
(1976) 07 AHC CK 0038
In the Allahabad High Court
Case No : Second Appeal No. 138 of 1967

Saliu Gopi Nath

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 06-07-1976

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 44(b), 46, 46(2), 61((2)

Citation : (1976) 07 AHC CK 0038

Hon'ble Judges : M.P.Mehrotra, J

Final Decision : Allowed

Judgement

M.P. Mehrotra, J.

This second appeal arises out of a suit which the appellant before me filed claiming a declaration that compensation rolls issued on October 16, 1958 to the plaintiff were final and their subsequent revision was void and inoperative. An injunction was also sought to restrain the defendant, State of Uttar Pradesh, from acting upon or in any manner enforcing the revised compensation rolls issued in April, 1959. The brief facts are these. By virtue of a partition in the joint family in 194445 the plaintiffappellant, Gopi Nath became the exclusive intermediary of the Mohals specified in the plaint and he was entered accordingly in the Khewat of 1359 Fasli. Following the date of resting draft compensation rolls were prepared for the Mohals and were issued to the appellant. They were finalised on May 21, 1953, May 28, 1953 and June 11, 1953 respectively. In preparing these rolls a deduction was made in respect of the Agricultural Incometax from the gross, assets in order to arrive at the net assets of the plaintiffappellant. The tax so deducted was the tax as determined by the Agricultural Incometax Officer. However, at that point of time an appeal at that instance of the plaintiffappellant was pending against the assessment of the Agricultural Incometax and subsequently by virtue of the decision in the appeal, the Agricultural Incometax assessed against the appellant in the previous year was reduced. On the basis of the reduction of the tax in the appeal, the

plaintiffappellant sought a revision of the compensation rolls. The Compensation Officer accordingly made corrections in the rolls and issued the revised rolls to the plaintiffappellant on October 16, 1958. In March April, 1959 the Compensation Officer nullified the aforesaid corrections made on October 16, 1958 and restored the compensation rolls to their original position. The plaintiffappellant's grievance is that the changes made in March April, 1959 were illegal and without jurisdiction. He, therefore, sought the aforesaid relief. The suit was contested by the State on the ground that the draft compensation rolls had become final in the year 1953 and the Compensation Officer had no jurisdiction to make the revision which he did on October 16, 1958. Therefore, the Compensation Officer was apprised of this position and he corrected the mistake by revising the compensation rolls and restoring the draft compensation rolls which has become final in 1953. The trial court and the lower appellate court both held that the revision which was made by the Compensation Officer in October 1958 was without jurisdiction and, therefore, the suit was dismissed. Both the courts however, held that the suit was maintainable and was not barred under the provisions of the U.P. Zaminaari Abolition and Land Reforms Act.

Shri Ashoke Gupta, learned counsel for the appellant, has contended that the Compensation Officer was entitled to make the revision under Section 16 (2) of the aforesaid Act. He has also submitted that the lower appellate court's observation that "no objection is, however, alleged or suown to have been filed" is incorrect and not supported by the material on the record, lie has brought to my nonce me plamtirrappelant's application 103C dated January 2, 1962 whereby the record in the collector's court in respect of his objection under Section 46 (2) of the U.P. Act No.1 of 1951 was sought to be summoned. The court passed an order on January 9, 1962 directing the said record to be summoned and yet the record was not produced before the court. It seems that in these circumstances the lower appellate court was not justified in making the aforesaid observation that no objections were all alleged or shown to have been filed. It is not disputed that in case it was brought to the nonce of the Compensation Officer by an objection under Section 46(2) that an appeal against the Agricultural Incometar was pending, then the Compensation Officer could have stayed the preparation of the draft compensation rolls with a view to await the decision of the appellate court in respect of the Agricultural Incometax levied on the intermediary for the previous year. In view of the facts brought out from the record it cannot be said that the plaintiffappellant in his objection under Section 46 had not brought to the notice of the Compensation Officer that such an appeal was pending. The plaintiff had applied for a certified copy of the objections as far back as on August 23, 1960 and the same was not issued till he made the application 103C dated January 2, 1962. Accordingly, a presumption should be made in his favour rather than against him. The lower appellate court was clearly wrong in drawing the presumption against the plaintiffappellant in this way.

Now taking a rather broad view of the picture, it seems to me that the court

without staying the proceedings with a view to await the result of the appeal against the Agricultural Incometax imposed by the assessing authority could proceed with the finalisation of the draft compensation rolls and could subsequently rectify the said rolls when the result of the appeal was brought to its notice. This course would have the advantage of despatch and practicability. In my view, when Section 44(b) of the U.P. Act 1 of 1951 in clear terms provides for a deduction from the gross assets of the amount of Agricultural Incometax paid or to be paid for the previous agricultural year by the intermediary, then such amount should be the final figure as determined by the appellate authority and not the tentative amount as determined by the assessing authority in the assessment order. It is not clear why the intermediary should suffer on account of the fact that the appellate authority has not been able to decide the appeal on the date when the Compensation Officer seeks to finalise the draft compensation rolls. The intermediary is entitled to say that by virtue of the provisions contained in Section 44 (b) he must be granted the deduction in respect of Agricultural Incometax of the true, ultimate figure which is arrived at as a result of his appeal against the assessing officer's order making the assessment. It would certainly not be equitable to deny the intermediary the correct figure of deduction on the ground that when the Compensation Officer proceeded to finalise the rolls the appellate court's decision was not before it. Either the Compensation Officer should have stayed his hands in the matter with a view to wait for the result of the appeal or, what seems to be a more practicable and convenient course, the Compensation Officer would have finalised the rolls and could subsequently revise the same when the result of the appeal was brought to his notice. I think, learned counsel for the plaintiffappellant is right in his contention that Section 61(2) should be construed in a broad manner and not too narrowly. A broad construction of the said provision will serve the ends of justice. It is wellknown that under the Incometax Act assessments of partners in a partnership firm are made on the basis of income returned by the partners and ultimately when the shares of the partners get reshuffled as a result of the assessment proceedings pertaining to the partnership firms, then consequential revisions are made in the partnership's assessment. That used to be done under Section 35 of the old Incometax Act, 1922 and now it is done under Section 154 of the present Act. I am aware of the fact that the phraseology used in these provisions of the Incometax Acts is different from the one used in Section 61, still, the broad purpose of these provisions is similar. I think it can be said to be a case of arithmetical error if the true figure of tax to be deducted as a result of the appellate order is substituted in the place of the figure of tax as originally determined by the assessing authority and which was initially deducted by the Compensation Officer while preparing the draft compensation rolls. Learned Standing Counsel has brought to my notice Master Construction Co. v. State of Orissa (1) where it was laid down:

"Arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing....."

I do not "think the law laid down in this case militates against the view which I have taken. It is a mistake relating to calculation. Whereas one figure was initially deducted, the said figure was subsequently held not to be the correct one and, therefore, the correct figure was subsequently deducted.

I, therefore, allow this appeal with costs and decree the plaintiff's suit against the defendantrespondent.