(2009) 08 AHC CK 0209

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8033 of 1983

Ram Chandra APPELLANT

Vs

Board of Revenue, U.P. at Allahabad & Ors. RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 210, 229B, 331

Citation : (2009) 08 AHC CK 0209

Hon'ble Judges : Vikram Nath, J

Final Decision : Allowed

Judgement

Vikram Nath, J.—Heard Sri Sankatha Rai, learned Counsel for the petitioner and Sri Triveni Shankar, learned Counsel for the respondents.

2. This petition has been filed assailing the correctness of the orders dated 241983 and 25101978 passed by the Board of Revenue and the Additional Commissioner whereby the suit of the petitioner has been dismissed.

3. The petitioner filed a suit under Section 229B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short referred to as the Act) for declaration of his rights with regard to Plot No. 2413/2, area 4 Biswa on the. ground that he was in adverse possession of the same for the last 14 years and that the defendantrespondents have failed to file suit against him under Section 209 of the Act and as such he has perfected his rights under Section 210 of the Act. The defendant respondents contested the suit and filed written statement. Both the parties led evidence both documentary and oral. The trial Court vide judgment and order dated 3111976 after considering the material on record decreed the suit of the petitioner holding that he had perfected his rights under Section 210 of the Act. The respondents filed an appeal, which was allowed by the Additional Commissioner vide judgment and order dated 25101978. The Additional Commissioner recorded a finding that the land in, suit was not land as defined under the Act and therefore no Sirdari rights could be conferred on the petitioner.

The second filed by the petitioner has also been dismissed by the Board of Revenue vide judgment and order dated 241983. The Board of Revenue also recorded similar finding.

4. From a perusal of the judgments of the Additional Commissioner and the Board of Revenue, I find that the oral evidence led by the plaintiff as also the defendantrespondents has not been taken into consideration. Reliance has been placed only upon the Khasra entries for the period from 1367F to 1380F whereas from a perusal of the judgment of the trial Court as also the oral evidence, which has been filed alongwith this petition, both led by the plaintiff as also the defendants, it appears that the plaintiffs witnesses have specifically stated that the plaintiff was carrying on agricultural activities over the land in dispute. In the crossexamination no suggestion was made by the defendants that no agricultural activities was being carried out by the plaintiff. Even in the statements of the witnesses produced by the defendants no such averment has come forward. It is well settled that documentary evidence can be rebutted by means of oral evidence. What credence can be given to such oral evidence in rebuttal would be a consideration for the Court. However, where such oral evidence is not taken into consideration at all by the First Appellate Court which is the last Court of fact, the judgment of such Appellate Court would suffer from an error of law and would stand vitiated. Even the Second Appellate Court also did not examine this aspect.

5. In view of the above discussion, in the opinion of the Court the oral evidence, which had been relied upon by the trial Court and it had a bearing on the findings, being not considered by the First Appellate Court and Second Appellate Court their judgments stand vitiated. The writ petition, therefore, is liable to be allowed. The judgments of the Additional Commissioner and the Board of Revenue are hereby quashed. The matter is remitted back to the First Appellate Court i.e. the Additional Commissioner to decide the appeal afresh after taking into consideration the material evidence on record keeping in mind the observations made above.

6. Since the matter is an old one, it is expected that the Additional Commissioner shall make an endeavour to decide the appeal expeditiously preferably within a period of six months from the date of production of a certified copy of this order. There shall, however, be no order as to costs. Petition allowed.