
(1954) 02 AHC CK 0026
In the Allahabad High Court
Case No : F.A.F.O. No. 45 of 1952

Ram Udit and Another

APPELLANT

Vs

Smt. Shyam Kali

RESPONDENT

Date of Decision : 05-02-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 33, 100
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 34, 48, 49

Citation : AIR 1954 All 751 : (1954) 24 AWR 208

Hon'ble Judges : Sapru, J

Bench : Single Bench

Advocate : Sarvsri Hyder Husain and H.N. Misra, for the Appellant; P.N. Bhat, holding brief of J.D. Pradhan, for the Respondent

Final Decision : Allowed

Judgement

Sapru, J.—This second appeal raised an interesting question of law. In order that that question may be properly understood, it is necessary to set out the facts which have given rise to the appeal.

2. The plaintiffs instituted the suit as members of a joint Hindu family for possession of certain zamindari and house property. Their case was that they were entitled to a two-thirds share of the property. The suit was resisted by the defendant who is the widow of the plaintiff's brother. Her case was that her husband was separate from the plaintiffs and that on his death, she became entitled to the property.

3. The trial Court decreed the suit holding that the family was joint and not separate. The defendant went in appeal to the lower appellate Court. The learned Civil Judge allowed the appeal, dismissed the suit so far as the zamindari property is concerned and remanded the case for a fresh trial about property No. 6 mentioned in the list attached to the plaint. The plaintiffs have now come up in appeal to this Court against this order. The view taken by the learned Civil Judge was that having regard to Sections 4 and 6 of the U. P. Zamindari Abolition and

Land Reforms Act (hereinafter called the Act), the plaintiffs could not claim possession of the zamindari property in suit. That property vested u/s 4 of the Act in the State of Uttar Pradesh; and consequently the plaintiffs had no subsisting right or title in respect of it.

The learned Judge was undoubtedly right in holding that u/s 4 of the Act after the notification all estates situate in Uttar Pradesh vested in the State. Further there is no doubt that as a consequence of that vesting, all rights, title and interest of all intermediaries ceased and vested in the State of Uttar Pradesh free from all encumbrances on and from the date of the notification of vesting. The question, however, to which the learned Judge did not address his attention at all was whether the fact that the plaintiffs could not claim a possessory title to the property and the relief of possession could not be given to them, had at all affected their right to establish their claim in respect of any estate or part thereof by due process of law in a Court having Jurisdiction. That they had this right assured to them is, in my opinion, clear from Section 34 of the Act. Section 34 is in the following terms:

"Nothing in Sections 32, 33 and 49 shall affect the right of any person to establish his claim in respect of any estate or part thereof by due process of law in the Court having jurisdiction."

The plain meaning of Section 34, as I understand it is that it preserves the right of any person to establish his claim in respect of any estate or part thereof in the ordinary municipal Courts having jurisdiction and this notwithstanding anything that may be found in Sections 32, 33 and 49 which, it may be remarked, makes the order of the compensation officer deciding an objection u/s 48 to be a decree of a civil Court.

4. While it may be that no decree for possessory relief could be given by the learned Judge, it was open to him to determine and declare the extent of the plaintiffs' title to property over which they were claiming possession. The relief thus granted would have been different from that of possession. I think it right to add that in taking into account the change in the state of affairs after the coming into force of the Act, the learned Civil Judge acted in accordance with the rule laid down by the Federal Court in -- AIR 1941 5 (Federal Court) , in which Gwyer C. J. approved the observation of Hughes C. J. in -- "Patterson v. State of Albania (1934) 294 US 600 (B) to the following effect:

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

While taking note of the changes effected by the Zamindari Abolition and Land Reforms Act and refusing a possessory decree I think the proper course for the learned Judge was to determine in this case the question of the title to

compensation in respect of the zamindari property claimed by the plaintiffs. In fairness, however to the learned Judge I must point out that the plaintiffs are themselves to blame for his failure to do so. They never seem to have invited him to determine the question of their right to compensation at all and it was only in this Court that this point was raised by learned counsel for the appellants. While this may be a good ground for depriving the successful appellants of their costs in the case, I do not; think I would be justified in refusing this point to be entertained at all for multiplicity of proceedings which will probably result from my doing so is to be deprecated. While sections 48 and 49 of the Act enable the Court, to determine the extent of the compensation they are not intended in my opinion, to cover cases where the question of title to compensation is itself involved. These are cases which are covered by Section 24. That section, I think, makes it clear that the right of any person to establish his claim in respect of any estate or part thereof in any ordinary court of law is not affected by anything which has been said in Sections 32, 33 and 49.

5. The result is, that I have come to the conclusion that the learned Judge should not have only determined the point raised by item No. 6 relating to house property but also the point about the right of the plaintiffs to compensation in respect of the share in the property to which before the Act came into force they would have been entitled had the fact of jointness been established.

6. I may say that I am not impressed with the argument that in order to give adequate relief it would have been essential for the Court to require the pleadings to be amended. I have read the plaint and I am satisfied that the alternative remedy of determining the right to compensation is covered by the prayer embodied in it.

7. For the reasons given above, I allow this appeal, set aside the order of remand and direct the learned Judge of the Lower Appellate Court to decide both the questions raised in the appeal according to the observations contained in this judgment. The plaintiffs appellants shall not get their costs in this Court and the lower appellate Court.