

(2011) 10 AHC CK 0126
In the Allahabad High Court
Case No : Writ - C No. - 61321 of 2011

Ram Das And Another

APPELLANT

Vs

State of U.P. And Others

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 341

Citation : (2012) 2 AWC 1332 : (2011) 114 RD 800

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

p>Hon"ble Amreshwar Pratap Sahi, J.

1. Heard learned counsel for the petitioners and Sri Pandey for Respondent No.13.

2. The petitioners are aggrieved by the impugned orders dated 8.1.2010 and the order passed by the Board of Revenue on 29.9.2011 in proceeding arising out of a Suit for partition u/s 176 of the U.P. Zamindari Abolition & Land Reforms Act, 1950. Their contention is that the respondent No.13 had absolutely no locus to contest the matter even though the said respondent was present through a Caveat in the Suit which has been instituted on 19.12.2009. It is urged that strangely enough without there being any compromise between the plaintiff and the other co-tenure holders, the Suit was sought to be decreed on the basis of an alleged compromise which has been recorded in the order dated 24.12.2009 that was obtained on gun point. The submission is that the compromise was not a valid compromise and was also under duress. It is, therefore, urged that the order was absolutely erroneous in law and the same ought to have been set aside by the Board of Revenue which it has refused to do so on the ground that no such application for setting aside the compromise was made before the concerned court itself.

3. Learned counsel for the petitioner submits that the proceedings were undertaken for contempt as well before the Board of Revenue as the opposite party had violated the terms of the interim order that has been passed therein and they continued to raise constructions unabated without the property being partitioned finally in the proceeding aforesaid.

4. Sri Pandey for the respondent No.13, on the other hand, alleges that the petitioners are now trying to take a different stand by raising pleas that were never raised before the trial court where the decree came to be passed and, therefore, the Board of Revenue has rightly rejected the revision.

5. Learned Standing Counsel and the learned counsel for the Gaon Sabha have also been heard.

6. It appears that in a Suit for partition filed by the petitioner, an order came to be passed on 24.12.2009 by the Sub-Divisional Officer on the basis of a compromise that was allegedly entered into by the parties, who were physically present before the Sub-Divisional Officer on 23.12.2009 as recited in the said order. Consequently, a decree was drawn up on the strength of the said compromise on 8.1.2010.

7. The petitioners appear to have lodged a complaint and also moved an application u/s 156 (3) Cr.P.C. on the basis whereof a criminal case has been registered on the allegation that the said alleged compromise was entered into and got signed forcibly under duress in the circumstances as indicated in the application aforesaid.

8. On the very same allegation, the petitioners approached the Board of Revenue. The Board of Revenue has dismissed the revision on the ground that the petitioners did not raise any such plea before the trial court itself where the said proceedings were recorded.

9. In the opinion of the Court, there were two remedies available to the petitioner as against the said decree. If the compromise was fraudulent or had been obtained under duress and deserved to be recalled, then the factum of compromise, which has been recorded in the order, could have been set aside by the very same court. The reason is very simple inasmuch as u/s 341 of the U.P. Zamindari Abolition & Land Reforms Act, 1950, the provisions of CPC have been made applicable and, as such, the principles under Order XXIII of the CPC as amended update has to be followed. Under the amendments made in the provisions of the CPC relating to compromise and a bar created by filing of a fresh Suit, the parties to a compromise if allege it to be an outcome of fraud, misrepresentation or duress have to approach the very same court itself for setting aside the same. This procedure has not been adopted by the petitioner and, therefore, the Board of Revenue was correct in its observations that it will not be possible for it to interfere in the matter as the petitioners themselves have not taken recourse to the law of procedure as enshrined under Order 23 of the Civil Procedure Code.

10. Apart from this, the petitioner could have filed a regular appeal assailing the judgment and decree of partition u/s 176. The same was also not attempted and a revision was filed. In such a situation, this Court is of the opinion that in case the petitioners are aggrieved by the very factum of the compromise, then the appropriate procedure would have been for them to have approached the same Court for setting aside the compromise that had not been done. No error can be found in the order passed by the Board of Revenue. Accordingly, this Court is not inclined to interfere with the same leaving it open to the petitioner to avail the remedy as available in law.

11. With the aforesaid observations, the writ petition is dismissed.