

(1958) 05 AHC CK 0018
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1638 of 1958

Raghubir

APPELLANT

Vs

Board of Revenue U.P. Allahabad and Others

RESPONDENT

Date of Decision : 09-05-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331, 331(4), 341

Citation : AIR 1959 All 13 : (1958) 28 AWR 664

Hon'ble Judges : M.L. Chaturvedi, J; D.N. Roy, J

Bench : Division Bench

Advocate : G.N. Verma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Chaturvedi, J.—This is a petition under Articles 226 and 227 of the Constitution praying for the quashing of the judgments of the Additional Commissioner dated 29-11-1957, and of the Board of Revenue dated 15-4-1958. It is further prayed that the judgment of the Judicial Officer which was against the petitioner may similarly be quashed.

2. The petitioner filed a suit under Sections 176, 229C and 209 of the U. P. Zamindari Abolition and Land Reforms Act praying that he be declared to be a co-tenant of the plots in dispute along with the fourth respondent Sri Kishan and that, if necessary, he may be awarded possession over his share of the plots.

The case of the petitioner was that he had first become a co-tenant along with one Sri Ram, a previous tenant of these plots; and subsequently he became a co-tenant with the respondent No. 4. All the three revenue Courts have held that the petitioner was not entitled to the reliefs claimed.

3. The Commissioner has given a clear and categorical finding that in the year

1950 the petitioner entered into an agreement with respondent No. 4, as a result of which he relinquished whatever rights he had in the plots and since then the fourth respondent became the sole tenant of the plots.

4. The learned counsel for the petitioner has argued that the Board of Revenue has not itself entered into a consideration of the evidence which had been produced in the case and was wrongly of the opinion that being a court of second appeal, it was bound by the findings of fact arrived at by the Additional Commissioner.

The argument of the learned counsel is that the provisions of Section 100 of the CPC do not apply to second appeals filed under the U. P. Zamindari Abolition and Land Reforms Act. He says that the only provision applicable to such appeals is Section 331 of the U. P. Zamindari Abolition and Land Reforms Act.

Section 331 contains four sub-sections. Sub-section (1) is to the effect that except as provided by or as under the Act, no court, other than a court mentioned in column 4 of Schedule 2, shall, notwithstanding anything contained in the Code of Civil Procedure, take cognizance of any suit, application or proceeding mentioned in column 3 thereof.

Sub-section (2) says that, except as hereinafter provided, no appeal shall lie from an order passed under any of the proceedings mentioned in column 3 of the schedule aforesaid. Sub-section (3) provides for an appeal from final orders passed by a court mentioned in column 4 in the proceedings mentioned in column 3 and to the court or authority mentioned in column 5.

Sub-section (4) then lays down that the second appeal shall lie from the final order passed in an appeal under Sub-section 3 to the authority, if any, mentioned against column No. 6 of the schedule aforesaid. Section 341 of the Zamindari Abolition and Land Reforms Act says that unless otherwise expressly provided by or under this Act, the provisions of the CPC shall apply to the proceedings under the Act.

The contention of the learned counsel is that a provision for a second appeal having been made under Sub-section (4) of Section 331, the provisions of Section 100 of the CPC are no longer applicable to appeals filed under the Zamindari Abolition and Land Reforms Act. We do not find it possible to accept this contention.

Section 341 says that the provisions of the CPC shall apply, unless there is express provision made to the contrary in the Zamindari Abolition and Land Reforms Act or the Rules made thereunder. Sub-section (4) of Section 331 does not contain any express provision that the provisions of Section 100 of the CPC shall not apply to second appeals filed under the Code of Civil Procedure.

Sub-section (4) only lays down in what cases second appeals shall lie and it does not go any further. Section 100 says that second appeals shall lie against all decrees passed in appeal and to this extent it may be said that the said portion

of Section 100, C. P. C. stands amended by the express provisions contained In Sub-section (4) of Section 331.

But apart from saying that a second appeal shall lie against all decrees passed in appeal, Section 100 of the CPC further enjoins the grounds on which a second appeal can be maintainable. Section 331 of the U. P. Zamindari Abolition and Land Reforms Act makes no provision on this subject and therefore Section 341 of the Zamindari Abolition and Land Reforms Act will have effect and the portion of Section 100 of the CPC which does not stand modified by Section 331 of the Zamindari Abolition and Land Reforms Act is to be applied to all proceedings under the Zamindari Abolition and Land Reforms Act.

It consequently follows that the Board of Revenue could entertain a second appeal filed under the Zamindari Abolition and Land Reforms Act only on the grounds specified in Section 100 of the Code of Civil Procedure. The correctness of the findings of fact arrived at by the subordinate courts therefore could not be considered by the Board of Revenue.

5. The other point argued is that the agreement by which the petitioner is said to have relinquished all his rights in 1950 requires registration and was not admissible in evidence in the absence of registration. The first court appears to have been of that opinion, but the Additional Commissioner and the Board of Revenue do not refer to this question at all.

The reason for it may be that the contracts for tenancy may be registered even under the provisions of the U. P. Tenancy Act which was in force in the year 1950. This registration is done before the Qanungo. The mere fact that the document was not registered before the Sub-Registrar, therefore, was not sufficient for proving that it was inadmissible in evidence. The petitioner never asked for a finding on the question whether the contract had been registered under the U. P. Tenancy. Act or not.

If the argument of the learned counsel is entertained, it would necessitate the remanding of the case to the trial court for recording evidence and giving a finding on the question whether the agreement was duly registered before the Qanungo or not. It would thus appear that the question raised by the learned counsel is a mixed question of law and fact and the petitioner has no right to urge such a question in this Court in proceedings under Articles 226 and 227 of the Constitution.

6. We find no force in this petition. It is accordingly rejected.