(2016) 12 AHC CK 0025

In the Allahabad High Court

Case No : Writ B. No. 57876 of 2016

Ram Ratan APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 08-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, Section 182

Citation : (2017) 134 RD 430

Hon'ble Judges : Manoj Kumar Gupta, J.

Bench : Single Bench

Advocate : C.S.C. and Mahesh Narain Singh, Advocate, for the Respondents; Akhtar Ali, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Manoj Kumar Gupta, J. - Heard counsel for the petitioner, learned standing counsel for respondent nos. 1 to 4 and Shri M.N. Singh for respondent no. 7.

2. In a suit filed under Section 176 of U.P.Z.A. & L.R. Act, 1950 a preliminary decree was passed on 12.1.1991. During the course of the proceedings for preparation of final decree, the Lekhpal prepared kurras. Respondent nos. 5 and 6 filed objections against the kurras. The trial court by order dated 29.4.2014 rejected the objections and confirmed the kurras and directed for final decree being prepared accordingly. Aggrieved by the said order, the respondent nos. 5 and 6 filed an appeal. The appellate court, being of the opinion that the appeal was confined only to kurra allotted to the respondent nos. 5 and 6 whereas the other kurras have not been challenged, dismissed the appeal by order dated 19.7.2014, with liberty reserved in favour of the respondents to file a fresh appeal challenging the correctness of all the kurras. In pursuance of the liberty so granted, the respondent nos. 5 and 6 filed another appeal before the Commissioner, which has been decided by order dated 21.12.2015 by Additional

Commissioner Meerut Division, Meerut. The Additional Commissioner has set aside the decree passed by the trial court confirming the kurras on the ground that the objections filed by the respondent nos. 5 and 6 against the kurras proposed by the Lekhpal were not dealt with by the trial court. Accordingly, the matter has been remanded to the trial court for taking a fresh decision, after considering the objections filed by the respondent nos. 5 and 6. Aggrieved by the remand order, the petitioner carried the matter in second appeal before the Board of Revenue. By impugned order dated 8.11.2016, the second appeal has been dismissed by holding that the order dated 21.12.2015 was passed in pursuance of the previous order dated 19.7.2014 granting liberty to respondent nos. 5 and 6 to file a fresh appeal. It has been held that since the said order has attained finality and therefore, the proceedings held in pursuance of the said order cannot be held to be illegal. Accordingly, the appeal has been dismissed.

3. Learned counsel for the petitioner submitted that the second appeal has been dismissed on a manifestly illegal ground. It is urged that the correctness and validity of order of remand has not been gone into by the Board of Revenue and thus, the impugned judgment of the Board of Revenue is not sustainable in law.

4. It is recorded in the impugned order of Board of Revenue dated 8.11.2016 that the main ground on which appeal was filed before it was that once the appeal was dismissed, another appeal before the same authority, challenging the same decree, was not maintainable. It is in context of the said plea that the Board of Revenue, in the impugned judgment has observed that the order dated 19.7.2014 granting liberty to file another appeal, having not been challenged, has attained finality. As such, it was not open to the petitioner to challenge its correctness on the ground that the appeal filed later on, was not competent. This Court concurs with the view taken in this regard by the Board of Revenue.

5. It is not disputed before this Court that the second appeal was filed by the petitioner against the order of remand, whereby the trial court has been directed to take a fresh decision after considering the objections filed by respondents no. 5 and 6 against the proposed kurras. The judgment of the trial court, by which the kurras were confirmed, does not indicate any application of mind to the objections filed by respondents no. 5 and 6 against the proposed kurras. Consequently, this Court finds that there is no illegality in the order of the Additional Commissioner dated 21.12.2015 remanding the matter to the trial court for a fresh consideration. It is for the said reason that while entertaining the second appeal, the Board of Revenue rightly observed that no substantial question of law was involved in the appeal. Even before this Court, learned counsel for the petitioner is not able to point out as to what substantial question of law was involved in the appeal filed before the Board of Revenue. Consequently, this Court declines to interfere with the order passed by Board of Revenue. The controversy is still to be decided by the trial court where the petitioner will get full opportunity to press his case.

6. The writ petition is, accordingly, dismissed.

