
(2006) 04 AHC CK 0240

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17382 of 2006

Ram Naval

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 19-04-2006

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 5, 5(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2006) 9 ADJ 441 : (2006) 3 AWC 2868

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : A. Chaturvedi and R.S Mishra, for the Appellant; V.K. Singh, Vimlendu Tripathi and Rahul Sripat and S.C., for the Respondent

Final Decision : Allowed

Judgement

Janardan Sahai, J.—A suit u/s 229-B of the U.P. Zamindari Abolition & Land Reforms Act was filed by Binda and Lalita transferors of respondent No. 6 against the petitioner and other defendants. The suit was decreed. An appeal was filed by the petitioner, which was allowed, and the suit was remanded to the trial court for fresh decision. According to the petitioner the suit was dismissed in default but it was restored on 26.10.1976 and that it was again dismissed on 21.4.1977 but was restored on 18.8.1977 and that thereafter on that date itself the trial court passed a compromise decree. The factum of restoration as well as of the compromise between the parties is disputed by Shri Rahul Sripat counsel for respondent No. 6. This dispute about the facts however does not have any bearing on the controversy requiring decision in this writ petition and therefore the dispute about these facts can be left here. An application for setting aside the compromise decree was filed by respondent No. 6 on 2.5.2000, which was allowed by the trial court by its order dated 24.6.2002. The trial court took the view that no notice was served upon the respondent No. 6 the transferee and that consolidation proceedings were going on when the compromise decree was passed a finding which in effect is that the compromise order could not have

been passed as the suit had abated. Against the order of the trial court the petitioner preferred a revision, which was allowed by the Additional Commissioner. The Additional Commissioner took the view that the consolidation proceedings started in the year 1986 and the revision in proceedings for setting aside the decree therefore would not abate. Against the order of the Additional Commissioner, a revision was preferred by respondent No. 6. The Board of Revenue in its impugned order dated 28.2.2006 has taken the view that as the consolidation proceedings had started in the year 1986 the revision ought to have been abated and it passed an order abating the revision as well as the suit. Aggrieved the present writ petition has been filed.

2. I have heard Shri R.S. Mishra, counsel for the petitioner and Shri Rahul Sripat counsel for respondent No. 6. Counter and rejoinder affidavits have been exchanged in this petition and the counsel for the parties agree that the writ petition may be disposed of finally.

3. The only controversy involved in the present case is whether the Board of Revenue was right in taking the view that the proceedings had abated. The restoration application was filed by respondent No. 6, which was allowed by the trial court. The law upon the point that a restoration application does not abate on the notification under the Consolidation of Holdings Act is settled, but doubt has been raised upon the question whether a pending appeal or revision arising out of an order allowing restoration would abate. In *Sheo Pujan Singh and Anr. v. Smt. Bhagesara Kunwari and Ors.* 1985 RD 163 it has been held that restoration application and revisions arising there from do not abate u/s 5(2) of the U.P. Consolidation of Holdings Act. Section 5(2) of the Act provides for abatement of proceedings relating to correction of the records and of cases in which declaration of rights over land is involved. An application for restoration or to set aside an ex parte decree does not by itself involve a declaration of rights of the parties over land as what is to be decided in these proceedings is whether sufficient cause for absence has been shown and therefore such an application does not abate u/s 5(2)(a) of the Act. An application for setting aside a compromise decree too does not involve declaration of rights over land.

4. The question which however has arisen in this case is if an ex parte decree or a compromise decree is set aside and the suit is restored but a revision against the order of restoration is pending whether the suit and the revision against the restoration order would abate on account of notification u/s 4 being issued or on account of pendency of consolidation proceedings. The language of Section 5 of the Act is clear that unless there is an order of abatement passed the suit does not automatically abate. Upon this point counsel for the petitioner has cited the case of *Ram Charittar Singh Vs. Deputy Director of Consolidation and Others*, in which it has been laid down that there is no automatic abatement and it is only when an order of abatement is passed that the suit or proceedings abate. This proposition is not disputed by counsel for the respondents. It is nobody's case that any order for abatement of the suit had been passed. The result therefore is

that the suit had not abated in this case. An appeal or revision against the order of restoration or of setting aside a compromise decree is a continuation of the restoration proceedings. It is well settled that an order, which is challenged in appeal puts the order impugned into jeopardy. If subsequently the appeal/revision is allowed the consequences of the order set aside would unless there are indications otherwise in the statute be set at nought either automatically or on an application filed by the party in whose favour the appellate order is passed and the parties would be restituted to their original position, The intention of the legislature is clear Firstly Section 5(2)(a) does not provide for abatement of the restoration application or of an appeal or revision arising out of a restoration application which means that the appeal or revision whether against an order rejecting or allowing a restoration application would have to be decided on merits. This is also clear from the fact that it is only when an order of abatement is passed that the suit abates. There being no automatic abatement, it cannot be said that there was any automatic revival of the suit in consequence of the order of restoration The order of restoration having been put into jeopardy in the revision, it cannot be said that the revision would become in fructuous in the absence of anything to the contrary in Section 5(2). The view that I take is also in line with the decision in Sheo Poojan Singh's case (supra) cited by the petitioner's counsel.

5. Counsel for the respondents relied upon a Single Judge decision of this Court in Dhanpati (D) through L.R. Vs. Board of Revenue and Others, . In that case a compromise decree was set aside on an application filed by one of the parties. Against that order a revision was filed in which operation of the order of restoration was stayed and also further proceedings in the suit. On these facts this Court took the view that as the operation of the order of restoration had been stayed and also the proceedings, the suit did not revive and consequently there was no abatement on account of notification of consolidation operation. It is no doubt true that this Court expressed its view that if no stay order is passed in the revision against the restoration order the suit would revive in consequence of the order of restoration and would abate u/s 5(2)(a). However the ratio of the case only is that if there is an order in the revision against the restoration order staying the operation of the restoration order the suit would not revive and the subsequent issuance of the notification u/s 4 of the Act would have no effect on the pending revision, which would not abate. This view does not affect the view that I am taking. The case is therefore distinguishable. For these reasons, the writ petition is allowed. The orders dated 15.4.04 and 28.2.06 passed by the Board of Revenue are aside. The Board of Revenue is directed to decide the revision on merits expeditiously and if possible within six months from the date a certified copy of this order is produced before it.