authority; a collateral challenge by way of writ petition is not an appropriate remedy. A party who has expressly consented to the determination of his share, participates in the proceedings, and allows the preliminary decree to attain finality without challenge, cannot subsequently be permitted to resile from such consent and claim a different share at the stage of implementation.

18. Where the preliminary decree in a partition suit is based on consent of parties, the decree partakes the character of a consent or compromise decree

governed by Order 23 Rule 3 CPC and the general law on consent decrees.

19. The legal position emerging from the foregoing discussion may be summarized as follows:

19.1 A preliminary decree in a partition suit, including one under Section 176, is a substantive adjudication of the parties' rights and shares, binding on them unless set aside in appeal, revision or by appropriate proceedings in the same suit; it cannot be collaterally re-opened at the stage of final decree or in subsequent proceedings merely because one party later disputes the share earlier accepted.

19.2 Where the preliminary decree determining shares is passed on the basis of consent/compromise between co-tenure holders, it has the character of a consent decree and operates as estoppel between the parties; such decree can ordinarily be challenged only before the court that recorded the compromise, and only on recognized grounds such as fraud, misrepresentation or want of authority, and not through collateral proceedings.

19.3 Once a final decree in a Section 176 suit has been prepared in conformity with the preliminary decree, kurra has been accepted after considering objections, and amaldaramad has been effected in revenue records, the partition attains finality, and later objections directed, in substance, against the original preliminary determination of shares are not maintainable.

19.4 A party who has consented to the determination of his share in a preliminary decree, allowed the decree to attain finality, participated in final decree proceedings, and acquiesced in amaldaramad of the decree in revenue records, is estopped from subsequently challenging the determination of his share in writ proceedings, in the absence of pleadings and proof of fraud or other vitiating factors.

20. In writ jurisdiction, this Court does not ordinarily sit as an appellate court over concurrent findings of the revenue authorities, nor does it interfere with concluded partition proceedings where the rights and shares have been determined by a consent preliminary decree, a final decree has been drawn, and the same has been given effect to in the revenue records, unless there is a clear case of lack of jurisdiction, violation of mandatory statutory provisions, or fraud. No such ground has been made out in the present case. The petitioner has not disputed the finding that he had consented to the determination of shares at the preliminary decree stage, nor has he shown that any appeal or revision against the preliminary decree was ever filed within limitation, nor has he produced any material to demonstrate fraud or other vitiating factors.

21. The petitioner has not disputed the factual findings recorded in the impugned orders that the preliminary determination of shares was made with his consent and that no statutory appeal or revision was filed in time against the preliminary decree. Learned counsel for the petitioner has not been able to demonstrate that

the Sub Divisional Magistrate or the Additional Commissioner acted without jurisdiction, violated any mandatory statutory provision of the Act, 1950 or the Rules, or committed any patent illegality in refusing to reopen a consent preliminary decree which had already attained finality.

22. The revenue courts acted squarely within their jurisdiction under Section 176 and the applicable rules; they merely declined to reopen a consent preliminary decree which had not been challenged in time and had already been worked out into a final decree and made in revenue records. No jurisdictional error or breach of any mandatory provision of the UPZA & LR Act or Rules is disclosed.

23. In these circumstances, there is no error apparent on the face of the record, nor any jurisdictional infirmity or manifest injustice, warranting interference by this Court under Article 226 of the Constitution. Mere dissatisfaction with the share earlier accepted and consented to, or a belated change of stand by the petitioner, cannot be a ground for exercise of the extraordinary writ jurisdiction.

24. In view of the aforesaid discussion, this Court is of the considered opinion that the orders dated 12.12.2002 passed by the Sub Divisional Magistrate, Etmadpur in Case No. 20 of 1995-96 under Section 176 of the Act, 1950 and dated 28.04.2005 passed by the Additional Commissioner (Judicial), Agra in Revision No. RST/34/2001-2002 do not suffer from any material illegality, perversity, or jurisdictional error. The writ petition is devoid of merit and is accordingly dismissed.

25. It is, however, observed that it shall be open to the petitioner, if so advised, to avail such statutory remedies as may be available in law against the trial Court decree in the suit, in accordance with the provisions of the Act, 1950 and the procedural law applicable, and any such remedy, if pursued, shall be decided on its own merits without being influenced by the dismissal of the present writ petition.