
(1999) 08 AHC CK 0157
In the Allahabad High Court
Case No : C.M.W.P. No. 37640 of 1995

Ranno Devi

APPELLANT

Vs

Board of Revenue and others

RESPONDENT

Date of Decision : 17-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, 11
Limitation Act, 1963 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 18, 209, 229B, 331

Citation : (1999) 4 AWC 2953 : (1999) AWC 2953

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Triveni Shanker, for the Appellant; Sankatha Rai, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of Board of Revenue dated 2.11.1995 whereby it allowed the appeal and set aside the order passed by the Additional Commissioner.

2. The dispute relates to the defendants inter se. Briefly stated, the facts are that Bhairo Lal Sahi, Batuk Lal Sahi and Anand Bhairo Lal Sahi filed suit No. 19 of 1962 against two sets of defendants. One Smt. Kallo Devi petitioner (defendant No. 1 in the suit) and the second set Shri Singh. Rameshwar Singh and Saklu Singh, defendant Nos. 2 to 4 alleging therein that the land in dispute was their khudkasht land before the date of vesting and after abolition of Zamindari, they became bhumidhars. It was alleged that defendant No. 1 (petitioner) was engaged by the plaintiffs in year 1367F to look after the crops over the disputed land for one year but she managed to get her name recorded in the revenue papers and took possession in collusion with the Lekhpal over the disputed land in 1367F and he illegally recorded her name in Class 9 and after getting her name recorded, she came in possession over the disputed land on 15.10.1961.

As regards defendant Nos. 2 to 4, it was alleged that they were neither in possession over the land in dispute nor had they any concern over the same but since they were ready to take forcible possession, they were impleaded as parties to the suit. It was prayed that the defendant No. 1 be evicted from the land in dispute and if the defendant Nos. 2 to 4 were found in possession, they should also be evicted from the land in dispute.

3. The petitioner contested the suit. She denied that the plaintiffs were khudkasht holder on the date Immediately before the date of vesting. She claimed that the land was settled in the name of her husband at the rate of Rs. 300 per year 13-14 years ago and since then the husband of the petitioner continued in possession over the land in dispute and after his death she is continuing in possession and her name was mutated in the revenue records. Her husband was also in possession in 1356 and 1359F and continued in possession and was sirdar of the land in dispute. She claimed that she has matured her right and the plaintiffs had not acquired any right over the disputed land u/s 18 of U. P. Zamindari Abolition and Land Reforms Act. She further pleaded that she had filed civil suit for permanent injunction against defendant Nos. 2 to 4. It was decreed by the trial court and the Judgment was affirmed up to the High Court.

4. The defendant Nos. 2 to 4 also contested the suit. They denied the averments made in the plaint and also the averments made in the written statement filed by the petitioner. it was alleged that the plaintiffs had settled the land with defendant Nos. 2 to 4 for the last 37-38 years and since then they were in possession over the land in dispute and they have become sirdar. One Bhanu Chaudhari was karinda of the plaintiffs and he used to realise rent from these defendants. The trial court recorded finding that the plaintiffs failed to prove their right and title over the land in dispute as having acquired bhumidhari rights under the provisions of U. P. Zamindari Abolition and Land Reforms Act. it was further found that defendant No. 1, the petitioner, also failed to establish her right over the land in dispute but the defendant Nos. 2 to 4 were in possession and had acquired rights over the land in dispute. The trial court dismissed the suit of the plaintiffs on 10.3.1972. The petitioner filed an appeal against the judgment of the trial court wherein it recorded a finding that the petitioner has no right and title over the land in dispute but defendant Nos. 2 to 4 have right. The plaintiffs also filed an appeal against the said judgment. The Additional Commissioner dismissed the appeal filed by the plaintiffs but allowed the appeal filed by the petitioner by Judgment dated 20.5.1994 and in the operative portion, it was observed that the petitioner be declared as bhumidhar of the land in dispute. Against this Judgment defendant Nos. 2 to 4 filed second appeal before the Board of Revenue. The appeal was allowed by the Board of Revenue vide impugned order dated 2.11.1995 and the judgment of the Additional Commissioner has been set aside. This writ petition is directed against the said order.

5. The controversy is as to whether the petitioner has acquired any right over the

land in dispute or the defendant Nos. 2 to 4 have rights over it. In the written statement, both had claimed that the land was settled with them by the Zamindar. The petitioner claimed that the plaintiffs had settled the land in the name of her husband at the rate of Rs. 300 per year and since then he continued to be in possession over this land and after his death, the petitioner became tenure-holder by way of succession and was sirdar in possession over this land. The defendant Nos. 2 to 4 also claimed that the plaintiffs had let out the land in dispute in their favour for the last 37-38 years and they were in its possession from much before 1360F. The trial court recorded finding that the defendant Nos. 2 to 4 were in possession and acquired rights over the land in dispute. The name of the petitioner was recorded for the first time in 1367F in remarks column and such entry continued from 1368F to 1370F. The litigation started between the parties since 1961. The petitioner had filed an application before the District Magistrate in regard to correction of entries and that correction proceedings continued. She further filed Suit No. 105 of 1961 for restraining the defendants from interfering with her possession. She had relied upon the entry of her name in 1367F and prior to that there was no entry of her name or the name of her husband in the revenue record. The parties led oral and documentary evidence- The defendant Nos. 2 to 4 filed rent receipts alleged to have been issued by the then Zamindar and relying upon the rent receipts and the revenue entries came to the conclusion that the defendant Nos. 2 to 4 were in possession over the disputed land and they were continuing in possession since before the abolition of Zamindari and they have become sirdar over it. The Additional Commissioner took the view that the petitioner had filed the suit for Injunction and the suit having been decreed, the petitioner has right over the land in dispute. This view has not been accepted by the Board of Revenue and it set aside the order of the Additional Commissioner. The basic question is whether the Board of Revenue was justified in setting aside the judgment of the Additional Commissioner in second appeal.

6. I have heard Shri Triveni Shanker, learned counsel for the petitioner and Shri Sankatha Rai, learned counsel for the contesting respondents at length.

7. Learned counsel for the petitioner contended that the petitioner had filed Suit No. 105 of 1961 for permanent injunction restraining the defendants from interfering with her possession over the land in dispute. A copy of the plaint has been annexed as Annexure-3, to the rejoinder-affidavit. In the said suit, it was alleged that she was a sub-tenant of the land in dispute. She had sown the crops but the defendants were threatening to dispossess her and they be restrained from cutting the crops or dispossess the plaintiff. The defendant Nos. 2 to 4 contested the suit alleging that the petitioner was not in possession and had no right and title over the land in dispute. The civil court had no Jurisdiction to try the suit as it was in respect of agricultural land. The trial court held that the civil court had jurisdiction to try the suit as the plaintiff had claimed the relief of injunction. The suit was decreed by the trial court on 30.11.1962. On an appeal, the case was remanded by the appellate court. The trial court again decreed the

suit on 25.7.1969. The defendants filed Civil Appeal against this decision. The appeal was dismissed on 8.9.1970 and the High Court dismissed the appeal on 16.7.1975. One of the plea raised in the second appeal was that the trial court had no jurisdiction to try the suit. The defendants had filed certain documents to be admitted in second appeal in regard to the question of title. The High Court while dismissing the appeal made the following observation :

"Learned counsel for the appellant filed an application under Order XLI, Rule 27, C.P.C. for taking additional evidence on record. That evidence relates to the title of the parties and has no bearing on the question of jurisdiction which is the only matter involved in this appeal. The question of title was not even pressed before the lower appellate court and must be deemed to have been given up."

8. The civil suit was only on the question as to who was in possession on the date of filing of the suit. It had no jurisdiction to decide the question of title nor it decided the question as to whether the petitioner or the defendants were bhumidhar or sirdar over the land in dispute.

9. The civil court had no jurisdiction to decide the question of title in respect of agricultural land nor could decide the question as to whether the petitioner or the defendants were bhumidhar or sirdar of the land in suit. The suit which involves declaration of rights in respect of agricultural land has to be filed in the revenue court. Section 331 of the Zamindari Abolition and Land Reforms Act (in short the Act) bars the civil court from taking cognizance of any suit application or proceeding mentioned in column 3 of the II Schedule of the Act based on a cause of action in respect of which any relief could be obtained by means of any such suit or application. Suit for declaration of rights in respect of agricultural land could have been filed u/s 229B of the Act and in such suit State of U. P. and the Gaon Sabha are necessary parties. The decree passed in injunction suit will not operate as res judicata in respect of declaration of rights over such land. In *Parsoitam v. Narottam and others* 1970 ALJ 505 . It has been held that suit for injunction restraining the defendants from cutting crops standing over the plots in suit, from interfering with plaintiffs possession is cognizable by the civil court where the entries in the revenue papers support the claim of the plaintiff. The petitioner had filed the suit claiming injunction restraining the defendants from cutting the crops and interfering with her possession. Her name was recorded in remarks column in the revenue papers. The suit for injunction for the relief claimed in the plaint was maintainable but as regards the declaration of rights over the land in dispute, the civil court had no jurisdiction. In *Chandrika Misir and Another Vs. Bhaiya Lal*, , the Supreme Court referring to Sections 209 and 331 of U. P. Act No. 1 of 1951 held that the civil court had no jurisdiction in respect of the matter mentioned in column 4 of Schedule II of the Act notwithstanding anything contained in the Civil Procedure Code, 1908. It specifically prohibits any other Court to take cognizance of the suit, application or proceeding mentioned in column 3 thereof. The suit for declaration of rights is only maintainable u/s 229B of the Act. In *Bhurey v. Pir Bux* 1973 ALJ 312 a

Division Bench of this Court held that the decree passed in civil suit for declaration of the rights of parties was without jurisdiction and it was void.

10. Learned counsel for the petitioner has placed reliance upon the decision of the Supreme Court in *Sulochana Ammo v. Narain Nair* 1994 ACJ 507 wherein it has been held that if in an injunction suit, the title is decided that will operate as *res judicata* in the subsequent suit. This decision is not applicable where the question of title itself cannot be decided by the civil court in view of the specific bar contained u/s 331 of U. P. Act No. 1 of 1951. Secondly, the High Court had made it clear that in the suit filed by the petitioner, the question of title has not to be gone into. The civil court having not decided that the petitioner acquired *sirdari* right over the land in dispute, its decree does not operate as *res judicata* on the question of title between the parties.

11. Learned counsel for the petitioner challenged the decision of the Board of Revenue on the ground that it had misread the pleading of the parties. It is pointed out that the Board of Revenue in its order observed that the case of the petitioner was that the Zamindar had settled the land with her husband at the rate of Rs. 300 per annum but after the death of her husband, it was settled with her at Rs. 51 per annum. A copy of the written statement has been annexed as Annexure-3 to the writ petition. The petitioner had appeared as witness, a copy of her statement is annexed as Annexure-24 to the petition. She in her cross-examination clearly stated that she had taken land from Batuk Bhairo Lal Shahi on settlement. This statement was in contradiction to the pleading taken by her in her written statement wherein she had stated that the land was settled by the Zamindar with her husband at Rs. 300 per annum 13-14 years ago. The Board of Revenue also noted this contradiction. At one place, it has referred to the later part of the statement of the petitioner as the pleading but that does not make any difference. Even otherwise the petitioner failed to prove settlement of land by the Zamindar in favour of her husband as alleged in the written statement.

12. The third submission of learned counsel for the petitioner is that the Board of Revenue was not justified in setting aside the finding recorded by the Additional Commissioner. A perusal of the order of the Additional Commissioner indicates that he recorded the finding that the land in dispute was settled by the Zamindar with the petitioner on the basis of the statement of Batuk Bhairo Lal Shahi one of the plaintiffs who appeared as P.W.1. The trial court considered his statement and it was found that he never admitted that the land in dispute was settled by the plaintiffs either with the petitioner or her husband. The Additional Commissioner relying upon his statement has held that Baluk Bhairo Lal Shahi admitted the fact that the land in dispute was settled with the petitioner. The Board of Revenue found that the Additional Commissioner misread the statement of Batuk Bhairo Lal Shahi. The petitioner has not annexed copy of his statement as annexure-to the writ petition. The Additional Commissioner had committed illegality in recording the finding on the basis of misreading of the evidence of the plaintiff particularly taking his statement as admission of the fact in favour of

the petitioner which, in fact, he never made.

13. The trial court had recorded a finding that the land in dispute was settled by the Zamindar in favour of the defendant Nos. 2 to 4 on the basis of the rent receipts filed by them. The Additional Commissioner did not refer to those rent receipts. Further the trial court relied upon the statement of the defendants Shiv Nandan, D.W. 3, Sakal Narain and D.W.4, Shiv Prasad but the Additional Commissioner while setting aside the judgment of the trial court did not consider their statements. The Board of Revenue, in these circumstances, was justified in upholding the judgment of the trial court on the question that the land in dispute was settled by the Zamindar with the defendant Nos. 2 to 4. The petitioner also failed to prove adverse possession. Her name was recorded in the revenue record in 1367F. The dispute arose between the parties in 1368F.

14. The learned counsel for the petitioner vehemently urged that the second appeal filed by the defendant-respondents was not maintainable as the certified copy of the judgment of the Additional Commissioner was not filed. He has placed reliance upon Shakuntala Devi Jain Vs. Kuntal Kumari and Others, and P.J. Lartius v. Board of Revenue and others. ACJ 309. It is stated that Second Appeal No. 5 of 1994-95 was filed on 6.12.1994 without any certified copy of the decree which was prepared on 6.6.1994. The respondents had filed one copy of the decree of Appeal No. 290/292 of 1992 which was decided on 6.5.1988 and the decree was prepared on 6.6.1994. The decree which was filed along with the memo of second appeal was incorrect decree as there was no folio attached with the copy of the decree. This has been explained by the defendant-respondents. Admittedly, the Additional Commissioner had decided the appeal on 20.5.1994. The appeal was filed by the defendant-respondents on 6.12.1994. It is pointed out that the correct copy of the decree had not been filed along with the memo of appeal. On coming to know of it, the defendant-appellants filed application to obtain correct copy of the decree on 13.3.1995. The copy was ready and supplied to Jagat Narain, appellant on 13.3.1995. This correct certified copy of the decree was filed on 15.3.1995. The appellant filed an application on 31.3.1995 supported with affidavit to condone the delay in-filing the appeal u/s 5 of the Limitation Act explaining the circumstances under which the correct certified copy of the decree was not filed. The petitioner filed counter-affidavit. The Board of Revenue considering the facts and circumstances of the case condoned the delay in filing the appeal, it is contended that as the appeal was not filed with correct certified copy of the decree, the appeal itself was not maintainable. The Board of Revenue having condoned the delay in filing the appeal from the time the correct certified copy of the decree was filed, the appeal shall be treated to have been filed within limitation on the facts of this case. I find that the Board of Revenue committed no illegality in condoning the delay.

15. There is no merit in this writ petition. It is accordingly dismissed. The parties shall, however, bear their own costs.