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**(2011) 11 AHC CK 0458**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 52974 of 2010

Ram Lakshman and Others

APPELLANT

Vs

Yashoda Nandan and Others

RESPONDENT

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**Date of Decision :** 04-11-2011

**Acts Referred:**

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

**Citation :** (2011) 11 AHC CK 0458

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

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Hon"ble A.P. Sahi, J.—Heard learned counsel for the petitioners Sri R.K. Mishra, learned counsel for the respondents 1 and 2, learned counsel for the Gaon Sabha respondent nos. 3 and 4 and the learned counsel for the respondents 5 to 7.

2. This petition assails the orders passed by the competent court in a suit for partition u/s 176 of the U.P. Z.A. & L.R. Act, 1950. The suit proceeded and objections were invited to the proposed lots that were prepared after the shares were accepted. The petitioners filed their objections, copy whereof is Annexure 1 to the writ petition.

3. The first contention of the learned counsel for the petitioners is that the Lekhpal who had prepared the lots was not allowed to be cross-examined by the petitioners and acceptance of the lots on the recommendation of the Lekhpal is therefore erroneous. Reliance is placed on the decision of this Court in the case of Keshav Deo and Others Vs. Board of Revenue U.P. Allahabad and Others, .

4. The second contention raised is that the petitioners had not signed on the lots that were prepared as they were not in accordance with the possession of the parties on the spot.

5. The third contention is that the Plot No. 203 which was a fairly large plot with

hardly any source of irrigation had been given exclusively to the petitioners with no share to the contesting respondents.

6. Further the status of the land and its location of village Sudpura was also alleged to be prejudicial, inasmuch as its location and inappropriate situation renders irrigation impossible.

7. Learned counsel submits that the statement of the Lekhpal has been wrongly construed and therefore the authorities have committed an error. He further submits that the petitioners had filed the relevant Khasra, copy whereof has been filed along with the writ petition to demonstrate the aforesaid status of the land. He further contends that all the issues had been raised before the appellate authority but the appellate court also in violation of Rule 21 of Order 39 has not proceeded to decide all the issues which were required to be gone into. He therefore submits that on all scores there is a total non-consideration of the objections raised on behalf of the petitioners hence the impugned orders deserve to be set aside.

8. On the other hand Sri R.S. Maurya and Sri A.S. Rai for the respondents submit that the petitioners are unnecessarily trying to prolong the proceedings and none of objections hold water. The lots which were prepared are justified, appropriate and proportionate to the shares to which the parties are entitled. They further contend that care has been taken to give as much compact holdings as per shares of the co-tenure-holders keeping in view the adjustment of fair quality and low quality land amongst the parties. They further submit that there is hardly any material so as to dislodge the findings of fact that have been recorded, not only by the appellate authority, but also the acceptance of the report of the Lekhpal by the trial court in this regard.

9. Having considered the submissions raised, the order sheet dated 3rd July, 2009, 13th July, 2009, 29th July, 2009 and 3rd August, 2009 it appears that the counsel for the petitioners sought time to file objections for which time was granted. The statement of the Lekhpal was recorded on 3rd July, 2009. The final arguments were heard on 3rd August, 2009 and the judgment delivered on the same day. There is nothing in the order sheet or in the petition to indicate that the petitioners ever sought opportunity on 13.7.2009 or 29.7.2009 to cross examine the Lekhpal whose statement has been recorded or moved any application for the same.

10. Learned counsel submitted that it was the obligation of the court to allow such cross examination. It is true that if the parties wanted to cross examine the Lekhpal, then the court is obliged to grant such an opportunity. However, in the instant case there is no evidence that the petitioners ever demanded or made a prayer before the court for the cross examination of the Lekhpal whose statement had been recorded on 3rd July, 2009. The counsel for the petitioners had ample opportunity from 3rd July, 2009 onwards to seek the cross examination of the Lekhpal in case they wanted to do so. In the absence of any

such attempt on the part of the counsel for the petitioners it cannot be said that the court has denied any opportunity either to the petitioners or to their counsel for cross examination. The decision relied on in the case of Keshav Dev (supra) is on the footing that if the cross examination had commenced, then the same could not have been cut short or abandoned by the court midway. It is not an authority for a situation like the present case where the petitioners or their counsel did not make any effort for cross examination inspite of opportunity available before passing of final orders. Thus the said decision does not come to the aid of the petitioners.

11. The contention raised on behalf of the petitioners is to the effect that the version of the Lekhpal should not have been accepted ex-facie. It appears that the learned counsel is proceeding under a presumption that the statement of the Lekhpal was on an affidavit. I have perused the said statement which is on record and it indicates that it was an oral statement made before the court. The said statement has been filed along with the counter affidavit on behalf of the respondent no. 1. It is not an affidavit and therefore the principles of Order 19 C.P.C. are nowhere attracted so as to accept the arguments on behalf of the learned counsel for the petitioners.

12. The contention of the petitioners that the lots have not been prepared in accordance with the possession of the parties also does not appeal to this court, inasmuch as, the lots have to be prepared in order to adjust shares of the parties and ordinarily it is done according to their possession which they are having over the land in dispute. However, when adjustments were to be made, keeping in view the fact that the land was situate in two villages, there was bound to be a variation in order to draw out the lots. Accordingly, no error has been committed by the courts below on this score as well.

13. The next argument of the learned counsel for the petitioners was in relation to Plot No. 203 contending that it was unirrigated. For this reliance has been placed on the Khasras that have been brought on record. From a perusal of the photocopies of the Khasras it appears that they were obtained on a date much after the filing of the objections and the passing of the order by the trial court on 3.8.2009. It is therefore obvious that these documents were not before the trial court. Even otherwise the finding recorded in relation to Plot No. 203 this is that it is within the command area of a canal and that there is a drainage that goes upto the adjacent plot for the purpose of irrigation. This finding could not be successfully assailed by the learned counsel for the petitioners.

14. He then contends that the gradient of the land from one direction to the other is such that water cannot travel upto the higher end. This also could not be successfully demonstrated, more so when the source of irrigation has been pointed out in the findings recorded. Apart from this, if the gradient of the slope of the land is such, then the same can be improved upon by attempting to level it and which is usually done when such partitions are carried out in relation to the holdings looking to the convenience of the parties. It is therefore open to the

petitioners to level their land, in case it is inconvenient for irrigation. After all, while distributing lots such aspects have to be adjusted and which in the opinion of the court has been done while drawing of lots.

15. One of the contentions raised about the land in village Sudpura in the objections is that since the direction of the land is located from North to South, therefore, it will not be possible to irrigate the land. No material has been brought forward as to how the location of the land from North to South is detrimental for irrigation. The findings recorded by the appellate authority are in detail, all of these issues have been considered in depth by the appellate authority in the judgment dated 13.7.2010.

16. In the opinion of the Court the Board of Revenue while dismissing the revision against the appellate order has rightly found that that no substantial question of law arose so as to interfere with the orders passed by the courts below. The petitioners even before this Court have been unable to point out any such perversity in the allocations which may compel this Court to raise a presumption about any question of law arising in the dispute at hand.

17. The writ petition lacks merit and is accordingly dismissed.