(1982) 01 AHC CK 0061

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 847 of 1972

Muse and Others — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 05-01-1982

Acts Referred:

Citation : (1982) AWC 314

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

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Singh, J.—This Writ Petition arises out of a suit for declaration filed by Bhagwan Das and Ors. the Plaintiff-Respondents, claiming to be sole tenure holders of the land in dispute. The suit was contested by the Defendants-Petitioners claiming to be co-tenure-holders along with the Plaintiffs. According to the Plaintiffs'' case, the land in dispute was settled with Bhagwan Das whereas according to the case of the Defendants, it was settled with Bhagwan Das and Balwanta, father of the Petitioners, jointly, who were the members of the joint Hindu family. From the case of the parties it is clear that both the parties set up the case on the basis of settlement by landholder. Therefore, the main question for consideration in this case is whether the land in dispute was settled with Bhagwan Das alone or it was settled with Bhagwan Das along with Balwanta ? Both the parties adduced oral and documentary evidence in support of their respective contentions. The trial court after considering the oral and documentary evidence on record, it appears, discarded the oral evidence but relying on the order passed in CLRD proceeding dismissed the suit on the finding that both Plaintiff No. 1 and Defendant No. 5 are co-sirdars of the suit plots along with other co-sharers. The first appellate court affirmed the decree of the trial court. From the judgment of the first appellate court, it appears that reference was made to the oral evidence of both the parties and finding was recorded to the effect that the name of Bhagwan Das was entered in a representative capacity as representing Balwanta also. This finding, it appears, is based on the fact that the family was joint. Consequently, the entry was also presumed to be in representative capacity. However, the Board of Revenue disagreed with the finding of the Additional Commissioner and held that the name of the Plaintiff has been wrongly interpreted by the courts below in the representative capacity. According to the Board of Revenue, the Plaintiff-Respondent was the sole tenure-holder.

2. The earliest entry was in the name of Bhagwan Das where he was recorded as Dar-Sikmi. This entry may be in individual capacity or in representative capacity and the fact that on the basis of this entry Bhagwan Das was the sole tenant or co-tenure holder along with Balwanta could be determined only after consideration of the oral and documentary evidence on record. No doubt, under the provisions of the U.P. Land Revenue Act, there is presumption of correctness of entries but there is no law to draw inference that a particular entry may be presumed in the individual capacity or in the representative capacity. This fact can be determined only after consideration of oral and documentary evidence on the record. The trial court, no doubt, has considered the oral and documentary evidence but it discarded the oral evidence and placed reliance only on the order passed in CLRD proceeding whereas the first appellate court based its finding on the fact that there is presumption of joint Hindu family and, therefore, the entry will also be presumed to be joint. But the Board of Revenue, without discussing the oral and documentray evidence considered by the subordinate courts, held that the entry in the name of Bhagwan Das cannot be presumed to be in representative capacity. The order of the Board of Revenue was an order of reversal. Therefore, while reversing the order of the first appellate court, it was necessary for the Board of Revenue either to remand the case or to consider the material and oral and documentary evidence himself. It appears that the Board of Revenue has not considered the oral and documentary evidence mentioned in the judgments of the first appellate court and the trial court. Therefore, the finding given by the Board of Revenue is no finding in the eye of law and cannot be sustained.

3. In the result, the writ petition succeeds and is hereby allowed. The order of the Board of Revenue dated 7-1-1972 is quashed and the Board of Revenue is directed to decide the case afresh according to law and in the light of the observations made above. Since no one has appeared on behalf of the Respondents, therefore, there is no order as to costs.

