
(1993) 01 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5849 of 1982

Ram Sanehi (deceased) by LRs.

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 19-01-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 103

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 11, 133, 157(1), 202, 21(1)

Citation : (1993) 2 AWC 822 : (1993) RD 208

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Ram Niwas Singh, for the Appellant;

Judgement

S.R. Singh, J.—The suit giving rise to this writ petition was filed by the Plaintiff Respondent Mohd. Shafraz u/s 202 of the U.P. ZA LR Act, 1950 (U.P. Act No. 1 of 1951) for ejectment of the Petitioner from the land in suit. The case of the Plaintiff was that his father Sri Mohd. Ismile, who was the tenant of the land in suit died in 1905, when the Plaintiff was minor and prosecuting his studies outside the village and that the land in suit was let out to the Defendant Petitioner Ram Sanehi during the Plaintiff's minority, it was further alleged in the plaint that the Plaintiff attained majority in 1971 after passing his intermediate Examination in 1975 he joined B.A, classes and wanted to bring the land in his cultivation, hence he sued against the defendant, who was only an asami liable to ejectment u/s 202 of the U.P. Act No. 1 of 1951.

2. The suit was contested by the Defendant Petitioner, inter alia, on the ground that the land in suit was not let out to him during the minority of the Plaintiff and that he had been in possession of the suit land in his own right in 1356-F and 1359-F and on that account he acquired adhivasi and later sirdari right under the provisions of the U.P. Act No. 1 of 1951. He also claimed to have accused right u/s 210 of the said Act by virtue of his continuous possession over the land in suit

for more than twelve years.

3. The trial court in the judgment, dated 30-8-1978 held that the Plaintiff's father Mohd Ismile died on 14-8-1956 and that the Plaintiff was minor aged about 3 years at that time and further that the Defendant could not prove his possession over the land la suit from the life time of the Plaintiff's father. The trial court farther recorded 3 finding that although the Defendant was recorded as Qabiz" in the khasra of 1362-F but it could not be proved that P.A. 10 was issued to the recorded tenure holder on the basis of khasra entires of 1367F and on wards filed by the defendant, The trial court held that the Defendant acquired possession of the suit land during the minority of the Plaintiff and after the death of his father. The trial also recorded a finding that from the certificate Issued by the Pradhancharya of D.A.V. Inter College Vsrnasi it was proved that the Plaintiff was prosecuting his studies in 1975 and it was on this finding that the trial court gave the bonefite of Section 157(1)(s) of the U.P. Act No. 1 of 5951 and accordingly it held that the provisions of Section 202(f) read with Section 21(1) (h) of the U.P. Act No. 1 of 1951 were attracted and the Defendant was liable to ejectment. The suit was accordingly decreed vide judgment and decree 30-8-1978.

4. Aggrieved against the judgment and decree of the trial court the Defendant went up in appeal The Additional Commissioner Ist Varanasi Division Varanasi dismissed the appeal vide judgment and decree dated 2-6-1981 and maintained the decree passed by the trial court. The second appeal preferred by the Defendant having been dismissed by the Board of Revenue vide judgment dated 26-4-1982 the Defendant Petitioner has now come up to this Court under Article 226 of the Constitution.

5. I have heard the learned Counsel appearing for the parties.

6. A perusal of the impugned judgments goes to indicate that the Plaintiff Respondent has been given benefit of Section 157(1)(a) of U.P. Act No. 1 of 1951 without recording a categorical finding on the basic fact attracting the said provision of law. It is evident from Section 157(1)(a) that what it visualises, Inter alia, is that a bhumidhar or an asami holding the land in lieu of maintenance allowance u/s 11 who is--

(a)....

(b) a minor, whose father suffers from any of the disqualifications mentioned in Clause (c) or (d) or has died;

(c)....

(d)....

(e)prosecuting studies in a (recognised educational Institution) and does not exceed 25 years in age and whose father suffers from any of the disqualifications mentioned in Clause (c) or (d) or has died.

(f)....

(g)....

May let the whole or any part of his holding.

7. It is evident from the aforesaid provision of law that letting by a Minor is permissible under Clauses (b)(e) of Sub-section (1) of Section 157. In case, however, letting is covered by Clause (b), limitation for suit u/s 202(f) read with Clause (b) of Sub-section (1) of Section 21 of Clause (b) of Section 133 of U.P. Act No. 1 of 1951 would be three years from the date of attaining majority as mentioned at serial No. 25 (viii) of Appendix III to the UP ZA & LR Rules. But in case of letting by a minor prosecuting his studies at the time of letting, the limitation of three years would not begin to run until the minor exceeds 25 years of age, The courts below have not recorded any categorical finding with reference to evidence on record as to whether or not the Plaintiff was prosecuting his studies at the time of letting. The only finding recorded by the trial court and the Additional Commissioner on the question of letting appears to be this that the Plaintiff was minor at the time of letting but this finding, in my opinion, may attract Clause (b) of Section 157(1) and not Clause (e) thereof. The revisions of Section 157(1)(e) read with Section 202(f) and Clause (b) of Section 133 of the U.P. Act No. 1 of 1951 could not have been invoked in absence of a finding that the Plaintiff Respondent was prosecuting his studies at the time the land was let out to the Defendant Petitioner. In absence of a finding to this effect the decree passed u/s 202(f) read with Section 133(b) cannot be sustained.

8. Learned Counsel appearing for the Petitioner also tried to assail the finding recorded by the trial court as mentioned by the appellate court on the genuineness of the entry in khasra 1362-F. It is evident from the judgments of the trial court and the Additional Commissioner that Khasra entry has been discarded on the ground that service of P.A. 10 upon the tenure holder could not be proved by the defendant. This finding, in my opinion, is not in any way vitiated. It is evident from para A-80 and A-81 as these provisions stood at the relevant time that lekhpal was required to prepare extracts from the list in Form P.A. 10 in triplicate and issue to the person or persons recorded in column 3, 4 and 5 of the Form P.A. 10. Column 3 was meant for entry in column 4 of Khasra while column 4 was supposed to contain entry in column 5 of khasra and column 5 of Form P.A.-10 records an entry in remarks column of the khasra. The Petitioner was recorded in the remarks column of Khasra of 1362-F, while Mohd. Ismile, the father of the Plaintiff Respondent was recorded in column 3 i.e., to no say column 4 of khasra. As found by the courts below Mohd. Ismile was served with the list of changes contained in P.A. 10 and the courts below have committed no error of law in discarding khasra entry of 1362-F.

9. Learned Counsel for the Petitioner also urged that the Board of Revenue was labouring under misconception of the scope and ambit of the second appellate jurisdiction In that according to the learned Counsel for the Petitioner, the Board

of Revenue was not Justified in observing that the second appeal could be decided only on substantial questions of law. Sri Ram Niwas Singh, learned Counsel for the Petitioner has placed reliance upon a decision of the Supreme Court in *Bajaya Vs. Gopikabai and Another*, . In the said case the supreme Court was called upon to interpret the scope and ambit of Section 151 of Madhya Pradesh Land Revenue Code, which reads as below:

Subject to his personal law the interest of a tenure holder shall on his death pass by inheritance, survivorship or bequest, as the case may be.

10. The question that arose before the Supreme Court was as to whether the expression "personal law" mentioned in Section 151 in the case of Hindus mean Hindu law as obtaining on 5-2-1955 when the Code came into force or, does it mean Hindu Law, as amended by Hindu Succession Act prevailing on November 6, 1956, when succession in that case responded. The Supreme Court has laid down following proposition of law:

The question posed above turn on an interpretation of the language of Section 151. There are no words in that section or elsewhere in the Code, which limit the scope of the expression "personal law" to that prevailing on February 5, 1955. On the contrary, the words "on his death" used in Section 151, clearly show that the legislative Intent was that "personal law" as mended upto the date on which the devolution of the tenure holder's interest is to be determined, shall be the rule of decision.

Broadly speaking, legislation by referential incorporation falls in two categories; First where a Statute by specific reference incorporates the provisions of another Statute as of the time of adoption, Second where a statute Incorporates by general reference the law concerning a particular subject, as a genus. In the case of the former, the subsequent amendments made in the referred statute cannot automatically be read into the adopting statute. In the case of latter category, it may be presumed that the legislative intent was to include all the subsequent amend, meats also, made from time to time in the generic law on the subject adopted by general reference. This principle of construction of a reference statute has been neatly summed by Sutherland, thus:

A statute which referees to the law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted.

(Vide sutherland's statutory Construction. Third Edition, Article 5208. p. 5208).

Corpus Juris Secundum also enunciates the same principle in these terms;

....Where the reference in an adopting statute is to the law generally which governs the particular subject, and not to any specific statute or part thereof,...the reference will be held to include the law as it stands at the time it is sought to be applied, with all the changes made from time to time, at least as

far as the changes are consistent with the purpose of the adopting statute.

Construing the expression "personal law" In accordance with the above principles the Supreme Court held that the expression "personal law" courting in Section 151 comprehends Hindu Law, as amended by the provisions of Hinds Succession Act, 1956.

11. Applying the aforesaid law to the provisions of Section 331(4) of the U.P. Act No. 1 of 1951 it can safely be said that the expression "ground specified in Section 100 of the CPC 1908" occurring in Sub-section (4) of Section 331 comprehends within Its ambit Section 100 of the Code as amended from time to time and as it obtained on the date the second appeal comes up for hearing before the Board of Revenue. Accordingly I am of the opinion that the Board of Revenue committed no error of law in holding that the second appeal can be heard and decided only on substantial questions of law.

12. Sri Ram Niwas Singh, learned Counsel appearing for the Petitioner with the aid of Section 341 of the U.P. Act No. 1 of 1951 also tried to urge that the Board of Revenue was not Justified in observing that the second appeal would lie only on the substantial questions of law. I do not find any substance in the submission made by Sri Singh for in my opinion, Section 341 of the U.P. Act No. 1 of 1951 has applied by Incorporation the provisions of the CPC generally, while Section 331(4) of the Act is confined to second appellate Jurisdiction of the Board of Revenue within four corners of Section 100 of the Code and as held above Section 100 of the Code means the section as it stands amended from time to time and obtained at the relevant time the second appeal comes up for hearing before the Board of Revenue.

13. Since the Board of Revenue in exercise of its second appellate jurisdiction may also record finding on any question of fact u/s 103 of the Code of Civil Procedure, I do not consider it necessary to remand the matter back to the trial court or the Additional Commissioner to record the findings on the question as to whether at the time of letting the Plaintiff Respondent was or was not prosecuting his studies for the purpose of Section 157(1)(e) of the U.P. Act No. 1 of 1951.

14. In the result the writ petition succeeds and is allowed in part. The judgment of the Board of Revenue is quashed. The Board is directed to readmit the appeal to its number and decide it afresh in accordance with law and in the light of the observations made in the body of the judgment.

15. Parties to bear their own costs.