(2010) 02 AHC CK 0150

In the Allahabad High Court

Nagar Nigam APPELLANT

Vs

Tola Ram and Others RESPONDENT

Date of Decision : 18-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2010) 02 AHC CK 0150

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—Tola Ram, respondent No. 1 herein, instituted a suit No. 75 of 1997 u/s 229 B of the U.P.Z.A. & L.R. Act in the Court of Sub Divisional Officer, Moradabad in respect of an area of plot No. 69 claiming that he is Assami over the same and he should be declared as Bhumidhar. The said suit was contested by the petitioner herein on the ground that the said plot belongs to local authority i.e. Nagar Nigam and as such an Assami tenure holder cannot be declared a Bhumidhar. Besides above, number of other pleas such as statutory notice u/s 326 of the U.P. Municipalities Act and other pleas were also pressed.

2. On the basis of the pleadings of the parties, the trial court framed as many as nine issues and after taking into consideration the material oral and documentary on record, by the judgment and decree dated 18th of August, 1997 decreed the suit declaring the respondent No. 1 herein, Tola Ram, as Bhumidhar with transferable rights. The said order was challenged successfully by the petitioner herein before the Additional Commissioner (Jud.) in Appeal No. 226 of 1996-1997. It was found by the First Appellate Authority that there is no material on record as to show in what capacity the Patta of Assami right was executed in favour of the petitioner. There is no documentary material in this regard on record. The appellate court also was of the view that proper opportunity was not afforded to the appellant therein to put forward its case. The judgment and decree of the first appellate court has been set aside in second

appeal No. 37 of 1998-1999: Tola Ram v. State of U.P. by the Board of Revenue on 13th of July, 2004. Challenging the said judgment and decree passed in second appeal, the present writ petition has been filed.

3. Heard Shri Prem Chandra, learned Counsel for the petitioner. None appeared on behalf of the private respondents. The learned Counsel for the petitioner submits that in view of the finding recorded by the trial court that the plot in dispute is a pond, no such declaration declaring Tola Ram as Bhumidhar can be granted. Secondly, in view of the amendment as carried on in Section 100 C.P.C, it was incumbent upon the Board of Revenue before deciding the appeal to have framed substantial questions of law. The submission is that the Board of Revenue has committed illegality in allowing the second appeal without framing the substantial question of law which is a mandatory requirement as per the amended Section 100 C.P.C..

4. I have given careful consideration to the aforesaid submissions of the learned Counsel for the petitioner. It is correct that under Issue No. 6, the trial court has found that there is pond on the spot over a part of the land. However, it has further observed that the said pond does not belong to Gaon Sabha or Nagar Palika and as such there is no hurdle for the declaration as sought for. It is not necessary for this Court to express any opinion on the said finding of the trial court as none has been expressed by the Board of Revenue in second appeal. So far as the question of non framing of substantial question of law before deciding the second appeal filed u/s 100 C.P.C. read with Section 331 of the U.P.Z.A. & L.R. Act is concerned, stands concluded in favour of the petitioner by two decisions of this Court. In Sri Net Bharti and others Vs. Board of Revenue and others, the Court has considered the manner in which a second appeal u/s 100 C.P.C. has to be disposed of. It has been said that if the second appellate court is affirming the findings of first appellate court, general agreement with the finding recorded by the first appellate court, would be sufficient compliance of Section 100 C.P.C., but in those cases where the second appellate court is setting aside the findings of first appellate court is required to meet the reasons given by the first appellate court. It has been further held that the decisions rendered by the Supreme Court with reference to Section 100 C.P.C. dealing with the power and jurisdiction of High Court to dispose of a second appeal without framing substantial questions of law are equally applicable to the second appeals decided by the Board of Revenue under the provisions of the U.P.Z.A. & L.R. Act. It has been held that under the amended Section 100 C.P.C read with Sub-section (4) of Section 331 and Section 341 of the U.P.Z.A. & L.R. Act, existence of substantial question of law is sine qua non for exercise of power by the Board of Revenue in second appeals and such second appeals can be only heard and decided on the substantial question of law so formulated at the time of admission after affording opportunity to the respondent or respondents, as the case may be, to argue that the appeal does not involve such substantial question of law. It is true that before amendment of Section 100 C.P.C., a second appeal was entertainable on a question of law but after amendment, a second appeal is

made entertainable by Parliament only on substantial question of law. The unambiguous expression "substantial question of law" used u/s 100, C.P.C. does not require any interpretation by Courts. It is thus crystal clear that question of law is not sufficient to entertain a second appeal unless such question of law partakes the shape of "substantial question of law".

5. Similar view has been taken in Pawan Kumar v. Board of Revenue 2007 (25) LCD 1120.

6. Coming to the facts of the case, it is but evident that while allowing the appeal by the impugned order, the Board of Revenue has not framed substantial questions of law. This being so, the impugned order passed in second appeal cannot be allowed to stand. The same is, therefore, quashed. The writ petition succeeds and is allowed and the matter is remanded back to the Board of Revenue to rehear and redecide it in accordance with law keeping in view the observations made above in the judgment, after framing the substantial questions of law.

7. No order as to costs.