

(2014) 08 UK CK 0039

In the Uttarakhand High Court

Case No : Restoration Application No. 632 of 2013, Delay Condonation Application No. 10908 of 2013 in Restoration, Delay Condonation Application No. 10909 of 2013 in Substitution, Substitution Application No. 10910 of 2013, Delay Condonation Application No. 3210 of

Maheshwar Dutt

APPELLANT

Vs

Additional Chief Revenue Commissioner

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 229-B

Citation : (2014) 125 RD 158

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Sharad Sharma, Senior Advocate, Advocate for the Appellant; J.C. Belwal, Advocate for the Respondent

Judgement

Alok Singh, J.—Mr. Sharad Sharma, learned Senior Counsel appearing for the applicants, submitted that plaintiff Vidhaya Sagar/respondent no. 3, herein, himself has filed Suit No. 27/3 of 1978-79 for declaration and partition u/s 176/229-B of the U.P.Z.A. & L.R. Act against the original petitioner and Hari Dutt for the land of Khata No. 11 and 12. Suit so filed was decided by the Assistant Collector, First Class Bhabar, Haldwani vide judgment and decree dated 13.03.1980 holding therein that original petitioner herein was the sole bhumidhar and in possession of Khata no. 12. Judgment and decree dated 13.03.1980 was never challenged and was allowed to attain finality. Learned Senior Counsel for the petitioner further contends that without disclosing the fact about filing of earlier suit being suit no. 27/3 1978-79 and judgment passed therein dated 13.03.1980, plaintiff Vidhaya Sagar/respondent no. 3, herein, has filed subsequent second suit u/s 176/229-B of the U.P.Z.A. & L.R. Act for the same very properties of Khata No. 11 and 12. He further contends that initially

suit was dismissed by the Trial Court on the technical ground that notice u/s 106 of Uttar Pradesh Panchayat Raj Act and u/s 80 of C.P.C. were not served prior to the filing of the suit; in the appeal learned Appellate Authority was pleased to hold that property of Khata No. 12 was joint Hindu Family property, therefore, plaintiff had share in Khata no. 12. According to learned counsel for the petitioner, finding so recorded by the Appellate Authority was contrary to the finding recorded by Assistant Collector 1st Class in first round of litigation. He further contends that had filing of the first suit and decision therein been placed before the trial as well as Appellate Court, subsequent, second suit would have been dismissed on the ground of res judicata.

2. Mr. J.C. Belwal, learned counsel appearing for the original plaintiff respondent no. 3 herein submits that he has to verify as to whether original plaintiff had filed earlier suit no. 27/3 78-79 pertaining to Khata no. 11 and 12 and alleged decision therein dated 13.03.1980.

3. Hon"ble Apex Court in the case of North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs., as well as Smt. Badami (Deceased) By her L.Rs. Vs. Bhali, has held that fraud vitiate judgment and decree; and any judgment and decree obtained by playing fraud can be set aside and declared as non est in any subsequent proceeding.

4. In my prima facie opinion, second suit was not at all maintainable in view of filing of previous identical suit and judgment passed therein. It seems plaintiff has filed subsequent suit by playing fraud on the Court by not disclosing that he had earlier filed identical suit for the same land which was decided.

5. Mr. J.C. Belwal, learned counsel for the respondents seeks and is granted 10 days" time to verify the same.

6. List on 04.09.2014.