
(2015) 08 AHC CK 0199
In the Allahabad High Court
Case No : Writ B. No. 40804 of 2015

Om Pal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-08-2015

Acts Referred:

Citation : (2015) 129 RD 246

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Pankaj Kumar Tyagi and Archana Tyagi, for the Appellant; Mahesh Narain Singh, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Smt. Archana Tyagi, for the petitioner. The writ petition has been filed for quashing the final decree passed by Sub-Divisional Officer dated 13.10.2005, Additional Commissioner dated 12.9.2006 and Board of Revenue, U.P. dated 5.6.2015, dismissing the appeal and second appeal of the petitioner, in partition suit under U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the "Act").

2. Plots 24 (area 1.6820 hectare), 30 (area 0.1690 hectare) and 150 (area 1.9710 hectare) of village Aterana, pargana Sardhana, district Meerut were joint holdings of Suresh, Om Pal, Dushyant and Ram Kumar. Suresh (brother of the petitioner) filed a suit (registered as Suit No. 103/5) for partition of his 1/4 share. The petitioner did not file his written statement. Respondents-5 and 6 filed their written statement and admitted share of the parties as 1/4 each. Sub-Divisional Officer passed preliminary decree in the suit on 27.6.2005, holding 1/4 share each of the plaintiff and defendants-1 to 3. Sub-Divisional Officer also directed Lekhpal to prepare kurra. Thereafter Lekhpal prepared kurra and submitted in the Court on 25.7.2005, in which Suresh, (the plaintiff) was given his share in plot 150/4 (area 0.9105 hectare), Om Pal (the petitioner) was given his share in plot 150/2 (area 0.9105 hectare), Dushyant (respondent-5) was

given his share in plots 24/2 (area 0.6810 hectare), 30/1 (area 0.1690 hectare) and 150/1 (area 0.1252 hectare) (total area 0.9752 hectare) and Ram Kumar (respondent-6) was given his share on plot 24/1 (area 0.9757 hectare). An area of 0.0250 hectare of plot 24/2 and 0.0250 hectare of plot 150/3, in which grove boring, nali tube-well and Deosthan were existing were remained joint of the parties.

3. The petitioner filed an objection on 4.8.2005 against kurra, and stated that there had been a private partition between parties of all the plots, in which the petitioner was given share in all the plots. The petitioner, by investing labour and money levelled his plots, made it fertile and also planted mango trees, which has been allotted in the kurra of Suresh, without giving any compensation to the petitioner. Lekhpal has not prepared kurra, according to previous possession of the parties. In the kurra the petitioner was given 0.9105 hectare land while respondents-5 and 6 were given 0.9752 hectare land thus unequal distribution has been made. Kurra is liable to be set aside.

4. Sub-Divisional Officer, after hearing the parties, by order dated 13.10.2005 held that kurras have been prepared by Lekhpal, according to the valuation and equal valuation land has been allotted to all the co-sharers. Lekhpal, in his statement, has stated that kurra has been prepared keeping in view of previous possession of the parties. Before partition, possession of one co-shares, over specific portion of the land is immaterial. Kurras have been prepared according to the provisions of Rule 131 of U.P.Z.A. & L.R. Rules, 1952. On these findings, he rejected objection of the petitioner, confirmed the kurra and passed final decree in the suit. The petitioner and Suresh filed an appeal (registered as Appeal No. 3 of 2005-06) from the aforesaid decree. The appeal was heard by Additional Commissioner, who by order dated 12.9.2006 held that there were two tube-wells, which were kept joint. In the kurras of Dushyant and Raj Kumar, 28 tree were falling while in the kurra of Om Pal and Suresh 30 trees were falling. Kurras were prepared on the basis of valuation and there is no illegality in it. On these findings, the appeal was dismissed. The petitioner and Suresh filed a second appeal (registered as Second Appeal No. 54 of 2006-07), which was dismissed by Board of Revenue, U.P. by order dated 5.6.2015. Hence, this writ petition has been filed.

5. The Counsel for the petitioner submitted that there had been a private partition between the co-sharers. In which, all co-sharers were given share in all the three plots. The petitioner, by investing labour and money leveled his plots, made it fertile and also planted mango trees, which has been allotted in the kurra of Suresh, without giving any compensation to the petitioner. Lekhpal has not prepared kurra, according to previous possession of the parties, as provided under Rule 131 of U.P. Zamindari Abolition and Land Reforms Rules, 1952. The petitioner was given 0.9105 hectare land in his kurra, while respondents-5 and 6 were given 0.9752 hectare land and thus unequal distribution has been made. The petitioner, in his objection, has raised above grounds but none of the

revenue Court has considered the objection of the petitioner. The decree of Courts below are illegal and liable to be set aside.

6. I have considered the arguments of the Counsel for the petitioner and examined the records. Rule-131 of U.P. Zamindari Abolition and Land Reforms Rules, 1952, which is relied upon is quoted below:---

"Rule-131.--(1) In making partition of holding into two or more portions, the following principles shall be observed:

(a) The valuation of portion allotted to each party shall be proportionate to his share in the holding;

(b) The portion allotted to each party shall be as compact as possible;

(c) As far as possible no party shall be given all the inferior or all superior classes of land;

(d) As far as possible existing fields shall not be split up;

(e) Plots which are in separate possession of a tenure holder shall, as far as possible be allotted to such tenure holder, if they are not in excess of his share.

(2) The land revenue payable by each person shall bear the same proportion to the total land revenue as the valuation of share bears to the total valuation of the holding."

7. Plots 24 and 30 are adjacent to each other and lay in west of Ganga canal, while plot 150 lies in east of Ganga canal. An area of 0.3508 hectare of plot 24 was land of the quality "bhud abbal abi" and carry valuation at the rate of Rs. 4.00 per pukhta bigha. Remaining land of all the three plots were of the quality "sewat Doyam pils abi" and carry valuation at the rate of Rs. 6.37 per pukhta bigha. Total area of plots 24 and 30 is 1.8510 hectare. Two of the co-sharers were allotted kurra on plot 24 and 30. Total area of plot 150 is 1.9710 hectare and the petitioner and Suresh were allotted kurras on plot 150. An area of 0.0250 hectare of plot 24/2 and 0.0250 hectare of plot 150/3, in which grove boring, nali, tube-well and Deosthan exist, remained joint of the parties. Valuation of all the co-sharers is approximately equal i.e. Rs. 22.92 and land revenue is also equal i.e. Rs. 47.75.

8. So far as the argument that the petitioner, by investing labour and money, leveled his plots and made it fertile, is concerned, the petitioner has not adduced any evidence to prove that he had ever leveled his plots or made any extra investment in it. Hereditary rate of the land and its quality was same except a part of plot 24. So far as improvements and trees are concerned, the portions of improvement were kept joint of the parties. In plot 24, there were 28 tree while in plot 150 there were 30 trees. Additional Commissioner found that distribution of trees was approximately equal. As such no prejudice has been caused to the petitioner.

9. The arguments that previous possession is the sole criteria for preparation of kurra is not liable to be accepted. Rule 131 (1) (d) provides that as far as possible existing fields shall not be split up and Rule 131 (1) (e) provides that plots which are in separate possession of a tenure holder shall, as far as possible be allotted to such tenure holder, if they are not in excess of his share. In this case, according to the own case of the petitioner, all the co-sharers were cultivating land of all the three plots in their private partition and none of the plot was in exclusive possession of the petitioner as such Rule 131 (1) (e) has no application in this case. In order to minimize splitting, two of the co-sharers were given their share of plots 24 and 30 and two were given on plot 150 according to Rule 131 (1) (d). As some area of plot 24 was land of inferior quality as such area of respondents-5 and 6 have been increased. Difference of area in 0.0647 hectare but valuation is same. Thus kurras do not suffer from any illegality. No interference is required by this Court. In view of the aforesaid discussions, the writ petition has no merit and is dismissed.