

(2010) 09 AHC CK 0160
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 33616 of 2000

Radhey Shyam

APPELLANT

Vs

Additional Commissioner (Judicial) Gorakhpur Division and
Others

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Evidence Act, 1872 — Section 44

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

Citation : (2011) 2 ADJ 548 : (2011) 112 RD 225

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard Sri H.P. Mishra, learned Counsel for the Petitioner and Sri M.N. Singh, learned Counsel for the Respondent No. 3.

2. The Petitioner had filed a restoration application in a suit filed u/s 229B of the U.P.Z.A. & L.R. Act by the Respondent Nos. 3 to 5, alleging that it was ex-parte and, therefore, the same should be restored and the matter should be decided on merits. The restoration application was rejected and the revision filed against the same has been dismissed, against which the Petitioner has approached this Court for setting aside the said orders on the ground that the orders impugned are erroneous in law.

3. The suit was filed u/s 229-B of the U.P.Z.A. & L.R., 1950 Act by Shyam Narayan-Respondent No. 3 arraying his grand-father Ram Niranjana as a Defendant. The following pedigree would be relevant to understand the said controversy:

4. It is alleged that in the suit an order was passed and the recall whereof was sought by Ram Niranjana. Subsequently, he compromised the matter and on the basis of such compromise which was entered into, the suit was admittedly

decreed in favour of the Respondent No. 3 Plaintiff.

5. It is undisputed that the tenure holder Ram Niranjana was very much alive and he did not question the correctness of the compromise or the decree passed by the trial Court.

6. It appears that during the lifetime of Ram Niranjana, an application was moved by the Petitioner on 4th November, 1991 for setting aside the ex-parte decree dated 28th June, 1986. This was admittedly done after five years of the passing of the decree and during lifetime of Ram Niranjana himself. The trial Court after noticing the aforesaid fact rejected the said application on the ground that the same was barred by time and even otherwise, the application had not been moved by Ram Niranjana, who was the recorded tenure holder. Ram Niranjana died on 14.7.1994 and the trial Court passed the order on the Petitioner's restoration application on 28.8.1996.

7. Aggrieved by the aforesaid order, the Petitioner filed a revision, which has been dismissed on 20.01.2000 upholding the order of the trial Court on the ground that the findings recorded do not suffer from any infirmity, inasmuch as, so long as Ram Niranjana was alive, the Petitioner had no right to move the said restoration application.

8. Having heard learned Counsel for the parties, the dispute, as a matter of fact, could have been raised by Ram Niranjana in relation to the compromise which had been entered into and has taken the shape of a decree. Even assuming for the sake of argument that the decree was passed ex-parte to the Petitioner, in law the Petitioner had no apparent right in the holding, which was the tenure of late Ram Niranjana who had full rights to enter into a compromise before a Court of competent jurisdiction.

9. In view of the provisions of the U.P.Z.A. & L.R. Act, 1950 Ram Niranjana being the sole tenure holder had an absolute right to settle the same and it appears that the suit was filed by the grandson in order to avoid any future dispute after the death of Ram Niranjana. The compromise not having been disputed by Ram Niranjana, the restoration moved was meaningless.

10. In the event, the Petitioner had any right, he could have filed his own suit for an appropriate declaration. If the compromise could be avoided as per the provisions of Section 44 of the Indian Evidence Act, 1872 the same could have been raised in a separate suit provided the Petitioner had any substantive rights in the property by birth. This right, if any, was admittedly not asserted by the Petitioner against his father before the appropriate forum during his lifetime.

11. In my opinion, the conclusion drawn by the authorities, does not suffer from any infirmity by non-suiting the Petitioner in moving the restoration application, which was also even otherwise heavily time barred without any plausible explanation for the inordinate delay.

12. Accordingly, the writ petition lacks merit and is hereby dismissed.