
(2011) 08 AHC CK 0252
In the Allahabad High Court
Case No : C.M.W.P. No. 65177 of 2008

Ramesh Chand

APPELLANT

Vs

Vinayak Buildwell (Pvt.) Limited and others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143, 149(1A), 176

Citation : (2011) 9 ADJ 484 : (2011) 114 RD 297

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Santosh Kumar Mishra, Advocate holding brief of Sri Vinod Swaroop Learned Counsel for the petitioner, Sri Manish Goyal, Learned Counsel for the respondent No. 1, learned Standing Counsel for the respondent Nos. 3 and 4 and the Learned Counsel for the Gaon Sabha.

2. The challenge in this petition is to the order of the Board of Revenue dated 17th September, 2008 which in essence questions the correctness of the procedure adopted by the Sub-Divisional Magistrate in a suit for partition u/s 176 of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as "the U.P.Z.A. & L.R. Act, 1950").

3. The petitioner-instituted the said suit on the ground that the respondent No. 1 had purchased only 16/17th share of plot No. 1929 from the petitioner and the balance of 1/17th had been retained by the petitioner, which deserves to be partitioned as the respondent No. 1 was unauthorizedly trying to encroach upon the said part of the land.

4. The background in which the said suit came to be instituted is that the sale-deed was executed by the petitioner in favour of the respondent No. 1 in respect of certain plots including plot No. 1929 to the extent indicated above. A copy of

the sale-deed dated 2nd July, 2006 has been filed as Annexure 1 to the writ petition. The boundary in relation to the area of the plots which have been sold, have been indicated in the sale-deed. The extent of the land, which is to be retained by the petitioner namely 1/17th share of plot No. 1929, has also been described along with the boundaries in the said sale-deed.

5. The Sub-Divisional Magistrate passed a preliminary decree but the contention raised on behalf of the petitioner is that while doing so, the Kurras were also allocated and the direction of the area to be retained by the petitioner as per the sale-deed has been altered. Aggrieved by this action of the Sub-Divisional Magistrate, the petitioner has proceeded with the litigation.

6. The contention raised and the relief claimed herein on behalf of the petitioner is that since the Sub-Divisional Magistrate was proceeding contrary to law, therefore, a transfer application had been moved and the case was transferred and as such in the aforesaid background a direction be issued to rehear the revision filed by the petitioner and decide the same in accordance with law.

7. The grievance, in essence, is in relation to the retention of that part of the land that has to be retained by the petitioner under the sale-deed. Learned Counsel has submitted that there is no other grievance apart from that. The counter affidavit filed on behalf of the respondent No. 1 indicates that the declaration u/s 143 of the U.P.Z.A. & L.R. Act, 1950, which was sought, was only in relation to the land that was purchased by the respondent No. 1 under the sale-deed and the said declaration has got nothing to do with regard to the share, which has been retained by the petitioner. The said declaration was made and the Map of the Abadi was prepared after complying the provisions of section 149(1-A) of the U.P.Z.A. & L.R. Act, 1950. The contention of the Learned Counsel for the respondents is that no such suit was maintainable for seeking a declaration or partition as once the land has been declared to be Abadi u/s 143 of the U.P.Z.A. & L.R. Act, 1950, it falls out of the purview of Chapter IX of the U.P.Z.A. & L.R. Act, 1950 and hence the provisions for partition would not be attracted.

8. It is urged that this writ petition has been filed with an oblique motive to harass the answering respondent and nothing more. The direction or the status of the land of the share of the petitioner has not been altered or disturbed and any allegation to that effect by the petitioner is wrong.

9. So far as, the nature of the property retained by the petitioner under the sale-deed is concerned, there is no declaration of the said area u/s 143 of the U.P.Z.A. & L.R. Act, 1950. The same continues to be the recorded Bhumidhari of the petitioner and as such in case the petitioner seeks partition of his Bhumidhari holding, a suit u/s 176 of the U.P.Z.A. & L.R. Act, 1950 would be maintainable. The dismissal of the suit on the ground that there is a declaration u/s 143 of the 1950 Act, proceeds on an erroneous assumption of fact inasmuch as it is the admitted case of the parties that the declaration is only with regard to the share

purchased by the respondent and not with regard to the share of petitioner.

10. The dispute has virtually narrowed down only to the area and identity of the land that is to be retained by the petitioner under the sale-deed. This, in the opinion of the Court, can be sorted out by the Trial Court while preparing the Kurras finally.

11. Insofar as, the share of the petitioner is concerned, it is strictly in accordance with the sale-deed, which is undisputed between the parties. The Kurras have to be prepared on the basis of the possession declared to be retained by the parties under the sale-deed itself, and therefore, the Trial Court has hardly any option to travel beyond the sale-deed.

12. Accordingly, the order of the Board of Revenue impugned herein dated 17.9.2008 and the order of the Trial Court dated 23.7.2008 dismissing the suit are set aside. The suit shall stand restored at the stage of preparation of preliminary decree. The Trial Court shall proceed accordingly to prepare a final decree in the light of the observations made hereinabove without any further delay as expeditiously as possible preferably within a period of two months from the date of production of a certified copy of this order.

13. The writ petition is allowed with the aforesaid observations.