
(2015) 11 AHC CK 0015
In the Allahabad High Court
Case No : Criminal Revision No. 1671 of 1990

Mohammad Hayat

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229-B

Citation : (2015) 11 AHC CK 0015

Hon'ble Judges : Vinod Kumar Misra, J.

Bench : Single Bench

Advocate : R.K. Jain, for the Appellant

Judgement

Vinod Kumar Misra, J.—List has been revised. Revisionists are not present. Their counsel are not present. Learned A.G.A. is present.

2. This revision has been preferred against the judgment and order dated 3.7.1990 passed by IVth Additional District Judge, Muzaffarnagar in Criminal Revision No. 45 of 1990 (Rahme Illahi and another Vs. Mohd. Hayat and 3 others) allowing the revision and setting aside the order dated 28.4.1990 passed by learned Pargana Magistrate, Sadar, Muzaffarnagar in Criminal Case No. 23/11 of 1988 (Smt. Rhmati Vs. Hayat and others) under Section 145 Cr.P.C. holding the possession of the 2nd Party.

3. Heard learned A.G.A. and perused the impugned judgment and order.

4. It transpires from the judgment that vide order dated 28.4.1990 learned S.D.M., Muzaffarnagar in Criminal Case No. 21/11 of 1988 (Smt. Rhmati Vs. Hayat and others) had declared second party, Hayat, Faiyaz and Islam in possession in the disputed plot on the relevant date and directed the first party not to interfere in their possession, unless disturbed by some competent court. Learned Judge has given the pedigree of the parties, which is as under

5. Second Party Hayat, Faiyaz and Islam alleged that Abdullah had executed a

will of his entire movable, immovable property in their favour on 27.2.1983. After the death of Abdullah second party moved a mutation application, which was allowed, as uncontested by the revenue authority. Smt. Rahamti, who was widow of Abdullah was not made a party in the mutation proceeding. When Smt. Rahamti came to know about the ex-parte mutation, she moved an application. On the basis of which order mutating the name of second party was set aside. Against that order matter is pending before Board of Revenue. Smt. Rahamti had filed civil suit for temporary injunction in which the plaint was returned to Smt. Rahamti. A suit under Section 229-B of U.P. Z.A. & L.R. Act was filed by Smt. Rahamti against Hayat and others which was registered as Case No. 91. The suit was dismissed in default on 24.9.1986. On 27.7.1987 a restoration application was moved which was rejected by the S.D.O. On 5.9.1987 against that appeal was filed before the Commissioner of Meerut, which was allowed by the Commissioner and the original suit was ordered to be restored. Against that order the second party, Hayat and others preferred a revision before the Board of Revenue, Allahabad. Learned Judge found that both the revisions were pending before Hon'ble Board of Revenue. Learned Judge also mentioned in his judgment that will alleged to have been executed by Abdullah, ignoring his widow Rahamti, in favour of second party is an unregistered document. The first party Rahman Elahi and Hussain Ahmad claimed the same to be a forged and fake document. The second party did not implead Smt. Rahamti as a party in the mutation proceeding and got their name mutated ex-parte. Learned Judge found that the name of the second party came into existence in the revenue record in view of the order of mutation, which order is still sub-judice in the Board of Revenue. So, in these circumstances, mere existence the name of second party cannot confer any right to the second party.

6. Under Section 229-B of the U.P.Z.A. & L.R. Act adjudication of the title and possession can be made by competent revenue court. Learned Judge mentioned in the judgment that jurisdiction under Section 145 Cr.P.C. was barred in view of case law of Hon'ble Apex Court in Ram Sumer Puri Mahant Vs. State of U.P. and Others, , wherein it has been laid down that the parallel proceedings should not be permitted to continue and in the event decree of the civil court, the criminal court should not be allowed to invoke its jurisdiction particularly when the possession is being examined by the civil court and parties are in a position to approach the civil court for interim order such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. When some suit is pending regarding the title and possession in the civil court or in the revenue court the summary proceeding under Section 145 Cr.P.C. should not be resorted in view of the fact that the parties can approach the revenue court for an injunction order under Section 229-B of the U.P. Z.A. & L.R. Act.

7. In view of the above factual and legal position, learned Judge allowed the revision and set-aside the order passed by the S.D.M. The reasoning given by learned Additional Sessions Judge is based upon proper appraisal of the facts and case law of Ram Sumer Puri Mahant (Supra). Thus, the learned Judge has

correctly set-aside the order passed by the learned S.D.M. Thus, this Court does find it proper to intervene in the aforesaid impugned order, as it does not contain any illegality. Consequently, the revision is devoid of merits and is liable to be dismissed.

8. The revision is, accordingly, dismissed.