
(2016) 02 AHC CK 0234
In the Allahabad High Court
Case No : Special Appeal No. 46 of 2016

Ram Sabad

APPELLANT

Vs

Ram Asrey and Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 22, Section 141
Constitution of India, 1950 — Article 225, Article 226, Article 227
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 38, Section 39, Section 40, Section 41(a),

Citation : (2016) 3 ADJ 378 : (2016) 2 AllWC 2129 : (2016) 117 ALR 379 :
(2016) 131 RD 180

Hon'ble Judges : Amreshwar Pratap Sahi and Attau Rahman Masoodi, JJ.

Bench : Division Bench

Advocate : R.K. Srivastava and Ganesh Gupta, for the Appellant; C.S.C. and Mohammad Aslam Khan, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Dr. R.K. Srivastava, learned counsel for the appellant, Sri Mohd. Arif Khan, learned senior counsel for the respondents and the learned Additional Chief Standing Counsel for the respondents-State who have raised a preliminary objection with regard to the maintainability of this Special Appeal.

2. This special appeal has been filed against an order dated 23.12.2015 finally disposing of the substitution and abatement applications in a pending writ petition that arises out of a challenge raised to the decision of the Consolidation Authorities in exercise of the powers under the U.P. Consolidation of Holdings Act, 1953.

3. The issue is as to whether such an order passed by the learned Single Judge in a pending writ petition disposing of substitution matters can be subjected to an intra court appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 and secondly even if it is entertainable then as to whether the

learned Single Judge was justified in interpreting the provisions of Chapter VIII Rule 38A of the 1952 Rules read with Section 141 of the Code of Civil Procedure to hold that the provisions of Order 22 C.P.C. would not apply to writ proceedings.

4. If the first question is answered in the negative then it would not be necessary to proceed to answer the second question on merits.

5. The Stamp Reporter has also reported that the court may examine the issue of the maintainability of the special appeal.

6. Sri Srivastava, learned counsel for the appellant, has vehemently urged that Chapter VIII Rule 5 does not bar the entertainment of an intra court appeal against an order passed in the writ petition itself while the writ petition is still pending. He has relied on the judgment in the case of Midnapore Peoples' Coop. Bank Ltd. & others Vs. Chunilal Nanda & others, , (2006) 5 SCC Page 399 to urge that such an order during the pendency of a writ petition would fall within the definition of a final decision and, therefore, the language of Chapter VIII Rule 5 would take within its fold an order of the nature presently in question as the order has finally disposed of the substitution applications in a writ petition and is not an order by the Consolidation Authorities in its original jurisdiction or appellate jurisdiction so as to bar the special appeal.

7. He has further invited the attention of the court to other judgments on the merits of the matter contending that the learned Single Judge was not right in declining to apply the principles of Order 22 of C.P.C. while disposing of the substitution and abatement applications.

8. The issue as to when a special appeal would be maintainable and in what circumstances under Chapter VIII Rule 5 is no longer res-integra and has been subject matter of consideration in several decisions of this Court including the division bench judgment in the case of Vajara Yojna Seed Farm, Kalyanpur (M/s.) and others Vs. Presiding Officer, Labour Court II, U.P. Kanpur and another, , (2003) 1 UPLBEC 496 that came to be affirmed by a full bench decision in the case of Sheet Gupta Vs. State of U.P. & others, , 2010 (28) LCD Page 1045.

9. The present matter arises out of proceedings that terminated before the Deputy Director, Consolidation under the U.P. Consolidation of Holdings Act, 1953. The orders under challenge in the writ petition are the revisional and appellate orders passed under the aforesaid act and, therefore, the writ petition was maintainable before a learned Single Judge according to the bifurcation of the jurisdiction as determined by the High Court. It falls within the laws that are exclusively State subject under the seventh schedule of the Constitution.

10. The question as to whether a special appeal would be maintainable against the determination in a writ petition by a learned Single Judge came up for consideration before a division bench in the case of Jagdish Singh & others Vs. Additional District Magistrate, 2002 (5) AWC 4089 where the division bench held as follows:-

"14. From what has been noticed hereinabove, it is apparent that in view of the statutory prohibition imposed with the enforcement of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962, the appeal arising from a proceeding under the U.P. Consolidation of Holdings Act, 1953, directed against an order or judgment passed by the Director of Consolidation or any other Officer purporting to exercise the powers and to perform the duties of Director of Consolidation under the provisions of the U.P. Consolidation of Holdings Act, 1953, ceased to be entertainable/maintainable.

15. At this stage it may be noticed that the Hon"ble Apex Court in its decision in the case of Vijay Laxmi Sadho (Dr.) v. Jagdish, , 2001 (2) JLJ 1 (SC), had clarified that rules framed by the High Court in exercise of powers under Article 225 of the Constitution of India are only rules of procedure and do not constitute substantive law.

16. We are of the considered opinion that in such a situation, the substantive provisions contained in the U.P. High Court (Abolition of Letters Patent Appeal) Act, 1962, had to prevail over the procedural law and an appeal which might have been entertainable/maintainable either under Clause 10 of the Letters Patent or under the Chapter VIII Rule 5 of the Rules of the Court could not, by any stretch of imagination, be taken to lie in the teeth of the statutory prohibition/bar imposed on the entertainability/maintainability of such an appeal with the enforcement of the aforesaid Act abolishing certain specified categories of Letters Patent Appeals.

17. As has already been noticed hereinabove, the judgment/order impugned in the writ petition giving rise to this special appeal had been passed in the proceedings under the U.P. Consolidation of Holdings Act, 1953, as amended and the said order had been passed by the Deputy Director of Consolidation exercising the revisional powers vesting in the Director of Consolidation. The order of the learned single Judge under Appeal has only maintained the order passed by the Deputy Director of Consolidation by dismissing the writ petition. Such an order passed by a learned single Judge is clearly not appealable.

18. The preliminary objection in the circumstances noticed hereinabove, is liable to be accepted and is hereby upheld.

19. The special appeal in view of what has been indicated hereinabove deserves to be and is dismissed as not maintainable."

11. In that case it was a final decision of the writ petition which was subjected to challenge in a special appeal under Chapter VIII Rule 5 of the 1952 Rules.

12. In the instant case the challenge raised is to the final disposal of the substitution and abatement applications in a pending writ petition that arises out of orders passed by the Consolidation Authorities. Sri Srivastava tried to draw a distinction between these two situations and contends that a special appeal would be maintainable as the orders passed are not by Consolidation Authorities

but by a learned Single Judge of this Court.

13. Further it would be apt to mention that the division bench in the case of Vajara Yojna Seed Farm (supra) has in paragraphs 63 and 64 held as follows:-

"63. The last category of appeal arises out of revision which was filed against the order of Deputy Director of Consolidation passed in exercise of revisional jurisdiction under Section 48 of U.P. Consolidation of Holdings Act, 1953. Since the challenge in the writ petitions were against the revisional orders passed under U.P. Consolidation Holdings Act, the said special appeals are clearly barred under Chapter VIII, Rule 5 of the Rules of the Court as discussed above. The orders passed under U.P. Consolidation of Holdings Act, 1953 by the consolidation authorities can also be said to be orders passed by Tribunal attracting the bar under Chapter VIII, Rule 5 of the Rules of the Court. The consolidation authorities exercise their jurisdiction under the U.P. Consolidation of Holdings Act, 1953. The consolidation authorities while exercising their power and jurisdiction under the U.P. Consolidation of Holdings Act, 1953, function as Tribunal and have all trappings of the Court. Various provisions of U.P. Consolidation of Holdings Act, 1953 make it clear that they adjudicate list between the parties on the basis of evidence brought before them including the oral evidence. There is forum of appeal and revision in the Consolidation Act and the orders passed by consolidation authorities bar jurisdiction of Civil Court which makes it clear that adjudication of rights by consolidation authorities have been given finality. Various provisions of U.P. Consolidation of Holdings Act including provisions of Sections 38, 39, 40, 41(a), 49 and 53-B make it clear that jurisdiction exercise by consolidation authorities are in the nature of jurisdiction of a Court and Consolidation Courts have all trappings of the Court while adjudicating the dispute. Thus the orders of consolidation authorities being orders of a Tribunal, the special appeals arising out of writ petition against the order of consolidation courts are also barred due to above reason. Thus this is an additional reason for holding special appeal arising out of writ petition against the orders passes by Consolidation Courts barred under Chapter VIII Rule 5 of the Rules of the Court. Consequently, Special Appeal Nos. 485 of 2002, 501 of 2002 and 531 of 2002 are also liable to be dismissed as not maintainable.

64. From the above discussions and looking into the provisions of U.P. Act No. 14 of 1962 as amended by Amendment Act of 1981 and Chapter VIII, Rule 5 of the Rules of the Court, 1952, special appeal is excluded from a judgment of one Judge of this Court in following categories:-

- (i) Judgment of one Judge passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court.
- (ii) Judgment of one Judge in the exercise of revisional jurisdiction.
- (iii) Judgment of one Judge made in the exercise of its power of Superintendence.

(iv) Judgment of one Judge made in the exercise of criminal jurisdiction.

(v) Judgment of order of one Judge made in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award of a Tribunal, Court or Statutory Arbitrator made or purported to be more in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in State List or Concurrent List.

(vi) Judgment or order of one Judge made in exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award by the Court or any officer or authority made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any Uttar Pradesh Act or under any Central Act."

14. In the Full Bench decision in the case of Sheet Gupta (supra) the following is the ratio that deserves to be noticed and is binding:-

"Discussion

Having given our anxious consideration to the various plea raised by the learned counsel for the parties, we find that from the perusal of Chapter VIII Rule 5 of the Rules a special appeal shall lie before this Court from the judgment passed by one Judge of the Court. However, such special appeal will not lie in the following circumstances:

1. The judgment passed by one Judge in the exercise of appellate jurisdiction, in respect of a decree or order made by a Court subject to the Superintendence of the Court;
2. the order made by one Judge in the exercise of revisional jurisdiction;
3. the order made by one Judge in the exercise of the power of Superintendence of the High Court;
4. the order made by one Judge in the exercise of criminal jurisdiction;
5. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution of India in respect of any judgment, order or award by

(i) the tribunal,

(ii) Court or

(iii) statutory arbitrator

made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India;

6. the order made by one Judge in the exercise of jurisdiction conferred by Article 226 or 227 of the Constitution of India in respect of any judgment, order or award of

(i) the Government or

(ii) any officer or

(iii) authority,

made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act, i.e. under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution of India."

15. We are therefore unable to agree to the submissions of the learned counsel for the appellant for all the reasons already given in the decision of Jagdish Singh (*supra*) and the other judgments referred to hereinabove, and also for the additional reason that if a special appeal would not be maintainable against the final judgment delivered by a learned Single Judge in a matter arising out of the U.P. Consolidation of Holdings Act, 1953, then in that event any order passed by the learned Single Judge at the interregnum stage finally disposing of applications and orders passed thereon would also not be subject to an intra court appeal as urged by the learned counsel for the appellant. The preliminary objection, therefore, is upheld.

16. The special appeal is not maintainable and is accordingly rejected.