

(1984) 05 AHC CK 0018

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2190 of 1977

Ramjee Pandey (deceased by L. R's.)

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 11-05-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : AIR 1984 All 314 : (1984) RD 318

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : B.B. Paul, for the Appellant; K.B. Garg, for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—This writ petition has been filed against the orders of the revenue courts whereby the application on behalf of the State of U. P. for setting aside the ex parte decree in favour of the petitioner has been allowed.

2. Necessary facts giving rise to the present writ petition are that the petitioner got the so-called ex parte decree on 15-6-1967. On 8-3-1972 Gaon Sabha had filed an application for setting aside the ex parte decree. The claim of Gaon Sabha has been negated by all the revenue courts. On 14-7-1972 an application for setting aside the ex parte decree was moved on behalf of the State of U. P. with the allegations that the Government Counsel (Revenue) came to know about the decree dated 15-6-1967 in connection with the proceedings for setting aside the ex parte decree at the instance of Gaon Sabha hence the application for setting aside that decree on behalf of the State of U. P.

3. All the revenue courts have granted relief to opposite party No. 4 by setting asides the ex parte decree in favour of the petitioners, hence the petitioner has approached this Court under Article 226 of the Constitution.

4. Ordinarily I would not have interfered with the impugned orders, but in this case I have a feeling that the application on behalf of opposite party No. 4 has

not been moved with correct allegations and the revenue courts have set aside the ex parte decree without examining the proviso added by this Court to Order 9, Rule 13 C. P. C.

5. The bare perusal of the impugned orders indicates that a summons relating to the suit was served upon the suits-clerk and that the Government counsel probably had appeared in the suit on behalf of the Gaon Sabha, yet the decree against the State of U. P. has been set aside on the ground that there was no proper service on the State of U. P. in the suit.

6. It is not necessary for me to examine various arguments advanced by the counsel for the parties in this case. Their view points are evident from the perusal of the impugned judgments. To decide the present writ petition it is necessary to quote the following proviso to Order 9 Rule 13 C. P. C. added by this Court, which reads as below :--

"Provided also that no such decree shall be set aside merely on the ground of irregularity in the service of summons if the Court is satisfied that the defendant knew, or but for his willful conduct would have known of the date of hearing in sufficient time to enable him to appear and answer the plaintiff's claim."

7. Relevant extract from the judgment of the Trial court dated 24-11-1972 reads as below:--

^^oknh ds odhy dk dFku gS fd iSjoh DydZ dks rkehyh LVsV dks rkehyh ekuh tk; A ;g lEeu 11&1&66 dks fy;s Fkk A bl ij vnkyrh eggj ugha gS vkSj bldks iSjoh DydZ us 14- 12 dks izkIr fd;k gS pwWfd lEeu ij vnkyr dk eggj ugha gS vkSj iSjoh DydZ dks lEeu ysus dk dksbZ gd ugha Fkk A ,slh lwjr esa iSjoh DydZ ds mij dh rkehyh LVsV dh rkehyh ugha ekaxh tk;sxh gks ldrk gS fd LVsV dkSaafly dks bldk bYe u jgk gS fdUrq dkxth lcwr dks ns[kus ds i"pkr eS bl fu"d"kZ ij igqaprk gaw fd LVsV ij ljfol ugha Fkh A vr% LVsV ds fo:) ,d i{k; fMxzh dk vksn"k ealw[k fd;k tkrk gS A LVsV blds fy;s 25 :i;k gjtk oknh dks nsos A**

8. The Additional Commissioner in his judgment dated 16-10-1973 vide paragraph 12 has observed as below :--

"I find sufficient force in the argument made on behalf of the U. P. State. The revisionist did not file any objection against the application moved on behalf of U. P. State on 14-7-1972. There was sufficient opportunity for the plaintiff to do so and the application of U. P. State was decided on 24-11-1972. The summon (paper No. 5/8) does not bear the seal of the court or its signature. The lower court has rightly set aside the ex parte decree dated 15-6-1967. In doing so he has restored the parties to original position. He has committed no material illegality or irregularity in his order. The revision has no force and is liable to be dismissed."

9. The revisional court in its order dated 11-3-1977 has observed as below vide paragraph 10 :--

"To sum up the service of summons in a suit against the State of U. p. through the Collector should ordinarily be made on the District Government Counsel Revenue as provided in Order XXVII Rule 4 of the Code of Civil Procedure. In certain cases it may also be done on the Collector personally or on the officer-in-charge suits expressly appointed and authorised by the Collector on his behalf. In no case will the service on a clerk of the Collect rate be deemed sufficient service on the State."

10. It appears to me that the revisional court has also arrived at the conclusion that there was no proper service on the State of U. P., hence it confirmed the judgments of the courts below. The learned counsel for the petitioner has contended that necessary allegations had not been made in the application for setting aside the ex parte decree to the effect that the summons issued by the court was not in order and that it was served upon the suit clerk which had no authority to receive the summons on behalf of the State of U. P. and that the ground on which the revenue courts have set aside the ex parte decree were not substantiated and that the courts failed to examine the evidence in this case before setting aside the decree in favour of the petitioner.

11. The learned counsel for the Gaon Sabha has tried to support the impugned judgment on the reasonings given in the impugned judgments. It has also been emphasised that as the ex parte decree has been set aside the parties have been relegated to the original position hence the impugned judgments should not be interfered with.

12. It is noteworthy that before this Court none has appeared on behalf of the State of U. P.

13. Ordinarily the property which has vested in the State of U. P. under the provisions of U. P. Z. A. and L. R. Act is looked after by the Goan Sabha through Land Management Committee; In the present case the so-called ex parte decree has been held good against the Gaon Sabha and it has been set aside at the instance of State of U. P. It is noteworthy that a written statement was filed on behalf of Gaon Sabha. Presumably it must have been signed by the Government Counsel (Revenue of the district) on the facts emerging in the present case. It is evident that a suits-clerk had received a summons regarding the petitioner's suit, but proper action was not taken by the suits-clerk with the result that the decree in favour of the petitioner was passed. The revenue courts have not examined as to whether the written statement filed on behalf of the Gaon Sabha bore signature of the District Government Counsel (Revenue) or whether on that account it could be inferred that the State of U. P. had knowledge about the date of hearing. It is also not very clear as to what are the functions of the suits-clerk who received the summons in the present case. The compel for the petitioner was not in a position to intimate me upon whom notice u/s 80 C.P.C. regarding the suit was served. Therefore I have a feeling that the revenue courts have not examined the relevant points as to whether the opposite party No. 4 could come to know about the date of hearing in the suit, but for negligent act on the part of

its agents:

14. Since the question involved in the present case has not been examined from correct angle and the revenue courts have not at all considered the proviso to Order 9, Rule 13 C. P. C. added by this Court. I think it proper to quash the impugned judgment of the revisional court alone and ask it to re-examine the claims of the parties in the light of the pleadings and evidence on record. It should also indicate as to whether the written statement filed by Gaon Sabha bore signature of the District Government Counsel (Revenue) or not and whether the knowledge could be imputed to opposite party No. 4 in the present writ petition on the ground that the Government Counsel knew about the suit in his capacity as a counsel for the Goan Sabha.

15. In the result the writ petition succeeds and the impugned judgment of the learned Member. Board of Revenue dated 11-3-1977 is hereby quashed and the revisional courts is directed to examine the claims of the parties afresh strictly in accordance with law in the light of their pleadings and evidence on record. There would be no order as to costs.