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**(2005) 08 AHC CK 0011**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 45747 of 2000

Pan Kumari

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

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**Date of Decision :** 30-08-2005

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 47, 9  
Limitation Act, 1963 — Article 137, 27  
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49, 9  
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 18, 189, 189(C), 209, 229B  
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 338

**Citation :** (2006) 1 AWC 448 : (2005) 99 RD 529 : (2005) 2 RD 529

**Hon'ble Judges :** Janardan Sahai, J

**Bench :** Single Bench

**Advocate :** G.N. Verma, R.C. Singh and S.D. Pandey, for the Appellant; Anuj Kumar, A.S.C., Radhey Shyam, H.R. Misra, Trevini Shanker and Sarita Dubey and S.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Janardan Sahai, J.—A suit u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act was filed by the plaintiffs/respondents Kailash Nath Tewari, Surya Mani Tewari and Chandra Mani Tewari against the Gaon Sabha. The petitioner Pan Kumari was also impleaded in the suit on an application filed by her. The case of the petitioner is that the ancestors of the petitioner were recorded in 1281-F and from 1320 fasali to 1359 fasali and the petitioners are in possession over the disputed land of which they were grove-holders on the date of vesting and consequently they became Bhumidhar u/s 18 of the U.P. Zamindari Abolition and Land Reforms Act. The suit was contested by the Gaon Sabha and by the petitioner. The trial court decreed the suit. Against the decree two appeals were filed one by the Gaon Sabha and the other by the petitioner. Both the appeals were dismissed by the Commissioner. Two second appeals were filed. The Board of Revenue dismissed both the appeals. Against the order of the Board of

Revenue a writ petition was filed by the Gaon Sabha numbered as Civil Misc. Writ Petition No. 50461 of 2000, which was also dismissed as withdrawn. The present writ petition has been filed by Pan Kumari.

2. I have heard Sri R. C. Singh, learned counsel for the petitioner and Sri Radhey Shyam, learned counsel for the respondents.

3. It is submitted by Sri R.C. Singh that the suit filed by the plaintiffs/respondents was barred by Section 49 of the Consolidation of Holdings Act in as much as no objection was raised in the consolidation proceedings by the plaintiffs/respondents. The other submission is that the suit is barred by limitation. On the question that the suit was barred by Section 49 of Consolidation of Holdings Act the finding recorded by the trial court is that on the date of the publication of the notice u/s 9 of the Consolidation of Holdings Act the plaintiffs/respondents were minors. The appellate court also affirmed the said finding. Sri R.C. Singh submitted that from the reading of the orders passed by the trial court and the appellate court it is clear that there is no specific finding upon the point of minority of the plaintiffs/respondents, which they were required to record in view of the directions in an earlier writ petition No. 41280 of 1996. I have examined the judgement of the trial court. It appears that before the trial court the plaintiffs/respondents had filed evidence showing the age of the plaintiffs. In the passport the date of birth of Chandra Mani Tewari is 25.9.1963 and in the High School Certificate of Kailash Nath Tewari his date of birth is 13.9.1958 and of Sruya Mani Tewari in his High School certificate is 25.8.1948. Oral evidence on behalf of the plaintiffs/respondents was also adduced. The trial court found that the documentary evidence filed by the plaintiffs/respondents was un rebutted. In effect this is a finding of minority as the trial court found that the plaintiffs evidence of minority was un rebutted. The appellate court has affirmed the finding that the plaintiffs/respondents were minors and consequently they could not file the objections within the time permissible u/s 9 of the Consolidation of Holdings Act. Sri R.C.Singh was unable to refer to any document filed by the defendant/petitioner in the trial court or in the 1st Appellate Court regarding the age of the plaintiffs/respondents. He however submitted that in the Board of Revenue an application for additional evidence was filed by the petitioner in which certain documents including C.H. Form 11 showing Surya Mani as major and guardian of the other plaintiffs were sought to be filed but the Board of Revenue did not pass any order on that application. In reply it has been stated in para 19 of the counter affidavit that the appeal was heard by the Board on 6.9.2000 and no such application was pressed or filed until the judgment on 21.9.2000. According to the respondents even the court fee stamps on the application have not been cancelled, which would indicate that the application was never filed. In rejoinder affidavit the averments made in the counter affidavit have been denied. In C.H. Form 11 copy of which has been filed in this petition there is an entry showing Kailash Nath Tewari the plaintiff as aged 6 years (minor) and Chandra Mani Tewari as aged 5 years (minor) whereas Surya Mani Tewari is shown as major and guardian of the

minors.

4. Sri Radhey Shyam, learned counsel for the respondents submitted that the Board of Revenue had no occasion to pass any order on the application under Order 41 Rule 27 because the same was never pressed and it was filed subsequently after the arguments were over. There is a dispute upon this fact. The point does not find mention in the order of the Board of Revenue. Ordinarily it would be treated that all the points that were raised before the Board of Revenue were considered by it. There is no affidavit of the counsel who argued the case before the Board of Revenue that the application under Order 41 Rule 27 was pressed. That apart in the face of the direct evidence in the nature of the High School Certificate that was available on the record not much weight can be attached to the entry in C.H. Form 11. The finding on the question of minority recorded by the authorities below is a finding of fact. No ground for interference has been made out.

5. It is submitted by Sri Radhey Shyam, learned counsel for the respondents that the order of the Board of Revenue has become final. The Gaon Sabha had filed a writ petition against that order but had withdrawn the same. It is not disputed by Sri R.C. Singh that in this case the petitioner is not claiming title in herself but is setting up the title of the Gaon Sabha. The Gaon Sabha having already lost in the Board of Revenue and having withdrawn the writ petition the matter between the Gaon Sabha and the plaintiffs/respondents has become final. The petitioner is litigating under the same title and consequently even otherwise the principle of res-judicata would be applicable. The view finds support from the decision of the Apex Court in 1996 All CJ 824 (Singhal Lal Chand Jain v. Rashtriya Swayam Sewak Sangh, Panna and Ors.). In that case a decree for eviction was passed against the Sangh. An objection u/s 47 C.P.C. in execution proceeding was filed by a member of the Sangh. The Apex Court held that the principles of res judicata were applicable as a member of the Sangh is litigating under the same title as the Sangh.

6. Sri R.C. Singh submits that the suit u/s 229-B was barred by limitation. In support of this contention he relies upon Section 341 of the U.P. Zamindari Abolition and Land Reforms Act, which provides that the Limitation Act would be applicable to proceedings under the U.P. Zamindari Abolition and Land Reforms Act and limitation in a suit for declaration would be governed by Article 137 of Schedule 1 of the Limitation Act as there is no period prescribed for such a suit under the U.P.Z.A. & L.R. Act. Section 341 itself provides that the provisions of certain Acts including the Limitation Act shall apply to the proceedings under the U.P. Z.A. & L. R. Act unless otherwise provided in the U.P.Z.A. & L.R. Act. Rule 338 of the U.P.Z.A. and L.R. Rules provides that the suits, applications and Ors. proceedings specified in Appendix III shall be instituted within the time specified therein for them respectively. Recourse to the provisions of the Limitation Act would be available only if there is no provision under Rules in respect of the period of limitation for the different classes of suits or proceedings mentioned

therein. In Appendix III the period of limitation provided for different classes of suits has been given. As regards suits u/s 229-B column 4, which prescribes the period of limitation for different classes of suit says "none". It would therefore be treated that there is no limitation for filing a suit u/s 229-B. Section 9 of the CPC provides that all suits of civil nature shall be instituted in the civil court except those, which have been accepted. A suit u/s 229-B falls within the excepted category and such suits even though they involve declaration are suits of a special character. Article 137 of the Limitation Act relied upon by Sri Singh in any case is applicable only to applications and not to suits and therefore has no play. When the rule making authority has provided different periods of limitation for different classes of suits it would be treated that provisions prescribing period of limitation in the Limitation Act would not be applicable to suits under the U.P.Z.A. & L.R. Act. Section 189 U.P.Z.A. & L. R. Act sets out the circumstances in which the interest of a bhumidar is extinguished. Clauses (a) (aa) and (b) relate to cases where the bhumidar dies leaving no heir, or where he has let out his holding in contravention of the provisions of the Act or where the land is acquired. Sub-section (C) of Section 189 provides that where a bhumidar has lost possession the bhumidari right would extinguish when the right to recover possession is lost. In *Ram Naresh v. Board of Revenue* 1985 R.D. 444 relied upon by Sri R. C. Singh it was held that the provisions of Section 27 of the Limitation Act would be attracted to suits instituted u/s 229-B. Section 27 provides that on the determination of the period limited for instituting a suit for possession the right to such property shall be extinguished. The rule is an exception to the general rule that limitation bars the remedy but does not extinguish the right. If however a person is in possession his right can not be extinguished unless the case is covered by Clauses (a) (aa) and (b) of Section 189. He can therefore seek a declaration of his right at any point of time. If a person has been dispossessed he would have to institute a suit u/s 209 U.P.Z.A. & L.R. Act. Appendix III provides the period for limitation for filing a suit u/s 209. It would follow therefore that a suit u/s 229-B would be barred by limitation the bhumidar is out of possession and his right to file a suit u/s 209 is barred by limitation. The finding of fact recorded on the question of possession is that the plaintiffs have established their continuous possession over the disputed land. The finding is not shown to be vitiated by any error. As the rights of the plaintiff were never extinguished no question of limitation arises. For the reasons given above the writ petition lacks merit and is dismissed.