

(1973) 07 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 194 of 1969

Pyare Lal

APPELLANT

Vs

Board of Revenue, U.P. at Allahabad and others

RESPONDENT

Date of Decision : 11-07-1973

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 229B

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 157

Citation : (1973) 43 AWR 466

Hon'ble Judges : T.S. Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T.S. Misra, J.—This is a petition Under Article 226 of the Constitution. The material facts may be stated in a short compass The Petitioner filed a suit for division of holdings against opposite parties Nos. 4 to 6 in respect of plots Nos. 748/3, 795 and 800 situate in village Mooda Buzurg, Distt. Lakhimpur Kheri. It appears that on 9-5-1962, a compromise petition was filed before the trial court, which passed a preliminary decree in terms thereof. On the same day, one Hardwari Lal filed an application before, the trial court that plot No. 795 had been transferred to him by Mohan Lal and he should be impleaded as a party to the suit. On 10-5-1962, the trial court ordered that Hardwarf Lal be impleaded as a party to the suit and the faint may be amended accordingly it also fixed 30-5-1962 for filing a written statement and framing of issues. Thereafter, the trial of the suit proceeded. The written statement was filed and issues were framed. The trial court ultimately passed another preliminary decree on 14-5-1963. Against this decree, the Petitioner preferred an appeal before the Commr. who dismissed the same. A second appeal preferred by the Petitioner before the Board of Revenue was also dismissed. The Petitioner also sought to, have the order reviewed by the Board, but the same was not allowed. The Petitioner has now come to this Court Under Article 226 of the Constitution for

quashing the orders of the trial court, the Commissioner and the Board of Revenue and for such direction as may be deemed fit and proper.

2. The main contentions of the Petitioner in support of the petition have been three-fold. It was urged, firstly that opposite parties Nos. 1 to 3 had no jurisdiction to pass a second preliminary decree without setting aside the first preliminary decree, secondly, that the trial court had no jurisdiction to imply a third party in the suit after the preliminary decree had been passed and thirdly that opposite parties Nos. 1 to 3 had no jurisdiction to pass a decree for damages, in a suit filed u/s 229-B/176 of the UP ZA and LR Act. I shall take up these contentions in seriatim.

3. The first contention of the learned, counsel for the Petitioner was as indicated above, that having passed a preliminary decree on the basis of the compromise, the trial court had no jurisdiction to pass another preliminary decree in the same suit without setting aside the first one and which according to him, was inconsistent with or contrary to the first preliminary decree. The suit was filed for division of holdings u/s 229-B read with Section 176 of the UP ZA and LR Act. It is a settled law that in suit for partition of immovable property, shares and rights of respective parties in the subject-matter of the suit may, in certain circumstances be suitably modified or varied even if a preliminary decree had been passed in the suit. In fact, it would be equitable, fair and just and even advantageous to the parties in a suit for partition or division of holdings to have all the disputed claims and rights effectually and completely adjudicated upon and finally determined in the suit and the shares finally specified in the preliminary decree which may be amended, varied or modified before a final decree is passed. Whether the court passed a decree for partition of the property, division of the holdings, or for the separate possession of shares therein, it does so after determining the rights and shares of the parties interested in the property, as required by Rule 157 of the UPZA and LR Rules or by Rule 18 of Order XX of the CPC in those cases where the provisions of the CPC apply. There is, however, no provision in the UPZA and LR Act or the rules framed thereunder nor is there any provision in the CPC prohibiting the passing of more than one preliminary decree in a partition suit. The court has jurisdiction to deal with the rights of the parties and determine their shares in the property involved in the suit, if the circumstances so require, even after the passing of the preliminary decree in the suit. It would therefore, be not quite correct to contend that a second preliminary decree cannot be passed in such a suit unless the first preliminary decree is set aside. I find no reason to hold that if a preliminary decree has been passed either on the basis of a compromise entered into between the parties or after deciding the issues on merits, no second preliminary decree can be passed in any circumstances, whatsoever. There may be circumstances which may require the court to readjust the equities arising between the parties. One of the circumstances may be the death of a party after the passing of the preliminary decree. So also may be the circumstance of the deliberate non-inclusion of a necessary party to the partition suit by the Plaintiff,

whose claims and rights might require adjudication. If a dispute is raised before the court, which passed a preliminary decree, by a party who was already on the record and whose rights in the property involved in the suit have been affected because of the death of another person who was interested in the property, the court may justifiably re-examine and adjudicate upon the dispute. So also would be the case when a third person approaches the court claiming right and share in the property in dispute and seeking adjudication thereof. There is no reason to hold that if a dispute was raised in a partition suit after the passing of the preliminary decree, it could not be decided by the court which passed the preliminary decree. It can scarcely be disputed that a partition suit does not come to an end after the passing of the preliminary decree, but it continues even thereafter till it is finally disposed of by a final decree. In fact, further proceedings are taken after the passing of the preliminary decree for finally disposing of the partition suit by dividing the properties, if necessary, by metes and bounds and adjusting the equities arising between the parties. The preliminary decree does not completely dispose of the suit. It continues even thereafter and is finally disposed of in the passing of a final decree. Thus, a partition suit in which a preliminary decree is passed," still remains pending and rights of parties who are added after the preliminary decree have to be adjusted at the time of the final decree See *Jadunath Roy v. Parmeshwar Mullick* AIR 1940 PC 12 : AWR 15. As the suit remains pending even after the passing of the preliminary decree, the court may, in appropriate circumstances, adjudicate upon disputed rights and claims with respect to the properties in suit and vary the shares by passing a second preliminary decree. The contention that a second preliminary decree cannot be passed without setting aside the first preliminary decree, has, therefore, no merits.

4. The next point on which great emphasis was laid by the learned Counsel for the Petitioner, was that the trial court had no jurisdiction to add a party to the partition suit after passing of the preliminary decree. In my view, this contention has no validity and force. A partition suit is not over by the passing of the preliminary decree. Rule 10 of Order I of the CPC enables the court at any stage of the proceedings, either upon or without the application of either party and on such, terms as may appear to the court to be just to order that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, to be added. In the instant case, Hardwari Lal moved an application before the trial court that he be impleaded as party on the ground that he was the alienee of plot No. 795. It appears from the order of the trial court Quoted in para. 3 of the writ petition that Mohan Lal conceded before the trial court that he had sold one field to Hardwari Lal. The trial court, therefore, found it just to implead Hardwari Lal in the case. The Plaintiff-Petitioner was, therefore, directed by the court to amend his plaint accordingly. He was also allowed Rs. 8/- as costs. Hardwari Lal thereafter filed a written statement

alleging that plot No. 795 had been transferred to him by Mohan Lal" by a registered sale-deed dt. 22-9-1961 and that he was bhumidhar of the said plot. The trial court on a consideration of the evidence on record found that the sale-deed dt. 22-9-1951 executed by Mohan Lal in favour of Hardwari Lal was valid. It appears that the Petitioner and Mohan Lal had entered into a compromise in the suit prior to the impleading of Hardwari Lal as a Defendant and that the compromise also related to plot No. 795 which had already been transferred by Mohan Lal. The trial court, therefore, adjusted the equities arising between the parties in respect of plot No. 795 and allotted the other two plots to the Plaintiff. Hardwari Lal was in these circumstances, a necessary party to the suit. In order to have a just and equitable partition, the presence of Hardwari Lal, who was a transferee of one of the plots in dispute, was necessary to enable the court to effectually and completely adjudicate upon and settle]the disputes involved in the suit. It would, therefore, be not quite correct to say that a third party, in these circumstances, could not be impleaded after the passing of the preliminary decree. It cannot be disputed that in order to save costs and prevent multiplicity of proceedings, a necessary party could always be added either as a Plaintiff or as a Defendant if the court is satisfied that the party is a necessary party and that it is necessary to have his presence in order to effectually and completely adjudicate upon and settle all the disputes, in a partition suit, it is the duty of the Plaintiff to implead all the persons who are or may be interested in the subject-matter of dispute. The court may also either suo motu or on being moved by an interested person bring on record all those persons whose presence is found necessary to enable it to make the declaration it is required to make by Rule 18 of Order XX of the CPC or Rule 157 of the UPZA and LR Rules. It is settled law that, the rights of parties cannot be judicially determined in the absence of the persons interested in the dispute and therefore, the court has jurisdiction to implead such a necessary party even after the passing of the preliminary decree, so as to effectually and completely adjudicate upon and settle the disputes. The second contention, raised by the learned Counsel for the Petitioner has, therefore, no merits.

5. It was lastly contended By the learned Counsel for the Petitioner that, the trial court had no jurisdiction to pass a decree for damages in a suit filed u/s 229-B/176 of the UPZA and LR Act. He contended that in view of the provisions of Sub-section (1) of Section 178 of the UPZA and LR Act, the court had to direct the sale of the holdings instead of proceeding to divide the holdings inasmuch as the aggregate area of the holdings sought" to be divided did not exceed 3-1/8th acres. Admittedly, the aggregate area of the holdings sought to be divided was less than 3 acres. Sub-section (1) of Section 178 is, however, governed by the provisions of Sub-section (3) thereof which, inter alia, provides that in the case of a co-tenure-holder who has under the provisions of the said Act or the U.P. Agricultural] Tenants (Acquisition of Privileges) Act, 1949, duly acquired bhumidhari rights with respect to a share of the holding only, the court shall divide the holding by separating the share aforesaid, but in respect of the

remainder of the holding the court will proceed, in accordance with the provisions of this, section, if applicable. It was found by the trial court on the appreciation of the evidence on record that Mohan Lal had acquired bhumidhari rights in respect of plot No. 795. The trial court while disposing of issue No. 4 observed that by the Sanad dt. 11-9-1961, Mohan Lal had acquired bhumidhari rights by depositing ten times rent. Mohan Lal thereafter transferred his bhumidhari interest in the said land to Hardwar Lal by a registered sale-deed dt. 22-4-1966. The trial court also found that the sale deed was a valid one. This finding was affirmed by the learned Commr. The Board of Revenue also proceeded on the basis of this finding to hold that the ownership of the said plot had vested in Hardwar Lal. These findings being findings of fact could not be assailed in this petition. That being so Sub-section (3) of Section 178 of the UP ZA and LR Act was clearly attracted and the court had jurisdiction to divide the holding by separating that share of Mohan Lal in the holding in which he had acquired bhumidhari rights from the other holdings. This is exactly what was done by the trial court. In these circumstances, the court could award compensation for adjusting the shares of the parties.

6. No other point was pressed. In the result, the petition fails and is accordingly dismissed with costs.