
(1978) 12 AHC CK 0065
In the Allahabad High Court
Case No : Writ Petition No. 13144 of 1975

Prem Bahadur

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 14-12-1978

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 178, 179, 180, 181

Citation : (1979) AWC 168 : (1979) RD 97

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : G.P. Mathur, for the Appellant;

Final Decision : Allowed

Judgement

R.M. Sahai, J.—In this writ petition directed against the order of Board of Revenue the only question is whether Board was justified in setting aside the preliminary decree passed in a suit u/s 176 by the two courts below for non-compliance of Rule 157.

2. Sections 176 to 182 of UP ZA Act of 1951 deal with partition and Section 182(8) provides that the division shall be effected in manner prescribed. Rule 157 reads as under:

Before making a division the court shall-

- (a) determining separately the share of the Plaintiff and each of the other-co-tenure-holders,
- (b) record which, if any, of the co-tenure-holders which to remain joint.
- (c) made valuation of the holding (or holdings) in accordance with the rent rate applicable to each plot in the holding, and
- (d) determine separately the value of the share of the Plaintiff and each of the

other co-tenure-holders.

From a perusal of the rule it is apparent that its efficacy is at the stage of final decree. The preliminary decree is concerned with determination of title and share only. The rule has been framed to carry out the revisions contained in Sections 178 to 182. Even if it is assumed that this rule applied to determination of title, the Board should not have set aside the decree of the two courts below. It should have directed the trial court to comply with rule before proceeding to prepare final decree.

3. In the result this petition succeeds and is allowed. The order passed by the Board of Revenue is quashed. As no body has appeared for Respondents the Petitioner shall bear his own costs.