(1961) 09 AHC CK 0045

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1597 of 1961

Ram Pyare APPELLANT

Vs

Board of Revenue, UP, Allahabad and others RESPONDENT

Date of Decision : 07-09-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 182B

Citation : (1961) 31 AWR 728

Hon'ble Judges : V. Bhargava, J;Gupta, J

Bench : Division Bench

Advocate : Lalta Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

V. Bhargava, J.—This petition u/Art. 226 of the Constitution is directed against an order of the Board of Revenue passed in a second appeal arising out of proceedings in a suit u/s 176 of the UP ZA and LR Act. The suit was instituted in the civil court in the year 1953 when the civil court had jurisdiction to entertain a suit u/s 176 of the UP ZA and LR Act. The civil court on 11-12-1954 passed the decree in the suit. By this time, however, the UP ZA and LR Act had been amended and S. l82B was added making a provision that in the case of a division of a holding of a sirdar the division had to be made by the Collector. Further S. 182 A was also added applying the provisions of S. 54 and Or. 20 R. 18 of the CPC to such suits. As a result the decree which had been passed by the civil court an 11-12-54 remained a decree declaring the shares on the basis of which actual division of the holding had to be made. This actual division because of the amended law had to be made by the Collector, and consequently proceedings were taken in the appropriate revenue court for that purpose. The revenue court divided the holding. Against that order dividing the holding opposite party No. 2 in this writ petition filed an appeal before the District Judge. That appeal was returned by the civil appellate court for presentation to the proper court holding that the appeal did not lie to the civil court but the revenue appellate court. Thereupon the appeal was presented in the revenue appellate court and came up before the Addl. Commissioner. The Additional Commissioner held that the appeal did not lie to the appellate court on the revenue side and consequently dismissed the appeal with costs. Thereupon the opposite party went up in appeal before the Board of Revenue. The Board of Revenue allowed this second appeal, set aside the order of the Commissioner holding that the appeal did lie competently before the Additional Commissioner and directed the Additional Commissioner to decide the appeal on merits. It is against this order that the Petitioner has come up to this Court.

2. On behalf of the Petitioner two points have been urged before us. The first point was that no appeal lay to the court of Commissioner from the order of the Assistant Collector dividing the holding u/s 182B of the UP ZA and LR Act. His contention was that the appeal would lie to the appropriate appellate civil court. This contention in our opinion has no force. Even previously, when a division of a estate had to be made by the Collector in a suit for partition filed before a civil court to which the provisions of S. 54 and Or. 20 R. 18 of the CPC applied, it was held that the appeal against the order of the Collector in the matter of dividing the estate would lie to the appropriate revenue appellate court under the Land Revenue Act and not to the civil court. On that analogy the appeal in this case would also lie to the revenue appellate court as the provisions of S. 54 and Or. 20 R. 18 of the CPC have been made applicable to a suit for division of holding u/s 176 of the UPZA and LR Act by S. 182A of that Act. Secondly, there is R. 182(2) of rules framed under the UP ZA and LR Act which specifically provides for an appeal in such a case & lays down that the appeal lies to the Court of the Commr. The appeal before the Commissioner was, therefore, clearly competent and the Commissioner committed an error of jurisdiction in refusing to entertain the appeal on merits and in dismissing it on the ground that the appeal did not lie to him. This was the error of the Additional Commissioner which was corrected by the Board of Revenue by its order in the second appeal.

3. The order of the Board of Revenue is challenged on the second ground that no second appeal lay to the Board of Revenue. It seems to us that it is quite unnecessary to go into that question. Even if no second appeal lay to the Board, the Board will be deemed to have exercised its revisional powers when the Board of Revenue directed the Commissioner to decide the appeal on merits. It was a clear case where revision lay to the Board of Revenue because the Additional Commissioner had wrongly refused to exercise jurisdiction vested in him of entertaining and deciding the appeal on merits. There is the further circumstance that, even if we were to set aside the order of the Board of Revenue or the ground that no second appeal lay it would also be fair and equitable for this Court to set aside the Additional Commissioner''s order dismissing the appeal on the ground of want of jurisdiction and if such equitable orders are passed by this Court the effect would be that the Additional Commissioner would have to hear the appeal afresh on merits. That is exactly what the Additional Commissioner

has been directed to do by the Board of Revenue. Consequently, even if this Court were to pass orders strictly in accordance with the provisions of law accepting the contention of the Petitioner that no second appeal lay to the Board of Revenue, the result would be that the parties would be placed in the same position in which they exist today. In our opinion a writ petition should not be entertained for such a purpose where the ultimate order will not effect the rights or the position of the parties at all and will leave them as they are at present. Such useless exercise of writ powers will not be at all appropriate.

4. The petition, therefore, has no force and is dismissed.

