
(1987) 03 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6780 of 1985

Sher Ali

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 24-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 1(1), 10, 12, 49, 52

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209

Citation : (1987) 1 AWC 699 : (1987) RD 155

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.P. Singh, J.—This writ petition has been filed by a Defendant-trespasser and it arises out of a suit u/s 209 of the U.P. Zamindari Abolition and Land Reforms Act.

2. Necessary facts giving rise to the present writ petition are that the Plaintiff claimed sirdari right in the disputed land and had alleged that the Defendants were trespassers hence the suit for ejectment of the Defendants and realisation of damages from them. The Defendant-Petitioner had denied the claim of the Plaintiff and had claimed sirdari right in themselves and various other pleas were raised to negative the claim of the Plaintiff in the land in dispute, as is evident from the issues framed in the case and mentioned in the judgment of the Trial Court.

3. All the revenue courts have decreed the Plaintiff's suit this time. Previously the case had been remanded twice by the appellate court, but ultimately the first appellate court agreed with the findings recorded by the Trial court and confirmed the judgment. Thereafter in second appeal also the Defendant has failed. Now the Defendant-trespasser has approached this Court under Article 226 of the Constitution.

4. Before me the learned Counsel for the Petitioner has contended that the Plaintiff's suit was barred by the provisions of Section 49 of the U.P. Consolidation of Holdings Act, yet the revenue courts have patently erred in decreeing the Plaintiff's suit. According to the learned Counsel "for the Defendant-Petitioner the cause of action for the suit arose during the consolidation operations in the village, therefore, the Plaintiff had right to claim the disputed land u/s 12 of the UP CH Act. Since the Plaintiff has failed to claim the appropriate relief u/s 12 of the UP CH Act, the Plaintiff's suit was barred by the provisions of Section 49 of the UP CH Act.

5. Second contention raised on behalf of the Petitioner before me is that the revenue courts have awarded damages without any basis in evidence and they have granted decree for a larger period than permissible under law, therefore, the decree for damages passed by the revenue courts suffer from patent errors of law and deserve to be quashed.

6. Learned Counsel for the Plaintiff contesting opposite party has submitted in reply that the impugned judgments do not suffer from any patent error of law rather they have done substantial justice between the parties and they need not be disturbed by this Court in exercise of powers under Article 226 of the Constitution.

7. Second submission made on behalf of the Plaintiff-opposite party is that the arguments regarding damages have been advanced during the course of hearing which should not be entertained at this stage. Moreover, it has been emphasised that the damages claimed and awarded is neither excessive nor against the weight of evidence on record. It has also been emphasised that the limitation for damages has also been provided under the entry Item No. 30 in Appendix 3 to U.P. Zamindari Abolition and Land Reforms Rules and the Plaintiff's claim was well within time. It was rightly decreed by the revenue courts.

8. I have examined the contentions raised on behalf of the parties. In my opinion none of the contentions raised on behalf of the Petitioner have any force.

Section 12 of the UP CH Act reads as below:

Decision of matters relating to changes and transactions affecting rights or interests recorded in the revised records.--All matters relating to changes and transfers affecting any of the rights or interests recorded in the revised records published under Sub-section (1) of Section 1 for for which a cause of action had not arisen when proceedings under Sections 7 to 9 were started or were in progress, may be raised before the Assistant Consolidation Officer as and when they arise, but not later than the date of notification u/s 52 or under Sub-section (1) of Section 6.

9. Learned Counsel for the Petitioner has emphasised during the course of arguments that the word "changes" would include the change of possession by the trespasser over the disputed land. Therefore, Sections 12 and 49 of the UP

CH Act were attracted to the facts of the present case. In my opinion mere change of possession would not affect the right of a tenure-holder recorded u/s 10 Sub-clause (1) of the UP CH Act. Therefore, the aforesaid section would be inapplicable to the facts involved in the present case. Moreover, the present suit giving rise to this writ petition was filed in the year 1966 and the consolidation regarding the disputed land had come to an end by denotification u/s 52 of the UP CH Act in the year 1964, therefore, no question of getting any relief u/s 12 of the UP CH Act arises in the circumstances of the present case. The argument of the learned Counsel for the Petitioner that the Plaintiff's suit was barred by the provisions of Section 49 of the UP CH Act is wholly misconceived.

10. It is proper to mention the ruling reported in 1978 RD 13, Ram Raj v. Board of Revenue, U.P. Allahabad wherein a Division Bench of this Court has held that a suit u/s 209 of the UP ZA and LR Act for eviction of a trespasser filed after the consolidation proceedings had come to an end was not barred by Section 49 of the UP CH Act. In view of the aforesaid ruling I think that the arguments advanced by the learned Counsel for the Petitioner in this behalf were wholly misconceived and should be repelled.

11. As regards the contention on behalf of the Petitioner that the damages awarded by the revenue courts have no basis in evidence and it was decreed for a larger period than prescribed in law without payment of any court fee. It is sufficient to observe that the Plaintiffs suit for damages also was well within time according to the entry Item No. 30 mentioned in Appendix 3 to the U.P. Zamindari Abolition and Land Reforms Rules.

12. The perusal of the judgment of the Trial court as well as appellate court would indicate that the amount awarded as damages is not excessive in view of the area involved and profit earned by the trespassers during the period of trespass.

13. As regards the question of payment of court fee it is a matter between the State and the Plaintiffs. The Defendant trespasser has nothing to gain if the Plaintiffs opposite parties get requisite relief without -paying proper court fee. The ends of justice demand that the question of payment of court fee by the Plaintiffs should be left open to be decided by the executing court if the State presses the point before it and if the State could rake up that point under law. At the instance of the Defendant trespasser, who has delayed the hearing of the suit for such along time I am not at all impressed with the arguments of the learned Counsel for the Petitioner regarding the -damages in the facts and circumstances of the present case. Even if the Plaintiffs opposite parties have got a decree without paying proper court fee I am not inclined to interfere with the impugned decrees of the revenue courts at the instance of the Defendant trespasser in the exercise of my powers under Article 226 of the Constitution.

14. For the foregoing discussions both the points raised on behalf of the Petitioner fail and in my opinion this writ petition is devoid of merit and is

accordingly dismissed. Parties are directed to bear their own costs.