

(2016) 10 AHC CK 0138
In the Allahabad High Court
Case No : Writ-B No. 10278 of 1985

Ram Deo

APPELLANT

Vs

Dina Nath

RESPONDENT

Date of Decision : 19-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 134 RD 261

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : S.K. Verma, Siddharth Verma, Advocates, for the Petitioners; U.S.M. Tripathi, B.S. Yadav, Dr. Vinod Kumar Rai, S.C, Sankatha Rai and Vijay Kumar Rai, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J. - Heard learned counsel for the petitioners. None has appeared on behalf of the respondents.

2. This writ petition arises out of a suit under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act, filed by the contesting respondents for being declared Bhumidhars with non transferable rights over plot Nos. 65 and 116 of village Semra Chak Faiz, Pargana and District Ghazipur on the ground that these plots have been allotted to them by the Gaon Sabha on 16.03.1968.

3. A written statement was filed on behalf of the State of U.P. alleging that the land allotted to the respondent was land of public utility, covered by Section 132 of the U.P. Zamindari Abolition and Land Reforms Act; his mutation application had been dismissed; the suit was barred by Section 49 of the U.P. Consolidation of Holdings Act.

4. The petitioners were also impleaded in the suit and they contested the same on the ground that they were the groove holders of the land in question, the trees having been planted by their ancestors; the land had never been cultivated

and the suit was barred by Section 34 of the Specific Relief Act.

5. The contention of the petitioner before the Trial Court appears to have been made that the Patta relied upon by the plaintiff respondent, was farzi.

6. The Trial Court finding that a valid allotment had been made in favour of the plaintiff respondent, decreed the suit.

7. The judgment and decree of the Trial Court was reversed in appeal filed by the petitioner vide order dated 09.04.1984. Before the Appellate Court, it appears to have been argued that it was not proved that proper procedure had been followed while making allotment in favour of the petitioners; no evidence of any Munadi having been made was filed and that even the members of the Land Management Committee had not been informed and therefore, the allotment made was not in accordance with law.

8. However, it appears from a perusal of the record that the appeal was allowed only on the ground that the application filed by the petitioner seeking mutation on the basis of the patta allotted to him had been rejected.

9. This order of the first Appellate Court has been reversed by the Board of Revenue in Second Appeal on the ground that the question of validity of an allotment could not be gone into by any court, except the competent Court, provided in Section 198(4) of the U.P. Zamindari Abolition and Land Reforms Act. For this purpose, the Board of Revenue has placed reliance upon the Full Bench decision of this Court reported in 1977 RD 408.

10. It has been submitted by learned counsel for the petitioner that the Board of Revenue had wrongly relied upon the Full Bench decision of this Court which has been distinguished by the Apex Court, vide judgment in U.P. State Sugar Corporation v. Deputy Director of Consolidation, AIR 2000 SC 878. It has been held that a void or non existent allotment can be ignored and therefore prima facie, the judgment of the second appellate Court, is vitiated.

11. The second submission made is that no substantial question of law was framed by the Board of Revenue in the second appeal and therefore the same could not have been allowed.

12. The third submission made is that the Gaon Sabha and the State were necessary parties but had not been impleaded in the Second Appeal which therefore, was incompetent and necessarily merited dismissal.

13. The last submission is that the plaintiff respondent had claimed a declaration simpliciter. No relief for possession had been claimed and therefore the suit was barred by Section 34 of the Specific Relief Act. Elaborating further it is submitted that since the petitioners had been mutated over the land, the presumption was that they were not in possession thereof. Yet they failed to seek possession.

14. I have considered the submissions made by the learned counsel for the petitioners and have perused the record.

15. The first point for consideration is as to whether the Board of revenue was justified in relying upon the Full Bench decision of this Court in the Case of Similesh Kumar v. Gaon Sabha Uskar and others, 1977 RD 408.

16. In my considered opinion, the Board of Revenue has rightly relied upon this Full Bench decision.

17. Perusal of the impugned order reveals that the contention of the petitioners before the Courts below was regarding the procedural defects and non compliance of the statutory provisions while making an allotment. These issues raised by the petitioners would, at best, render the allotment illegal and such procedural defects would not render the allotment, void.

18. Besides, once the petitioners raised issue of procedural defects in the process of allotment, the allotment in favour of the respondents stood admitted. In view of the Full Bench decision relied upon by the Board of Revenue, the issues that were raised by the petitioners were issued to be considered only in proceedings for cancellation of their allotment. There is nothing on record to show that any such proceedings were initiated by the petitioners.

19. The first contention of learned counsel for the petitioners; therefore, cannot be accepted and is repelled.

20. The submission of learned counsel for the petitioner that the second appeal could not have been decided without framing a substantial question of law is also misconceived. The Apex Court in the case of State of Uttarakhand v. Mohan Singh, (2012) 13 SCC 281, has held that no substantial question of law is required to be framed by the Board of Revenue in a second appeal.

21. I do not see any substance in the submission that the suit filed by the respondents was barred by Section 34 of the Specific Relief Act as only a declaration simpliciter had been sought, without seeking the consequential relief for possession. Perusal of the order of the Trial Court reveals that the respondent claimed to be in possession over the land in suit. None of the Courts below have returned a finding that the plaintiff respondent was not in possession. The petitioner is raising this plea only because the mutation application was rejected and therefore it must be presumed that the petitioner was not in possession.

22. Even if the mutation Courts had returned a finding that the plaintiff respondent was not in possession over the land in suit, still in view of the settled legal position that finding returned by the mutation courts is not binding upon the Courts in regular title proceedings, it cannot be held that the suit was barred by Section 34 of the Specific Relief Act.

23. The only point that survives for consideration is whether the second appeal filed by the plaintiff respondents was incompetent and liable to be dismissed on the ground that the State of U.P. and the Gaon Sabha had not been impleaded therein.

24. Although, this ground has been taken as ground No.5 in the writ petition but no corresponding averment of fact in this regard is to be found in the writ petition itself.

25. The Gaon Sabha and the State of U.P. have been impleaded as party in this writ petition. Neither have filed any counter affidavit.

26. This plea also does not appear to have been raised before the second appellate Court itself. A true copy of the memo of appeal has been filed by the petitioner along with the writ petition. However its certified copy of the decree of the second appellate Court has also not been filed.

27. In the aforesaid facts and circumstances, this Court is constrained to hold that it is not established or proved on record that the Gaon Sabha and the State of U.P. had not been impleaded as a parties in the second appeal.

28. There is no explanation offered as to why, this issue was not raised before the second appellate Court, if such a defect did exist.

29. Since no specific averment was made in the writ petition that necessary parties have not been impleaded before the second appellate Court, the counter affidavit is also silent on in this issue. The parties are only required to rebut the assertions made in the writ petition and the counter affidavit is not required to rebut the grounds taken in the writ petition.

30. In any case, the State of U.P. as also the Gaon Sabha which are stated to be necessary parties in the second appeal have been impleaded in the writ petition. They have not raised any such objection before this Court. Therefore, this Court is not inclined to accept the contention that necessary parties were not impleaded in the Second Appeal.

31. In view of the above discussion, I do not find any illegality in the impugned orders.

32. The writ petition is found to be devoid of merits and is accordingly dismissed.