(2007) 03 AHC CK 0092

In the Allahabad High Court

Pawan Kumar and Others APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 226

Citation : (2007) 4 ADJ 617 : (2007) 78 AWC 2468 : (2007) 3 AWC 2468

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjani Kumar, J.—By means of present writ petition under Article 226 of the Constitution of India, the petitioners have challenged the order dated 24th March, 2005, passed by Board of Revenue and also the order dated 30th June, 2003 passed by Additional Commissioner, Saharanpur.

2. The brief facts of the present case are that the petitioners and all family members entered into an oral family settlement to partition their shares by metes and bounds on 2nd February, 1970 of the property in dispute. On 27th September, 1997, petitioner No. 1 Pawan Kumar filed a civil suit being Suit No. 527 of 1997 for permanent injunction on the basis of family settlement dated 2nd February, 1970. In the aforesaid suit, the petitioners 2 and 3, who were arrayed as defendants, filed Joint written statement on 5th December, 1997. Another defendant, namely, Smt. Anju also filed her written statement on 22nd December, 1997 in Suit No. 527 of 1997. The aforesaid Suit No. 527 of 1997 has been decreed by the civil court on 29th April, 1998 on the basis of the compromise and a compromise decree was passed identifying the respective shares of the plaintiff and the defendants as agreed upon by the family settlement dated 2nd February, 1970. Thereafter on 19th July. 1999, the petitioners 1 and 3 filed separate suits being Suit Nos. 445, 450 and 444 u/s 229B of the U.P. Zamindari Abolition and Land Reforms Act claiming the title as

per their shares decided under the compromise decree of the civil court dated 29th April, 1998. The suits filed by the plaintiffs, i.e., petitioners 1 and 3 have been decreed by the trial court vide its judgment and order dated 12th June. 2002 on the basis of the family settlement dated 2nd February, 1970 and the compromise decree of the civil court on 29th April, 1998 passed in Civil Suit No. 527 of 1997. The entries of khatauni were corrected on 20th June, 2002 as per decree dated 12th June. 2002. The respondents in this petition, filed appeals being Appeal Nos. 55, 56 and 59 against the judgment and decree dated 12th June, 2002 before the lower appellate court on the ground that there was connivance between the plaintiffs and the defendants and that the suit was barred u/s 49 of the Consolidation of Holdings Act. The lower appellate court vide its judgment and order dated 30th June, 2003 allowed the appeals filed by the respondents and set aside the Judgment and decree of the civil court dated 12th June, 2002. Being aggrieved by the order dated 30th June, 2003 passed by the lower appellate court, the petitioners filed three separate identical second appeals before the Board of Revenue being Second Appeal Nos. 6, 7 and 8. The Board of Revenue vide its judgment and order dated 24th March, 2005 dismissed the second appeals filed by the petitioners, thus this writ petition.

3. Heard learned Counsel appearing on behalf of the parties. Learned Counsel for the petitioner has submitted that a second appeal lies against the judgment and order of lower appellate court in view of the provisions of Section 331 of the Act which is reproduced below:

331. (4) that a second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under Sub-section (3) to the authority, if any, mentioned against it in column 6 of the Schedule aforesaid.

4. Learned Counsel for the petitioner has submitted that a perusal of Section 331(4) that a second appeal shall lie to the Board of Revenue on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under Sub-section (3) to the authority, if any, mentioned against it in column 6 of the Schedule aforesaid.

5. Learned Counsel for the petitioner further relied upon Section 341 of the Act which provides as under:

341. Application of certain Acts to the proceedings of this Act:

Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court Fees Act. 1870 (VII of 1870), the Code of Civil Procedure, 1908 (V of 1908), and the (Limitation Act, 1963 (XXXVI of 1963)) (including Section 5 thereof) shall apply to the proceedings under this Act.

6. On the strength of aforesaid two provisions and Section 100 of the CPC read with Sub-sections (3), (4) and (5) which are reproduced below has submitted that a second appeal can be entertained and decided only when authority

deciding second appeal is satisfied that substantial question of law is involved in any case and thereafter second appellate authority shall formulate that question. It is only after satisfaction of the second appellate authority that a substantial question of law is involved and formulation of the question so involved the second appeal shall be heard and decided.

Section 100. Second appeal....

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.

7. Learned Counsel for the petitioner further relied upon a decision of the Apex Court in a case in Cian Dass v. Gram Panchayat, Village Sunner Kalan and Ors. 2006 (101) RD 449 (SC) : 2006 (4) AWC 4031 (SC), wherein the Apex Court relying upon earlier decision of the Apex Court in the case of Ishwar Dass Jain v. Sohan Lal 2000 (29) ALR 756 : 2000 (1) AWC 2.1 (SC (NOC) and in the case of Roop Singh v. Ram Singh 2001 (92) RD 374 (SC : 2000 (39) ALR 484 : 2000 (2) AWC 222 (SC (NOC). In para 11 of the case of Gian Dass (supra) the Apex Court has ruled as under:

11. The plea about proviso to Sub-section (5) of Section 100 instead of supporting the stand of the respondent rather goes against them. The proviso is applicable only when any substantial question of law has already been formulated and it empowers the High Court to hear, for reasons to be recorded, the appeal on any other substantial question of law. The expression "on any other substantial question of law" clearly shows that there must be some substantial question of law already formulated and then only another substantial question of law which was not formulated earlier can be taken up by the High Court for reasons to be recorded, if it is of the view that the case involves such question.

8. Learned Counsel for the petitioner has submitted that it was therefore, not open to the Board of Revenue to interfere with the second appeal without formulating substantial question of law as contemplated u/s 331 of the Act read with Section 100(4)(5) of Code of Civil Procedure.

9. Learned Counsel for the petitioner has further relied upon a decision of

learned single Judge of this Court in Ram Prakash and Anr. v. Ram Saran and Ors. 2006 (100) RD 742 and in the case of Mohd. Islam and Anr. v. Board of Revenue and Ors. 2006 (100) RD 71, and Anr. decision relied upon by counsel for the petitioner reported in the case of Anil Kumar and Ors. v. Board of Revenue U.P. at Meerut and Ors. 2005 (99) RD 425, wherein this Court relying upon the decisions of the Apex Court in the case of Kshitesh Chandra Purakrit and Anr. v. Santosh Kumar Purakrit and Anr. 1997 (5) SCC 433 : 1998 (1) AWC 413 (SC), and in the case of Sheel Chandra v. Prakash Chandra 1998 (89) RD 623 (SC) : 1998 (3) AWC 2347 (SC), has taken similar view.

10. Learned Counsel for the respondent in reply to the aforesaid argument advanced on behalf of counsel for the petitioner has submitted that the provisions of Section 100 of the CPC became the part of the provisions of Section 331 of the Act in its present form on the principle of doctrine of legislation by way of incorporation and he therefore submitted that since the provisions of Section 100 of the CPC has been brought on the statute by way of amendment in the CPC in 1976 whereas the provisions of CPC referred to in Sub-section (4) of Section 331 of the Act refers to the provisions of Code of Civil Procedure. Thus relying upon the decision in the case of Gauri Shankar Gaur and Others, etc. Vs. State of U.P. and Others, counsel for the respondent submitted that the argument advanced on behalf of the petitioner deserves to be rejected.

11. Thus, from reading of Section 331(4) read with Section 341 and Section 3(3) of the U.P. Zamindari Abolition and Land Reforms Act, I am of the opinion that the argument advanced on behalf of counsel for the respondent cannot be accepted, particularly in view of the law laid down by the Apex Court in the case of Gian Dass (supra).

12. In this view of the matter, I am of the opinion that the argument advanced on behalf of counsel for the petitioner the writ petition deserves to succeed and is allowed on this ground alone.

13. In these circumstances, without going into further with regard to the impugned order, this writ petition succeeds and is allowed. The order passed by the Board of Revenue dated 24th March, 2005 in Second Appeal Nos. 6, 7 and 8, Annexure-''11'' to the writ petition, is hereby quashed. The matter is remanded back to the Board of Revenue to decide afresh in accordance with law and in view of the observations made by this Court in this judgment. However, the parties shall bear their own costs.

