(1970) 11 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 354 of 1964

Mst. Ram Piari APPELLANT

Vs

Joint Director of Consolidation and others RESPONDENT

Date of Decision : 06-11-1970

Acts Referred:

Citation : (1970) 40 AWR 887

Hon'ble Judges : S. N. Singh, J

Bench : Single Bench

Advocate : V.B.L. Srivastava, for the Appellant; B.D. Agarwal and K.B. Garg for Opp. Parties, for the Respondent

Final Decision : Allowed

Judgement

S. N. Singh, J.—This petition Under Article 226 of the Constitution arises out of consolidation proceedings. Since the matter has been decided on a technical point, it is not necessary to give detail facts. It appears before the consolidation authorities an objection was filed by the Petitioner claiming tenure holding''s right in the disputed property. This objection of the Petitioner was rejected by the Consolidation Officer. Against the decision of the CO, an appeal was preferred by the Petitioner before the SO (C). The Petitioner had engaged a counsel before the CO and had filed a vakalatnama in favour of that counsel. The counsel who was appointed by the Petitioner before the CO preferred an appeal before the SO (C) without filing a fresh vakalatnama.

2. A preliminary objection was raised on behalf of the Gram Samaj that the appeal was not properly presented and reliance was placed on para. 55 of the Revenue Court Manual. This preliminary objection of the Gram Samaj was accepted by the SO (C) who dismissed the appeal as improperly presented. Against this decision a second appeal was filed before the Dy. Director (C). This second appeal was also dismissed for the same reason as given by the SO(C). Before the Dy. Director (C) it appears that a certified copy of the judgment Mahabir v. State of UP CMW No. 619 of 1959 D/-10-9-1960 was filed. A mention

of this decision has been made in the order of the Dy. Director (C), but the Dy. Director (C) did not decide the case following the decision of this Court on the objection of the Gram Samaj that the judgment not being a reported one could not be relied as a ruling. Against the decision of the Dy. Director (G) a revision was filed, but this revision was dismissed as not maintainable by the Director of Consolidation having been filed after the 8th of March 1963. Aggrieved with the orders of the consolidation authorities, the present writ petition has been filed.

3. In view of a recent Division Bench decision of this Court in Ram Singh v. Dy. Director (Consolidation). 1970 AWR 838 the order of the Director of Consolidation dated 26-7-1963 is correct and calls for no interference.

4. It is prayed by the learned Counsel for the Petitioner that he has also prayed for the quashing of the orders of the SO (C) and the Dy. Director (C). His prayer for the quashing of these two orders may be considered. This request of the learned Counsel appears to be reasonable and I have heard the learned Counsel for the parties so far as these two orders of the SO (C) and the Dy. Director (C) are concerned. Having heard the learned Counsel for the parties, I am of the opinion that these two orders should be quashed and the SO (C) should be directed to decide the appeal on merits.

5. The facts stated above would show that the Petitioner engaged a counsel before the CO. Her claim was rejected. Thereafter without filing a fresh Vakalatnama, the counsel filed an appeal before the SO (C). I have emphasised times out of number that the consolidation authorities should try to do justice between the parties by deciding the case on merits and not to adhere to technicalities. In this case I find that the SO (C) wrongly relied on para. 55 of the Revenue Court Manual. There is no justification for relying on para. 55 of the Revenue Court Manual. Under the Consolidation of Holdings Act Chs. IX and X of the UP Land Revenue Act have been made applicable to proceedings before the consolidation authorities. No provision has been shown by the learned Counsel for the parties wherein Revenue Court Manual has been made applicable to proceedings before the Consolidation authorities. Rules contained in the Revenue Court Manual were framed u/s 234 of the Land Revenue Act which is contained in Ch. XI of the UP Land Revenue Act. Consequently these rules cannot be made applicable to proceedings under the UP Consolidation of Holdings Act. If at all, the consolidation authorities should have decided the question of proper presentation of the appeal in terms of rules contained in the Tenancy Act, which would follow that a counsel duly authorised could present memorandum of appeal even if no fresh vakalatnama was filed before the SO (C). It is true that the CPC as such has not been made applicable to proceedings before the consolidation authorities, but principles governing the presentation of appeals as provided in the CPC could safely be applied in view of the principles of equity, justice and good conscience. Applying the procedure provided by the Code of Civil Procedure, it can safely be held that the presentation of appeal in the instant case was proper.

6. This is also to be mentioned that it was strangely argued before the Dy. Director (C) that a decision of this Court, a certified copy of which was filed before the Dy. Director (C), was not binding on the Dy. Director (C) because it did '' not find place in any journal. In my opinion this is hardly any ground for not following the decision of this Court by the Dy. Director (C). The Dy. Director (C), in my opinion, acted illegally and with material irregularity in not following the decision of this Court in Mahabir v. State of UP (supra) wherein it has been specifically held that a duly authorised counsel could present memorandum of appeal even if no fresh vakalatnama was filed before the SO (C).

7. In view of the above discussion, this petition is allowed. The orders of the SO (C) dated 10th of January 1963 and that of the Dy. Director (C) dated 29th of March 1963 are hereby quashed and the SO (C) is directed to restore the appeal to its original number and decide it on merits. There will be no order as to costs.