
(2009) 07 AHC CK 0274
In the Allahabad High Court

Mohan Lal Srivastava and Another	APPELLANT
Vs	
Parshottam (D) through L.Rs. and Others	RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

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

Citation : (2009) 4 AWC 3620

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devi Prasad Singh, J.—List has been revised. None appears on behalf of the respondents.

2. Heard Sri K.C. Saxena learned Counsel for the petitioner and the learned standing Counsel.

The suit u/s 176 of U.P. Zamindari Abolition and Land Reforms Act, 1950 was filed by the petitioner. The said suit was decreed and final decree was prepared (Annexure-6 to the writ petition). Feeling aggrieved against the final decree, the private respondent Sri Parshottam had preferred an appeal before the Commissioner, Varanasi Region, Varanasi. The matter was heard by the Additional Commissioner (Admn.) who by the impugned order dated 24.3.2005, directed that the possession of plot No. 109Ka, shall not be delivered to the petitioner. Feeling aggrieved the present writ petition has been preferred.

3. The solitary argument advanced by the petitioner's counsel is that Sri Parshottam (now substituted by legal heirs), is not aggrieved party. Hence, the appeal filed before the Commissioner, is not maintained.

4. Heard the learned Counsel for the petitioner and perused the record.

5. From the bare perusal of final decree, it appears that there is no reference with regard to plot No. 109Kha which admittedly, belongs to Parshottam. The

final decree has been prepared in terms of judgment in original suit which contained various plots including plot No. 109Ka. The submission of the petitioner's Counsel is that during consolidation operation, the plot No. 109 was bifurcated in three plots namely, 109Ka, 109Kha and 109Ga. The submission is that the petitioner is owner of plot No. 109Ka and he does not claim right and title over plot No. 109Kha. According to petitioner's Counsel, even if Sri Parshottam was not aggrieved party, the appeal filed by him is not maintainable. It is settled proposition of law that any person who is aggrieved by the Judgment and decree, may prefer a statutory appeal before the higher forum. However, in the present case, it appears that Sri Parshottam was not an aggrieved party. The final decree does not contain any reference with regard to plot No. 109Kha. The Additional Commissioner (Admn.), Varanasi Region, Varanasi has also not recorded any finding as to how Sri Parshottam was an aggrieved party and in what manner the plot of Parshottam having plot No. 109Kha is affected by the final decree.

6. Learned Counsel for the petitioner admits that the petitioner does not have claim right, title or possession over the plot No. 109Kha. Since the final decree does not contain any reference with regard to plot No. 109 Kha, the appeal filed by late Sri Parshottam does not seem to be maintainable. The Commissioner while passing the order dated 24.3.2005 has failed to exercise jurisdiction vested in him.

7. Learned Counsel for the petitioner rightly relied upon the judgment of Hon''ble Supreme Court in Baldev Singh Vs. Surinder Mohan Sharma and Others, The case of Baldev Singh (supra), Hon''ble Supreme Court held that a person who is not in possession over the property in suit, is not a necessary party nor he can prefer appeal. The relevant portion of Hon''ble Supreme Court in the case of Baldev Singh (supra), are reproduced as under:

11. "Locus" of a person to prefer an appeal in a matter of this nature is vital as the right of privacy of two spouses would be interfered thereby. The Court cannot enlarge the scope of "locus" in a case of this nature where the parties are fighting litigations. Allegations made by the first respondent in his revision application does not disclose any cause of action for maintaining the said application nor does it state as to how and in what manner he would be prejudiced if the impugned judgment is allowed to stand. In the aforementioned premise bona fides of the first respondent were also required to be determined by the High Court. Having regard to the facts and circumstances of the case, we are of the opinion that the application filed by the first respondent before the High Court was not a bona fide one but was filed in furtherance of the pending disputes between the parties.

12. In the instant case, it is not necessary for us to determine the question as to whether the judgment in question is a judgment in personam or a judgment in rem. Herein, the status of the parties is not in question and such judgments ordinarily cannot be said to be judgments in rem. Even if the said judgment is a

judgment in rem, the respondent herein could not have questioned the same as he cannot be said to be aggrieved thereby. In that view of the matter, the question as to whether in the instant case, the Civil Court, Ludhiana, had any jurisdiction to pass the decree in question, takes a back seat.

8. Keeping in view the law settled by Hon'ble Supreme Court, the judgment and order passed by the appellate authority, seems to be not sustainable. The final decree seems to be a decree prepared exclusively adjudicating the controversy in terms of original judgment relating to petitioner's holding and not the respondents. The writ petition deserves to be allowed.

9. Accordingly, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the order dated 24.3.2005, passed by the Additional Commissioner, Varanasi Region, Varanasi with consequential benefits. The Commissioner concerned, shall decide the appeal in terms of the observation made hereinabove.

10. No orders as to costs.