
(1978) 12 AHC CK 0012
In the Allahabad High Court
Case No : S.A. No. 355 of 1976

Sardar Singh

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 14-12-1978

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 122B(4)

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115

Citation : (1979) AWC 132 : (1979) RD 38

Hon'ble Judges : Deoki Nandan, J

Bench : Single Bench

Advocate : K.B.L. Gaur, for the Appellant;

Final Decision : Allowed

Judgement

Deoki Nandan, J.—This is a Plaintiff's second appeal in a suit for an injunction restraining the Defendants State of Uttar Pradesh and Gaon Sabha of village Landhaura in district Saharanpur from demolishing the eastern and the southern walls of a Gher or taking the land of the Gher into possession on the basis of an order dated 6th March, 1967 of the Sub-Divisional Officer, Deoband. The trial court decreed the suit on the findings, that the Plaintiff was the owner in possession of the land in suit and there was no evidence to show that he had encroached on any land or had damaged any Kharanja, belonging to the Gaon Sabha. The lower appellate court, however, dismissed the suit on the finding that the civil court had no jurisdiction to sit in appeal over the order of the Sub-Divisional Officer inasmuch as it was not established that the Sub-Divisional Officer had in any way exceeded his jurisdiction in passing the order.

2. Mr. K.B.L. Gaur, learned Counsel for the Plaintiff Appellant contended before me that the Sub-Divisional Officer's jurisdiction in the matter like the present one arose u/s 122B of the U.P. Zamindari Abolition and Land Reforms Act, and that under sub-Section (4) of that section the order is made final subject to the

result of a suit by the aggrieved party before a court of competent jurisdiction. The land in suit was not agricultural land nor claimed to be held for any agricultural purpose. A suit for determination of any question of title relating to such land undisputedly lay in a civil court. The relief for injunction could have been granted only after adjudication of the title to the land in the Plaintiff's favour. Inasmuch as the Defendants were threatening to execute the Sub-Divisional Officer's order a mere relief for declaration of title would have been ineffective, and it was accordingly, necessary to pray for the consequential relief of injunction. The suit could in no sense be said to be not maintainable. Indeed it was authorised by the very provision of Section 122B of the U.P. Zamindari Abolition and Land Reforms Act and also the rules framed thereunder particularly Rule 115(h).

3. Learned standing counsel appearing for the State could not successfully controvert this position and it has to be held that the view taken by the lower appellate court on the point about the jurisdiction of the civil court to interfere with the Sub-Divisional Officer's order u/s 122B of the U.P. Zamindari Abolition and Land Reforms Act in the present case is erroneous. Nevertheless the learned standing counsel urged that the findings of the trial court on the question of title are wrong and unsustainable on the evidence on the record. This aspect of the matter has not been gone into by the lower appellate court and sitting in second appeal it will not be possible for this Court to scrutinise the evidence and to examine whether the findings recorded by the trial court on the question of Plaintiff's title and possession and other matters covered by issues Nos. 2, 4 and 5 are correct or not.

4. In the result, the appeal succeeds and is allowed. The judgment and decree of the lower appellate court in Civil Appeal No. 408 of 1973 of the court of IV Additional District and Sessions Judge, Saharanpur, are set aside and the appeal remanded to the District Court for being heard either by the District Judge himself or by any Additional District Judge competent to hear it and to whom it may be assigned by him. The costs shall abide the result. The court fees paid by the Appellant in this Court shall be refunded to him.