(1977) 04 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1175 of 1970

Ram Charan APPELLANT

Vs

The Board of Revenue and Others RESPONDENT

Date of Decision : 18-04-1977

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 34, 34(5)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 137, 209, 229B, 240G

Citation : (1977) AWC 372 : (1977) RD 200

Hon'ble Judges : K.N. Seth, J

Bench : Single Bench

Advocate : B.S. Yadav and S.R. Singh, for the Appellant; S.C. and C.P. Dubey, for the Respondent

Final Decision : Allowed

Judgement

K.N. Seth, J.—This petition arises out of a suit instituted by the Petitioner u/s 229-B/209 of the U.P. Zamindari Abolition and Land Reforms Act (here-in-after referred to as the Act) seeking a declaration that he was the sirdar of the land in dispute and for recovery of the possession over the same. The case set up by the Plaintiff was that his father acquired sirdari rights in the plots in dispute as he was the recorded occupant in 1356-F. and was also in cultivatory possession in 1359-F.; that the Plaintiff continued to remain in possession as sirdar after the death of his father on 22-9-1957. It was alleged that subsequently the Defendant fraudulently got the name of the Plaintiff''s father expunged in proceedings u/s 137 of the Act of which the Plaintiff had no knowledge and hence the suit.

2. The suit was contested by Defendant No. 1, inter alia, on the ground that the Plaintiff''s father was neither a sirdar nor was ever in possession over the land; that the suit was barred u/s 34(5) of the U.P. Land Revenue Act. It was also pleaded that the proceedings u/s 240-G of the Act were binding on the Plaintiff

and the present suit was barred by principles of res judicata. Plea of limitation was also raised. It was further pleaded that by depositing ten times rent Murakh Singh acquired bhuraidhari rights and executed a sale deed in favour of the other Defendants who obtained possession over the land in question. Other Defendants pleaded that they were bona fide purchasers of the land in dispute.

3. The trial court held that father of the Plaintiff, before his death, had acquired sirdari rights which was inherited by the Plaintiff; that father of the Plaintiff died on 22-9-1957; that the Plaintiff was sirdar of land in suit but was not in possession on date of the suit. The claim of Defendant No. 1 that he acquired bhumidhari rights was negatived and so also the claim of the transferees that they acquired bhumidhari rights under the sale deed in their favour. It was however, held that they were in possession from 6-6-1959. The suit was held to be within time. The other issues were also decided in favour of the Plaintiff but the suit was dismissed on the ground that it was barred u/s 34(5) of the U.P. Land Revenue Act. The learned Additional Commissioner, while dismissing the appeal filed by the Plaintiff, upset the finding that Bhagirathi died on 23-9-1957. He also disagreed with the view of the trial court regarding the suit being barred u/s 34(5) of the U.P. Land Revenue Act.

4. The Board of Revenue held the suit to be barred u/s 34(5). It also held that the proceeding u/s 240-G was binding on the heirs of Bhagirathi. The Board approved the findings recorded by the lower appellate court that Bhagirathi was not dead on 22-9-1957 on the ground that it was based on appreciation of evidence and could not be interfered with.

5. One of the crucial questions involved in the suit was regarding the date of death of Bhagirathi, father of the Plaintiff. According to the Plaintiff he died on 22-2-1957. The Defendants on the other hand, pleaded that he was alive when proceedings u/s 240-G took place and that Bhagirathi in fact made a statement in that proceedings on 2nd May, 1957. It was also pleaded that the decision made in proceeding''s u/s 240-G of the Act operated as res-judicata against the Plaintiff. The question whether the decision arrived at in proceedings u/s 240-G would bind the Plaintiff is also dependant on the question whether Bhagirathi was alive when that proceeding took place. The trial court discussed this aspect of the case carefully. It is not in dispute that the statement alleged to have been made by Bhagirathi on 2nd May, 1957, is said to have been recorded by the collection Amin. It is not on oath and was not recorded in any judicial proceeding before a court. It has not been shown that the Collection Amin is empowered to record any statement in the course of his official functions. Even if it be assumed that he has such a power, that statement would be admissible as evidence in a judicial proceeding on being formally proved. In the present case, admittedly, the statement alleged to have been made by Bhagirathi and recorded by the Collection Amin on 2-5-1957 has not been proved according to law and as such that statement could not be read in evidence in the present proceeding. The only basis on which the learned Additional Commissioner disbelieved the case set up

by the trial court that Bhagirathi died on 22-2-1957 is that Bhagirathi mads a statement on 2nd May, 1957. On this ground alone he disbelieved the entry in the death register which he was otherwise prepared to believe. The reasoning that if there was any impersonation of Bhagirathi, it should have been agitated before the Compensation Officer in the proceedings u/s 240-G of the Act is apparently fallacious. This is just begging the question. If Bhagirathi had died on 22-2-1957 and his heirs had not been brought on record and were thus ignorant of the aforesaid proceedings, this matter could not possibly be agitated in the proceedings u/s 240-G. That proceeding would be a nullity as it was against a dead person. The finding recorded by the learned Additional Commissioner is vitiated by an obvious error of taw. The Board committed an error in feeling itself bound by this finding on the ground that it was based on appreciation of legal evidence. The learned Additional Commissioner did not refer to any other evidence except the alleged statement of Bhagirathi in coming to the conclusion that Bhagirathi was not dead on 22-2-1957.

6. The view taken by the trial court and the Board of Revenue that the present suit was barred u/s 34(5) of the U.P. Land Revenue Act is patently erroneous. The aforesaid provision bars the suit only in respect of matters dealt with in Section 34. It has no bearing on the right of a claimant to establish his legal title to the property in dispute in a court of law. In the present case Ram Murat was the recorded tenant. The Plaintiff claimed title on the basis that his father being the recorded occupant in 1356-F. and also being in cultivatory possession in 1359-F. acquired sirdari rights in the land and that right was inherited by the Plaintiff on his death. The father of the Plaintiff was not recorded in the revenue papers as a tenant and it was not the Plaintiff''s duty to report that he had succeeded to the sirdari rights which vested in his father. Apart from the aforesaid consideration I find no merit in the contention that unless a report had been made u/s 34 the Plaintiff could not sue for possession of the land if he was illegally dispossessed. The right of a person entitled to the property could not be defeated on account of his failure to make a report as contemplated by Section 34. No such intention is contained in Sub-section (5) of Section 34. Mere failure on the part of an heir who succeeds to the property of the recorded tenure holder would not disentitle him to proceed against a trespasser who obtains possession over the property illegally. Sub-section (5) cannot possibly be interpreted to mean that the trespasser acquires immunity from process of law for being compelled to surrender his illegal gain merely because the rightful claimant was negligent in making a report as contemplated in Section 34. The only logical conclusion is that the bar created by Sub-section (5) is confined to the matter of mutation through a suit in a court of law and it does not extend to the extent of depriving a person of his property. Learned Counsel for the Respondents placed reliance on certain observations of a Bench of this Court in Suraj Bali v. Board of Revenue 1959 AWR 437. In that case the court was concerned with the question whether the provisions of Section 34 as amended by the U.P. Zamindari Abolition and Land Reforms Act were applicable only to cases

of transfer or succession which took place after the date of amendment for it could be applied also to cases of transfer or succession before the date of amendment. In that case the Court was not concerned with the question as is involved in the present case and the decision in that case cannot be treated as an authority for the proposition that a suit of the present nature is barred u/s 34(5) if no report is made as contemplated by Section 34.

7. The trial court decided all the issues raised in the case. The learned Additional Commissioner upheld the decree dismissing the suit on the ground that the decision in proceedings u/s 240-G was binding on the Plaintiff. The first appellate court disagreed with the trial court''s view that the suit was barred u/s 34(5) U.P. Land Revenue Act. The Board dismissed the appeal on the ground that the suit was barred u/s 34(5). It was held that the statement of Bhagirathi in 240-G proceeding was binding on his successors and the finding that Bhagirathi had not died on 22-2-1957 was not open to challenge. (have already held against the view taken by the appellate courts on the aforesaid points. The learned Additional Commissioner and the Board did decide other issues raised in the case which has to be considered now.

8. fn the result the petition is allowed. The orders of the Board of Revenue dated 29-11-1967, that of the Additional Commissioner dated 9-9-1965 and 2-5-1967 are quashed. The case is stent back to the first appellate court which shall re-admit the appeal at its original number and decide it in accordance with law on the basis of the existing material on record. Parties shall bear their own costs.

