
(2014) 01 AHC CK 0209
In the Allahabad High Court
Case No : C.M.W.P. No. 1836 of 2014

Rajesh Pratap Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Land Revenue Act, 1901 — Section 219
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3A, Order 42 Rule 42, 144, 99
Constitution of India, 1950 — Article 226

Citation : (2014) 4 ADJ 82 : (2014) 104 ALR 651 : (2014) 4 AWC 3683 : (2014) 124 RD 146 : (2014) 123 RD 243

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Mahesh Narain Singh and M.N. Singh, Advocate for the Appellant;
R.C. Singh and Shivendra Bahadur, Advocate for the Respondent

Judgement

Ran Vijai Singh, J.—Heard Sri Amol Ranjan, learned Counsel for the petitioner, learned Standing Counsel appearing for the State-respondents and Sri R.C. Singh, along with Sri Shivendra Bahadur, learned Counsel for the private respondent. Learned Counsel for the respondents state that they do not propose to file any counter affidavit and the writ petition may be decided on the existing facts and legal points involved in it.

2. With the consent of learned Counsel for the parties, the writ petition is taken up for final disposal.

3. By means of this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the judgment and orders dated 28.9.2012 and 30.10.2012 passed by Commissioner, Gorakhpur Division, Gorakhpur in revision No. 388/G-2012 (Satish Chandra Shahni v. Rajesh Pratap Singh) and order dated 1.4.2013 passed by learned Member, Board of Revenue in revision No. 883/LR/2012-13 (Rajesh Pratap Singh v. Satish Chandra Shahni).

4. Vide order dated 28.9.2012, the learned Commissioner has allowed the revision and vide order dated 30.10.2012, correction application filed by respondent No. 3 has also been allowed, whereas by the order dated 1.4.2013, the petitioner's revision filed before the Board of Revenue against the aforesaid orders has been dismissed.

5. The facts giving rise to this case are that on the strength of the registered sale deed dated 2.1.1985, the mutation application was filed by the petitioner before the Additional Tehsildar, which was numbered as case No. 23/791 (Rajesh Pratap Singh v. Kedar). This application was allowed on 15.11.1995 by the Additional Tehsildar. Aggrieved by this order, respondent No. 3 has preferred revision in the year 2012 before Divisional Commissioner, Gorakhpur, which was numbered as revision No. 388/G-2012 (Satish Chandra Shahni v. Rajesh Pratap Singh). The aforesaid revision was allowed vide judgment and order dated 28.9.2012. The revision was barred by time. There was also an application for condonation of delay, but without issuing notice and hearing the petitioner, the delay was condoned and the revision was allowed on the ground that the order dated 15.11.1995 is a forged order. It appears, the respondent herein has filed correction application before the Divisional Commissioner for correcting one sentence by mentioning 6. Aggrieved by this judgment and order, the petitioner filed revision before the Board of Revenue and the learned Member, Board of Revenue has dismissed the revision on the ground that no prejudice has been caused to the petitioner as the petitioner will have ample opportunity to place his case before the Tehsildar concerned.

7. While assailing this order, learned Counsel for the petitioner contends that it is not in dispute that the revision was barred by time and it is settled that if the revision or appeal is barred by time, it should either be rejected as barred by time or in case delay is condoned, it can only be condoned after issuing notice to the other side. In his submissions, the Divisional Commissioner as well as learned Member, Board of Revenue have erred in not going through the legal provisions and the settled law in this regard, therefore, the orders impugned deserve to be set aside.

8. Refuting the submissions of learned Counsel for the petitioner, learned Counsel for the respondents submitted that the sale deed, on which basis the petitioner has sought mutation of his name, is not in existence and it has never been executed, which finds support from the report of the Sub Registrar, it is also contended that the sale deed was of the year 1985 and the mutation application was filed in the year, 1995. This also shows the callous attitude of the petitioner. It is also contended that once the delay has been condoned by the Courts below, it means the Court has exercised its positive discretion in favour of the applicant and it should not be interfered under Article 226 of the Constitution of India.

9. For appreciating the controversy, it would be appropriate to go through the provisions contained under paras 176 and 195 of the Revenue Court Manual, which are reproduced hereinunder:

176. Application of certain provision of the Civil Procedure Code--The provisions of Rules 2 to 4, 6 to 10, 15 to 29, 31 to 37 of Order XLI, Order XLII and sections 99 and 144 of the CPC relating to appeals from decree shall apply to appeals from orders under the Uttar Pradesh Land Revenue Act:

Provided that the decree passed by the Board of Revenue may be dated and signed by the Registrar of the Board.

195. Rules regarding revisions by Board--An application to the Board u/s 219 of the Act shall be drawn up and presented in the manner prescribed by rule for an appeal and shall be accompanied by a copy of the decree or order in respect of which such application is made and by a copy not only of the judgment, (if any) on which such decree or order is founded, but of every Court subordinate to the Court whose decree or order is sought to be revised.

10. From the bare reading of para 195 of the Revenue Court Manual, it would be clear that an application to the Board u/s 219 of the Act shall be drawn up and presented in the manner prescribed by rule for an appeal and shall be accompanied by a copy of the decree or order in respect of which such application is made, meaning thereby, the procedure for filing an appeal and revision shall be the same. Para 176 of the Revenue Court Manual talks about applicability of provisions of Rules 2 to 4, 6 to 10, 15 to 29, 31 to 37 of Order XLI, Order XLII and sections 99 and 144 of the Code of Civil Procedure. Order XLI, Rule 3-A of the CPC provides the procedure for filing of a time-barred appeal, which reads as under:

3-A. Application for condonation of delay--(1) When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under Rule 11 or Rule 13, as the case may be.

(3) Where an application has been made under sub-rule (1), the Court shall not make an order for the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under Rule 11, decide to hear the appeal.

11. Sub-rule (1) of Rule 3-A of Order XLI of the CPC provides that in case the appeal is barred by time, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period. Sub-rule (2) of Rule 3-A of Order XLI of the CPC provides that if the Court sees no reason to reject the application without the issue of a notice to the respondent,

notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under Rule 11 or Rule 13, as the case may be.

12. From the bare reading of sub-rules (1) and (2) of Rule 3-A of Order XLI of the Code of Civil Procedure, it is apparent that delay cannot be condoned in a time-barred appeal without there being any notice to the other side.

13. Here in this case, the revision was filed after expiry of more than 17 years and without issuing any notice to the petitioner, not only delay has been condoned, but the revision itself has been allowed.

14. This Court in Nagar Palika Parishad, Seohara, District Bijnor Vs. Raghuraj Singh Public Inter College, Seohara, Dhampur, District Bijnor and Others, after taking note of paragraphs 176 and 195 of the Revenue Courts Manual and considering the various judgments of the Apex Court in Noharlal Verma Vs. District Co-Operative Central Bank Limited, Jagdalpur, V.M. Salgaocar and Bros. Vs. Board of Trustees of Port of Mormugao and Another, Sneh Gupta Vs. Devi Sarup and Others, and Ragho Singh Vs. Mohan Singh and Others, has held that if a revision or appeal is filed beyond the period of limitation as prescribed under the law then that has to be accompanied with an application u/s 5 of Limitation Act supported with an affidavit explaining the reason for not approaching the Court well within the time, and in absence of such application or in absence of any notice to the other side, the Court can only dismiss the appeal/revision as barred by time and in no case it can condone the delay or admit/allow the Appeal/Revision.

15. The matter is squarely covered by the aforesaid judgments. Apparently, from the perusal of the judgment of the Divisional Commissioner, it is clear that 17 years delay was condoned without having the version of the other side and without issuing notice to the other side, observing that the order is forged.

16. I am of the opinion that merely by saying that the order is a forged, cannot be said to be a forged order, unless forgery is pleaded and proved. Whatever observation has been made by the Divisional Commissioner is based on an ex parte report of Sub Registrar without there being any version of the other side, therefore, this kind of order cannot be sustained in the eye of law.

17. When the matter was brought to the notice of the learned Member, Board of Revenue, the Revisional Court, instead of directing the Divisional Commissioner to correct the procedural lapse and infringement of petitioner's substantial right which had accrued in his favour on account of delay in filing revision, has dismissed the petitioner's revision. Therefore, both the orders are unsustainable in the eye of law and deserve to be quashed.

18. The writ petition succeeds and is allowed. The judgment and orders dated 28.9.2012 and 30.10.2012 passed by Commissioner, Gorakhpur Division, Gorakhpur in revision No. 388/G-2012 (Satish Chandra Shahni v. Rajesh Pratap

Singh) and order dated 1.4.2013 passed by learned Member, Board of Revenue in revision No. 883/LR/2012-13 (Rajesh Pratap Singh v. Satish Chandra Shahni) are hereby quashed.

19. The Divisional Commissioner is directed to proceed in accordance with law and conclude the proceeding, after giving a reasonable opportunity to all concerned, without granting any unnecessary adjournments to the learned Counsel for the parties. Considering the submissions of learned Counsel for the respondents that the petitioner is intending to create third party right, as an interim measure, till the final decision is taken by the Commissioner, no third party right shall be created.