

(2005) 09 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 43941 of 2005

Raj Bahadur and Others

APPELLANT

Vs

Additional Commissioner (Six) Alld. Division and Others

RESPONDENT

Date of Decision : 01-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 80, 80(1), 80(2)
Uttar Pradesh Panchayat Raj Act, 1947 — Section 106
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2006) 1 AWC 173 : (2005) 99 RD 533 : (2005) 2 RD 533

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : C.B. Singh, for the Appellant; Manoj Srivastava and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—Impugned herein are the orders dated 29.9.2004 and 7.12.2004 passed by trial court and Revisional Court respectively whereby the application filed by the defendants under Order VII Rule 11 C.P.C. was dismissed.

2. The dispute in the instant petition revolves round the Bhumidhar land of Dharamraj situated in village Unao Pargana Atharwan Tahsil Manjhanpur District Kaushambhi. Dileep Kumar son of Dharamraj arrayed as respondent no.3 in the instant petition instituted a suit u/s 229B of the U.P.Z.A. & L.R.Act with the allegations that the landed property has been inherited by him, he being the only son of Dharamraj and that the defendants got their names mutated in the revenue record claiming themselves to be the successors of Dharamraj by setting up an unregistered Will. It is further alleged that at the relevant time, the plaintiff was minor and the defendants by manufacturing an unregistered will, got their names mutated in the revenue records. It was further alleged that the plaintiff being the only son of Dharamraj, the property devolved upon him. The suit instituted by the plaintiff prayed for the relief of declaration of his

Bhumidhari rights. The defendants entered the contest by filing written statement in which they repudiated the plaint allegations. In the litigative fray, the defendants agitated a preliminary objection on the ground that notice required u/s 80 C.P.C. read with Section 106 of the Panchayat Raj Act was wanting and in consequence, they prayed for dismissal of the suit. In its turn the trial court disallowed the plea raised by way of preliminary objection and held the suit maintainable. In revision, the revisional court lent affirmance to the order of the trial court holding that the order impugned had been passed on merits. It is in this perspective that the petitioners brought their grievance to the Court by means of the present petition.

3. Learned counsel appearing for the petitioners polemically argued that notice u/s 80 of the C.P.C. has the complexion of a mandate and non-compliance thereof would be fraught with the consequence of non-suiting the plaintiff and therefore, it is further argued, the suit was liable to be dismissed on this ground alone. The learned counsel placed credence on two decisions namely, Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal, and Sheo Puja and Ors. v. Gram Sabha and Ors. 1964 RD 157 and taking cue from these decision, the learned counsel reasoned that even if there was any hardship or inconvenience, the phraseology employed by the legislature could not be stretched to mean otherwise if the same is clear and leaves no manner of doubt in its meaning. Per contra, learned Standing counsel contended that the impugned orders were passed in accordance with law and the writ petition has rendered itself liable to be dismissed.

4. Sri Manoj Srivastava, learned counsel representing the respondent no.3 propped up the judgments of the courts below by arguing that Section 80(2) of the C.P.C. as well as Section 106 of the U.P. Panchayat Raj Act leave no manner of doubt that if a cause of action is disclosed against the State of U.P. or any other public officer or against Gaon Sabha, two months' notice is rendered mandatory but at the same time, he canvassed that in the present case, cause of action is clearly disclosed against the private respondents and the Gaon Sabha was made a party only to fulfill the requirements of law as contemplated u/s 229 b of the U.P.Z.A. & L.R.Act. In view of the averments made in the plaint as well as the affidavit filed in support of the application for exemption of notice, the argument proceeds, cause of action is clearly made out against the private party and by this reckoning, the suit is maintainable and no notice of 60 days was required to be given.

5. I have traversed upon the impugned orders passed by the trial court as well as the revisional court and it is discernible from a perusal of the orders that the both the courts below have given anxious considerations to the averments contained in the affidavit as well as in paragraphs 5 and 6 of the plaint and rightly held the same to be cogent and convincing and consequently, held the suit maintainable.

6. It would transpire from a perusal of the record in entirety that the plaintiff

sought waiving of period of notice by means of an accompanying application to the suit on the ground that the defendants got their names entered in the revenue records on the premises of a forged will and on the basis of the said forged and unregistered will, claimed themselves to be the rightful successors of the property and further that in case, sixty days" period of notice is not waived the defendants were likely to alienate the property which would occasion great hardship and injury to the plaintiff and it is in this perspective that exemption of period of notice as required u/s 80 C.P.C. was prayed for.

7. In this connection, Sub-section (2) of Section 80 C.P.C. may be excerpted below.

"A suit to obtain an urgent or immediate relief against the Government(including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted with the leave of the Court, without serving any notice as required by Sub-section (1); but the court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit."

8. In connection with the contentions of the learned counsel for the petitioners, the question that begs consideration is whether period of notice as envisaged u/s 80 C.P.C. was rightly waived taking into reckoning the nature of cause of action and nature of reliefs claimed in the suit. Regard being had to the nature of controversy, it is essential to delve a little deeper into the cause of action to ascertain whether period of notice u/s 80 C.P.C. was rightly waived or not.

9. It clearly transpires from a reading of plaint that the Gaon Sabha through Pradhan and the State of U.P. through Collector, Kaushambhi were arrayed as defendants 5 and 6 respectively and it is in this context that the defendants raised the preliminary objection against waiving of the period of notice. A further probe into the facts on record unravels that fraud of concocting unregistered will was imputed to defendants 1 to 5 who were arrayed in the suit as defendants and it is further alleged that the defendants committed further fraud upon the public authorities and got their names mutated in the revenue records. It thus leaves no manner of doubt that the main plank of allegations is against defendants 1 to 5 and Gaon Sabha and District Magistrate were arrayed in the plaint by reason of the fact that these public authorities were charged with the duties of correcting revenue records u/s 229B of the U.P.Z.A. & L.R.Act and in consequence, they were necessary parties to the case. From a further probe into the allegations, it would crystallize that no immediate and urgent relief was claimed by the plaintiff either against the State Government or any public officer. The reliefs in the suit are claimed against the respondents 1 to 5 who were alleged to have set up a forged unregistered Will to prop up their claims. It is also explicit from the record that the plaintiff minced no words to say that defendants were trying to alienate the property and in case statutory period of

notice as mandated u/s 80 C.P.C. is not waived, it would visit upon the plaintiff with harm and hardship to the plaintiffs. The order passed by the trial court deals with the urgency as set out by the plaintiffs in the plaint and in the accompanying application to the plaint and rightly held the suit to be maintainable waiving the statutory period of sixty days observing that the reasons assigned in the affidavit and the plaint were cogent and convincing. I would like to hark back again to the facts on record. It is clearly stated in the plaint that the Will set up was unregistered. It is also stated that at the relevant time, the plaintiff was minor and the defendants taking advantage of his position as minor, set up the Will having a covetous eyes over the property in suit. The trial court as well as revisional court relying upon the averments made in Paras 5 and 6 of the plaint and also the averments contained in the affidavit and other materials on record filed in support of the application for waiving of statutory period of noticed rightly converged to the conclusions that the suit was maintainable. The learned counsel has not drawn my attention to any aspect from which it may be discernible that any error apparent on the face of record was writ large. In the circumstances, I am of the view that the suit was rightly filed observing in compliance the requirement of Sub-section (2) and the same was maintainable.

10. Coming to the next aspect of requirement of sixty days notice to the Gaon Sabha/Gram Panchayat and their officers u/s 106 of the U.P. Panchayat Raj Act is concerned, Section 106 of the Act clearly envisages that a suit or any other legal proceeding was against any person acting under the direction of any of these bodies or persons for anything done or purporting to have been done in official capacity under this Act until expiration of two months next after notice in writing has been in the case of Gaon Sabha/Gram Panchayat delivered or left in the office of Gram Panchayat concerned no suit is maintainable. In the present case, there is no allegation in the plaint that Gaon Sabha or any officer or persons has done anything or purported to have done anything in official capacity under the U.P. Panchayat Raj Act and therefore, mandatory requirement that suit shall be instituted only after expiry of two months will not be invoked to apply in the present case as the allegations in the plaint make out a clear cut case of fraud on the part of defendants 1 to 5 and the Gaon Sabha was impleaded simply as required u/s 229-B of the U.P.Z.A. & L.R.Act as a necessary party only to fulfill the requirements of law. Besides this, the question of requirement of notice of sixty days u/s 80 C.P.C. or Section 106 of the U.P. Panchayat Raj Act was not brought to bear either by State of U.P. or by the Gaon Sabha by filing any written statement or otherwise. In the perspective of above discussions and from a perusal of materials on record, it is amply borne out that there is no interest either of State of U.P. or the Gaon Sabha nor any cause of action was disclosed against any one of them. Besides, as stated supra, there is no allegation of any act purported to be done by the State Government or the Gaon Sabha or their officers in exercise of powers under the U.P. Panchayat Raj Act or under the U.P.Z.A, & L.R.Act and in the circumstances, mandatory requirements of notice u/

s 80 of the C.P.C. and Section 106 of the U.P. Panchayat Raj Act shall be deemed to be waived and suit shall be considered to have been rightly instituted as required u/s 80(2) C.P.C.

11. The next aspect to be considered is whether there was any immediate or urgent cause of action against State or its public officer as required by Section 80 C.P.C. As stated supra, the relief claimed in the plaint was against defendants 1 to 5 who are private parties. No doubt, District Magistrate and Gaon Sabha are arrayed as respondents 6 and 7 but regard being had to the fact that they were charged with the duties of correcting the revenue record, they were rightly arrayed as parties. Section 80 C.P.C. does not mandate statutory notice to be issued in all situation irrespective of nature of cause of action. Section 80(2) C.P.C. clearly postulates statutory notice in the event of an urgent or immediate relief against the Government or any public officer. At the risk of repetition, it may be quipped here that the grievance and allegations made in the plaint are directed and claimed against defendants 1 to 5 who were alleged to have set up a forged and unregistered Will with a view to expropriating the plaintiff of his rightful claim over the property in question and in this conspectus, the provisions of Section 80 C.P.C. cannot be interpreted to signify that the same can be invoked even if there is no immediate or urgent cause of action claimed against State or its public officer.

12. I have also examined the ratio flowing from the decisions cited across the bar by the learned counsel for the petitioners. In my considered view, the decisions have been rendered in the different context and are wholly unavailing to the petitioners in the facts and circumstances of the present case.

13. As a result of foregoing discussions, the petition fails and is dismissed accordingly. In the facts and circumstances, there will be no order as to costs.