

(1995) 04 AHC CK 0063

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 227 of 1976

Ramapati

APPELLANT

Vs

D.D.C., Allahabad and Others

RESPONDENT

Date of Decision : 27-04-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 5

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1995) 04 AHC CK 0063

Hon'ble Judges : Binod Kumar Roy, J

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—The petitioner prays to quash the orders passed by different consolidation authorities as contained in Annexures 1, 2 and 3 to this writ petition. Annexure1 contains the order dated 12.3.69 passed by the Consolidation Officer, Bibipur in Case No. 3669. By the said order five other connected cases were disposed of. Annexure2 contains the appellate order dated 19.1.69 passed in Appeal No. 2318 of 1969 filed by the petitioner alongwith six appeals. Annexure3 contains the Revisional Order, dated 21.10.75 passed in Revision Nos. 63115, 970, 972 to 976. By the impugned revisional order petitioner's Revision No. 63/115 was dismissed on account of limitation (vide reasons recorded in paragraph 6).

2. Sri S.P. Singh, the learned counsel appearing on behalf of the petitioner, contended that the Revisional Authority has committed an apparent error of law in not granting benefit of Section 5 of the Limitation Act. The petitioner has handed over all necessary papers and fees to Sri Bhagwati Prasad his counsel for filing the revision but his counsel did not file the revision application. To support these facts the petitioner also filed his affidavit. Though a counter affidavit was filed by Respondent No. 2 but the statements made therein were illegally relied upon by the Revisional Authority inasmuch as they were not in terms of Order XIX, Rule 3 of the Code of Civil Procedure. It was not the case of the Respondent

No. 2 that he derived knowledge of the facts stated in the counter affidavit from the learned counsel of the petitioner. Learned counsel strenuously submitted that the word "sufficient cause" has been repeatedly held by the Apex Court, as well as this Court, to be interpreted liberally and to substantiate the cause of justice. The impugned order shows that before the Revisional Authority entire records were and in this view of the matter he ought to have decided the revision of the petitioner on merits and should not have dismissed on limitation. In this context the learned counsel placed reliance on a Full Bench decision of this Court in *Rama Kant Singh v. Deputy Director of Consolidation* RD 1974 (Supp.) 262.

3. Sri H.P. Dubey, the learned counsel appearing on behalf of Respondent No. 4 on the other hand contended as follows :

(i) The Revisional Authority has correctly dismissed the revision application on account of limitation after holding that there was no sufficient cause for the condonation of delay. The petitioner has not appended his affidavit and has suppressed the fact of filing of the counter affidavit of the Respondent filed before the Revisional Authority. Sri Dubey further pointed out, by reading a copy of the affidavit filed by the petitioner in support of his prayer seeking condonation of delay that according to the statement made in the affidavit the petitioner fell ill since September, 1969 of abdominal disorders to such an extent that his movements were stopped and only on 28.7.74 he became able to move, came and enquired of full facts and filed the revision application immediately thereafter. Learned counsel highlighted that if the statement of the petitioner is accepted that he fell ill in September, 1969 itself in that event it is not understandable as to how he handed over relevant papers including his Vakalatnama to his alleged learned counsel Sri Bhagwati Prasad after the passing of the impugned appellate order on 19.9.69. This finding stands supported by following apparent facts namely that the appellate order was passed on 19.9.69 and against which Respondent No. 4 had preferred six revisions impleading the writ petitioner as an opposite party within the period of limitation and those revisions, after contest by the petitioner, were dismissed on 28.1.70 on a technical ground that certified copy of the appellate order was not filed in every revision rather it was filed only in one of them; that against the revisional order dismissing the revisions Respondent No. 4 came up to this Court in writ petition No. 2219 of 1970 on 27.4.90 in which the petitioner was again impleaded as Respondent No. 2, who also filed counter affidavit and contested that writ petition, which, however, was allowed by this Court vide judgment and order dated 14.2.1974 and all six revision applications were directed to be disposed of on merits; that the petitioner filed his revision application on 25th July, 1974 after the death of Sri Bhagwati Prasad making allegations against a dead counsel; that the statements made in the Section 5 application filed by the petitioner were seriously countered by Respondent No. 4 by filing a counter affidavit which were in terms of Order XIX, Rule 3, C.P.C. and thereafter a finding of fact has been recorded against the petitioner which is unassailable in writ jurisdiction.

(ii) Since the revision application was dismissed on account of limitation it is not permissible for the petitioner to assail the orders passed by the first two authorities on merits. The appellate authority has correctly recorded a finding that the land in question (khata No. 113) was self-acquisition of Respondent No. 4. The further findings that the petitioner had failed to prove jointness of Mahadeo with Krishnanand was also not proved and that the petitioner has failed to prove his possession over the land in question are also valid findings. The petitioner has not taken any special ground assailing the findings of fact recorded by the first two authorities and thus it does not lie in the mouth of the petitioner to assail those findings on merits. That apart the learned counsel for the petitioner has also not shown any material to support his submissions that the findings of fact are vitiated on account of any error apparent on the face of record, and therefore, the prayer to quash the orders passed by first two authorities is misconceived and fit to be outright rejected.

4. Mr. Bhargava, the learned counsel appearing on behalf of Respondents 5 and 6 adopted the arguments made by Mr. Dubey and also submitted to dismiss this writ petition. He further contended that on the finding, correctly recorded, was held that the land bearing Khata No. 113 belongs to respondents 4 to 6 all and was not exclusive property of Respondent No. 4.

5. The learned counsel of the petitioner, in reply, contends that nothing has been brought on the record by Respondent No. 4 in his counter affidavit or otherwise in regard to the nonsufficiency of the cause and accordingly the submission of Mr. Dubey as well as Mr. Bhargava should not be accepted.

6. To the Full Bench, relied upon the learned counsel for the petitioner, following question was referred :

"whether after the record has been called for by the Deputy Director of Consolidation under Section 48 of the U.P. Consolidation of Holdings Act, it is open to him to dismiss the revision on the ground that a necessary party has not been impleaded in the memorandum of revision or he should examine the record and pass such an order which will advance justice after hearing the person who has not been impleaded." And it was held as follows :

"After the record has been called for by the Deputy Director of Consolidation under Section 48 of the U.P. Consolidation of Holdings Act he should examine the record to decide whether it was a fit case for exercise of the revisional jurisdiction suo moto. Such opinion shall have to be formed even where the application in revision moved by a party is defective having been made beyond the prescribed period of limitation or all the necessary parties have not been impleaded.

If the Deputy Director of Consolidation finds that the case requires further hearing he shall give notice to all the necessary parties irrespective of whether they were or were not impleaded in the application and after giving them reasonable opportunity of hearing pass such orders as he thinks fit. Where the

application in revision is not defective and is maintainable the exercise of revisional jurisdiction shall be at the instance of the parties and not suo moto."

7. It is an admitted position that the revision was filed on 25th July 1974 against the impugned appellate order dated 19.1.69 i.e. to say after more than 5 years during which the revisions filed by Respondent No. 4 were heard and dismissed on the ground of nonfiling of certified copy of the appellate order which dismissal was set aside by this Court on 14.2.1974. The petitioner has also not brought on the record his petition and the accompanying affidavit seeking condonation of delay. He has nowhere stated in his writ petition what were the contents of the counter affidavit and that the requirements of Order XIX, Rule 3, C.P.C. were not met. I may observe that when Mr. Dubey showed me and read out a copy of the affidavit of the petitioner filed in support of the condonation petition the correctness of the recitals therein were not disputed by the learned counsel for the petitioner. No documentary evidence was brought on the record by the petitioner to support his alleged continued illness. I, thus accept the submission of Mr. Dubey in regard to the limitation.

8. The petitioner has nowhere stated as to on what date Revision application was admitted and the records called for. I also gave an opportunity to the petitioner by my order dated 31.3.95 to bring on the record the relevant facts in this regard but the petitioner has come up with an explanation that since the records are not available it is not possible for him to append copy of the ordersheet of the revision application. It is for the petitioner to prove his case. It is true that in view of the nonavailability of the record he cannot bring on record the order sheet of his revision but at least this much was/is expected of him as to on what date his revision was admitted and the records called for and to support it by his Counsel's certificate. In this view of the matter it is not possible for me to hold that his revision application was admitted and thereafter records were called for. The records of the courts below being before the Revisional Authority in connection with other cases were of no help to the petitioner. The Full Bench decision relied upon by the learned counsel for the petitioner is, thus, clearly distinguishable and is of no help to the petitioner.

9. However, I do not accept the submission of Mr. Dubey that this Court has got no jurisdiction to set aside the earlier orders passed by the authorities if the revisional authority dismisses a revision on the ground of limitation. I only need observe in this context that there is world of difference between a "constitutional court" and a "civil court". To former the Limitation Act does not apply but to latter it does apply. However, this Court exercises its jurisdiction under Article 226 only in such cases in which there has been an apparent error of law and the failure to exercise jurisdiction would result in manifest injustice. The learned counsel for the petitioner could not show me that the findings recorded by the first two authorities against the petitioner in regard to the lands bearing Khata No. 113 are vitiated on account of errors apparent on the face of record.

10. For all these reasons I am constrained to dismiss this writ petition but in the

peculiar facts and circumstances I make no order as to costs.