

(2011) 08 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2524 of 1997

Ram Kumar Gupta

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2011) 8 ADJ 797

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : P.K. Mishra, Pankaj Saxena, Amit Singh, Pankaj Srivastava, R.D. Khare and Ram Kumar Gupta, for the Appellant; A. Srivastava, Arnish Srivastava, Iqbal Ahmad and S.K. Srivastava, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri P.K. Mishra learned counsel for the petitioner and Sri Srivastava for the contesting respondents. This petition arises out of a suit u/s 229-B of the U.P.Z.A. & L.R. Act, 1950, filed by the petitioner-plaintiff claiming adverse possession over the land in dispute. The Original suit No. 116 of 1984 was filed seeking declaration by the petitioner as bhumidhar, which was withdrawn with liberty to file a fresh suit. The petitioner thereafter filed two suits u/s 229-B in 1986, registered as Original Suit No. 2 of 1987-88 on the same grounds, and the other suit regarding another plot with the same prayer.

2. Both the suits were contested by the contesting respondents denying the claim of possession by the petitioner and after evidence was led the suits were dismissed on 27th January, 1989. Two appeals were filed and the appeals were allowed on 28.12.1989 remanding the matter back to the trial Court to decide the matter afresh. The trial Court this time decreed the suits vide judgment dated 11th January, 1993.

3. The contesting opposite parties filed appeals that were allowed on 8.4.1993.

Two second appeals were filed by the petitioner before the Board of Revenue against the judgment of the first appellate Court and the second appeals were allowed on 24.5.1994. One Ishaq moved a restoration application on 16.7.1994 and a review petition was filed on behalf of the respondent Nos. 3 to 5. The restoration application was allowed and the review petition was dismissed as infructuous as the appeals had been restored. The Board ultimately decided the appeals again on 24.9.1996 against the petitioner upholding the order of the learned Additional Commissioner dated 8.4.1993. Aggrieved the petitioner has filed the present writ petition.

4. The contesting respondents have filed a counter-affidavit and the learned counsels have advanced their submissions. Sri P.K. Mishra contends that the procedure adopted by the Board of Revenue was incorrect and therefore the impugned order deserves to be set aside on this issue. Suffice it to say that the restoration was allowed and thereafter the matter was heard again, in such circumstances, it cannot be said that the Board has committed an error in deciding the matter again vide order dated 24.9.1996.

5. Coming to the merits of the claim, the main contention of Sri P.K. Mishra is that the second appeal was dismissed inspite of the fact that a substantial question relating to ignoring of material evidence had been raised and without there being any finding on any misreading of the evidence by the trial Court, the first appellate Court had erroneously reversed the judgment. For this Sri Mishra has invited the attention of the Court to the statement of the Lekhpal of the Village, Ram Swaroop and he submits that there is a total non-application of mind and non-consideration of such relevant material that vitiates the finding recorded by the first appellate Court. The Board of Revenue while proceeding to hear the second appeals committed a manifest error by not framing this substantial question of law that arose on the facts of the case, hence the impugned order is vitiated.

6. Sri Mishra further submits that the statement of the Lekhpal was a vital piece of evidence and its non-consideration has altered the result of the entire proceedings. He submits that the petitioner had throughout led evidence to indicate his adverse possession and the evidence had been believed by the Trial Court. He submits that without pointing out any misreading of the evidence the first appellate Court could not have reversed the judgment. He relies on the decision in the case of Vishwa Nath and others Vs. Ramraj and others, (at pages 107 and 108).

7. Replying to the submissions of Sri Mishra, Sri Srivastava learned counsel for the contesting respondents urges that the petitioner had failed to establish his right, title or interest in any way, inasmuch as, the first appellate Court has found that the statement of the witnesses in relation to possession was conflicting, and that there was no evidence, documentary or oral, to indicate that the possession of the petitioner was continuous, uninterrupted and in the knowledge of the true owner. He contends that none of these ingredients were

established and therefore even otherwise even assuming for the sake of argument that the statement of Lekhpal Ram Swaroop had not been discussed appropriately, the result would be the same as the plaintiff has failed to establish his own case. He therefore contends that the finding of fact recorded by the first appellate Court as affirmed in second appeal is complete and there is no reason to interfere with the impugned orders.

8. Having heard learned counsel for the parties, the law relating to adverse possession is well settled. The plaintiff has to prove his uninterrupted continuous possession against the true owner within his knowledge. The evidence was led and the trial Court decreed the suit recording a finding to the following effect on the statement of the Lekhpal (Village Record Keeper) quoted herein below:

9. The appellate Court while reversing the judgment of the trial Court has nowhere commented upon the said evidence that was relied on by the trial Court. It is true that the first appellate Court has discussed the other plaintiff witnesses and has arrived at a conclusion that the claim of adverse possession has not been proved. Nonetheless, it has not indicated as to why the statement of the Lekhpal Ram Swaroop deserved to be disbelieved.

10. In the opinion of the Court, the Lekhpal being a village record keeper, his statement had to be taken into consideration which the trial Court had done and which the appellate Court failed to dislodge by any reasoning. Whenever such a composite nature of evidence has to be considered, especially in matters relating to adverse possession, then the combined effect of the oral evidence has to be taken into account. The trial Court did so, but the first appellate Court has completely ignored this vital piece of evidence which could have been either accepted or rejected on an overall consideration of the statement of the witness. It was still open to the first appellate Court to have discarded the statement of the Lekhpal but the first appellate Court instead chose to ignore the same.

11. It is to be noticed that in the grounds of first appeal that was filed by the respondents against the judgment of the trial Court, the said issue does not appear to have been raised. Whereas against the judgment of the first appellate Court, the petitioner-plaintiff in second appeal has raised a clear ground as Ground No. 6, as is evident from the memo of the second appeal in relation to the statement aforesaid being ignored. Once, this issue had been carried forward before the second appellate Court on the ground that a material piece of evidence has been ignored then the Board of Revenue ought to have considered framing a substantial question of law on this issue as to the impact of non-consideration of a relevant material. This lapse on the part of the Board of Revenue therefore in my opinion was detrimental and to support the aforesaid conclusion reliance can be safely placed on the Full Bench decision of this Court in the case of Nanha and Another Vs. Deputy Director of Consolidation, Kanpur and Others, which is quoted herein below:

Para 15. Our answer to the question referred to us is:

if it appears that a Court of fact has in substance based its findings on no evidence or that its finding is perverse in the sense that no reasonable person could possibly come to that conclusion or that it erroneously ignores a vital plea or material evidence which affects the result, a manifest error of law apparent on the face of the record leading to failure of justice can be said to be established. But if a Court or a tribunal bases its finding on a consideration of all relevant evidence, but an appellate or a revisional Court or tribunal while affirming the finding does not refer to some material or contrary evidence in its order it cannot be said that it has been ignored from consideration so as to entitle the High Court to interfere under Article 226 of the Constitution.

12. Applying the aforesaid principle of the Full Bench decision the first appellate Court in my opinion committed a manifest error by ignoring the aforesaid evidence entirely and as such the first appellate Court appears to have based its finding only on the discrepancies pointed out by it without adverting to the impact of the aforesaid statement of Ram Swaroop which had been made the basis for decreeing the suit by the trial Court. If the law requires a Court to give its own finding on a question of fact and that question is of such a nature that it vitally affects the ultimate decision of the dispute then an omission to record a finding will amount to a substantial irregularity. The omission may be deliberate or may be due to an inadequate comprehension of the importance of that question for determination of the dispute between the parties but if such an issue has been dealt with by the trial Court and had arisen properly on which the rights of the parties were dependent, then there can be no doubt that such an omission to record a definite answer would amount to exercising the jurisdiction with substantial irregularity. Accordingly, I am of the opinion that the first appellate Court failed to advert to the relevant issues as pointed out above and as such the judgment of the first appellate Court is vitiated.

13. The aforesaid fact was directly related to the issue of possession as claimed by the petitioner, whatever worth it was, and the same having not been considered and ignored was also in my opinion a substantial question of law that ought to have been framed by the Board of Revenue in second appeal and answered accordingly. The Board having failed to exercise its jurisdiction in the manner aforesaid has therefore committed an error and accordingly the order of the Board of Revenue also deserves to be set aside for the said infirmity. To support the said conclusion drawn, reliance can be placed on the Apex Court judgment in the case of Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., . The facts of the present case also warranted the framing of the question of law as urged on behalf of the petitioner.

14. This writ petition is therefore allowed. The impugned order of the Board of Revenue dated 24.9.1996 and that of the learned Additional Commissioner dated 25.8.1994 in first appeal are set aside. The matter is remitted back to the learned Additional Commissioner Moradabad to proceed to decide the first appeal afresh in the light of the observations made hereinabove. It is made clear that

this Court has not entered into any field of assessment of the evidence of possession which shall be entirely within the jurisdiction of the first appellate Court to decide in accordance with law independently and record its own conclusions. Since the dispute is a very old one, it is expected that the first appeal shall be disposed of as expeditiously as possible preferably within a period of six months from the date of presentation of a certified copy of this order before the concerned Court. The writ petition is allowed.