

(2015) 03 AHC CK 0135
In the Allahabad High Court
Case No : Writ-C No. 1508 of 2015

Raj Kumar Singh and Others	Vs	APPELLANT
Suraj Kumar Singh and Others		RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

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

Citation : (2015) 127 RD 687

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Dileep Kumar Yadav and Abhishek Srivastava, for the Appellant;
Arun Kumar Srivastava, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.

1. Heard learned Counsel for the petitioner, learned Standing Counsel for the State-respondents and Shri Arun Kumar Srivastava for the Gaon Sabha. The petition has been filed challenging the orders dated 12.11.2014 passed by the Additional Commissioner (Administration) and the order dated 24.7.2012 passed by the SDM, Dhanaura.
2. The facts of the case briefly stated are that the respondent No. 1 filed a suit: 119 of 2010 (Suraj Kumar Singh v. Raj Kumar) for partition under section 176 of the U.P. Zamindari Abolition and Land Reforms Act.
3. It appears that on 13.9.2011 yet another suit being Suit No. 56 of 2011 for partition was filed by the said Suraj Kumar Singh. The petitioners, who are the defendants in these suits, filed an objection regarding maintainability of the subsequent suit. Subsequent to this objection regarding maintainability of the second suit the plaintiff filed an application to withdraw earlier suit No. 119 of 2010 which application was allowed by the order dated 24.7.2012.

4. The subsequent suit was also dismissed on the objection of the defendant-petitioners vide order dated 24.7.2012. An application was filed for recalling the order dated 24.7.2012 on the ground that the earlier suit stood withdrawn by order dated 4.11.2011.

5. The Sub-Divisional Magistrate by his order dated 12.11.2014 has allowed the restoration application subject to payment of Rs. 500/- as costs.

6. The consequential revision filed by the petitioners has been dismissed on 26.11.2014 and, therefore, this writ petition.

7. It has been contended by the learned Counsel for the petitioners that the subsequent suit was clearly barred and, therefore, the same deserved to be dismissed. The Trial Court wrongly and illegally restored the same and this order has wrongly and illegally been affirmed by the Revisional Court.

8. The second submission of the learned Counsel for the petitioners is that several of the parties were dead and the order allowing the restoration has been passed by the Trial Court without any substitution having been filed to bring the heirs on record. The order, therefore, passed against dead persons is liable to be set aside on this ground alone but the revisional Court has not adverted to this aspect of the matter.

9. Upon hearing learned Counsel for the parties and upon perusal of the record, I see no illegality in the reasoning given by the Commissioner while dismissing the revision. It has been observed in the impugned order that only a restoration application has been allowed and that too on payment of costs of Rs. 500/-. However since the matter has been restored, it will be open for the parties to canvas their respective claims on merits before the Trial Court and, therefore, there is no justification for interfering with the order restoring the suit.

10. I find no illegality in this approach by the Revisional Court. All the objections that are being raised by the petitioner by means of this writ petition are still available to be raised before the trial Court in the pending suit and for this reason alone, I see no justification for interfering with the impugned orders. The writ petition is, therefore, dismissed with the observations that it will be open for the petitioners to raise all such pleas as are being raised by means of the writ petition before the trial court. In case, these issues are raised, it is expected that the same shall be considered and decided by the trial Court while disposing of the suit itself.