
(2015) 09 AHC CK 0223
In the Allahabad High Court
Case No : Writ-C No. 45320 of 2015

Ram Sukh and Others

APPELLANT

Vs

Addl. Commissioner II, Varanasi Division and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 47
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 333

Citation : (2015) 129 RD 528

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : H.K. Yadav and Ramesh Rai, for the Appellant; Manoj Kumar Yadav, Pramod Kumar Pandey and U.S. Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—Heard Sri Ramesh Rai learned Counsel for the petitioners, Sri U.S. Chauhan for the respondent No. 3 and Sri Pramod Kumar Pandey for the respondent Nos. 6 and 7 and Sri Manoj Kumar Yadav who has accepted notice on behalf of respondent No. 4 Gaon Sabha. The petition arises out of a suit for partition under section 176 of the U.P. Zamindari Abolition & Land Reforms Act filed jointly by the petitioner No. 1 and the respondent No. 3. The petitioner No. 2 in the instant writ petition was arrayed as a defendant in the suit.

2. In the suit, a preliminary decree was passed and there is no dispute between the parties as regards their respective shares. Subsequently, the Lekhpal submitted his report for partition by metes and bounds. This was accepted by the Court and a final decree was prepared. Thereafter, a review/recall application was filed by the respondent No. 3 Pataei. This application was accompanied by an application under section 5 of the Limitation Act and was duly supported by an affidavit.

3. The Trial Court by its order dated 26.5.2015 allowed the review application and set aside the final decree and directed the Lekhpal to submit a fresh report. Aggrieved by this order the petitioners preferred a revision which has been dismissed holding it to be no maintainable as it is directed against an order which is interlocutory in nature.

4. Learned Counsel for the petitioners submitted that the final decree that has been drawn is in consonance with the plaint allegations. It has been passed in accordance with the partition demanded in the plaint and therefore, for all practical purposes is a consent decree. The review/recall application was filed on the allegation that the applicant therein had not been allotted any share abutting the road. He therefore, submits that the ground on which the review application was filed was not tenable for maintaining a review application and the orders impugned are liable to be set aside.

5. The second submission is that the revision filed by the petitioners was clearly maintainable and the Court below has committed patent illegality in holding to the contrary.

6. Learned Counsel for the respondents on the other hand submitted that the review application was filed on the allegation that the applicant is an illiterate person who can barely sign his name. The final decree prepared was to his detriment inasmuch as he had not been provided any land abutting the road and was therefore, put in an extremely disadvantageous position. This discrepancy arose as his co-plaintiff Ram Sukh and the petitioner No. 2 colluded to harm the interest of the applicant. It is therefore, submitted that the impugned orders have rightly been passed and are liable to be affirmed.

7. I have considered the submissions made by learned Counsel for the parties and have perused the record. The review/recall application filed by the respondent No. 3 was preferred on the ground that he being an illiterate person did not understand the plaint allegations which had been signed by him. On account of his illiteracy he would also not understand the report prepared by the Lekhpal in collusion between his co-plaintiff Ram Sukh and Thagga, the defendant in the suit. The same allegations have been reiterated also by means of the affidavit filed in support of the application. In this connection, it would be relevant to note that the allegations were primarily against the co-plaintiff, the petitioner No. 1, Ram Sukh. However, Ram Sukh did file an objection to the review application but never filed any counter affidavit, controverting the affidavit of the respondent No. 3. A counter affidavit was filed by the petitioner No. 2 and in this affidavit he has categorically stated that the averments made therein are true to the best of his knowledge. This averment, in my considered opinion does not amount to a sufficient rebuttal/denial of the allegations made by the respondent No. 3. Besides, the person against whom the allegations were primarily directed namely Ram Sukh never choose to rebutt them, by means of a counter affidavit.

8. In such view of the matter, in my considered opinion, the allegations made by the respondent No. 3 stand admitted, since they had not been controverted by the petitioner No. 1.

9. The point that requires consideration thereafter is as to whether a review application could be filed and maintained on an allegation of misconception of facts. In this connection, it would be relevant to refer to Order XLVII of Code of Civil Procedure which provides amongst other, that a review can be filed on account of "some mistake or error apparent on the face of the record, or for any other sufficient reason." The aforesaid provision has been interpreted by the Apex Court in the case of Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, wherein it has been held that the term "sufficient reason" is wide enough to include a misconception of law or fact by a Court or even by an Advocate. An Advocate is a mere representative of the parties and therefore, misconception on the part of the parties would also make a review maintainable.

10. In view of the above, the contention of learned Counsel for the petitioner that the review application was not tenable on the ground it had been filed, cannot be accepted.

11. The next submission which requires consideration is that the final decree was drawn up in consonance with the plaint allegations and therefore, it amounted to a consent decree.

12. I am unable to agree with this submission also. While passing a final decree for partition, it is necessary for the Court to adjust the equities between the parties. The procedure in this regard has been provided in Rules 130 to 132 of the Rules framed under the U.P.Z.A. & L.R. Act.

13. In my considered opinion, equity demands that each share holder be provided access to a road, in case the same is possible. This, in fact, appears to be the main bone of contention between the parties. The respondent No. 3 was aggrieved since he had not been allotted any land in his share which abutted the main road. This aspect though seriously disputed by learned Counsel for the petitioner cannot be determined by this Court because none of the parties have brought on record the map that had been prepared by the Lekhpal on the basis of which the final decree had been drawn up. I therefore, see no justification to interfere with the impugned order on this ground.

14. The last submission of learned Counsel for the petitioner that the revision was wrongly held to be not maintainable, has substance. Once, a review application had been allowed and the order under review has been set aside this order, in my considered opinion was clearly appealable. Section 333 of the U.P.Z.A. & L.R. Act clearly provides that a revision can be filed against all orders and also against orders which are appealable in case, no appeal is actually filed, against such order. The revision therefore, has wrongly been dismissed holding it to be not maintainable.

15. However, in view of the fact that a final decree has to be prepared afresh, wherein the parties will have every opportunity of canvassing their respective claims and the Trial Court will necessarily be required to adjust the equities between the parties while passing the final decree afresh, I see no justification to entertain this writ petition only on the ground that the revision filed by the petitioner has wrongly been held to be not maintainable. Entertaining the writ petition on this ground alone would necessarily entail prolonging the litigation between the parties on a largely academic issue, insofar as the dispute between the parties in the instant writ petition is concerned.

16. In therefore, refuse to exercise my equity jurisdiction under Article 226 of the Constitution of India in favour of the petitioners. The writ petition is therefore, dismissed. However, it is provided that the Trial Court may pass a final decree as expeditiously as possible, preferably within a period of four months from the date a certified copy of this order is filed before it.