
(2008) 03 AHC CK 0103

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11887 of 2008

Sita Ram and Others

APPELLANT

Vs

District Judge, Azamgarh and Others

RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2008) 03 AHC CK 0103

Hon'ble Judges : Krishna Murari, J

Final Decision : Dismissed

Judgement

Krishna Murari, J.—Heard learned Counsel for the petitioners.

2. Father of the present petitioners filed a suit impleading Gaon Sabha Rasoolpur and State of U.P. seeking permanent injunction to restrain the defendants from demolishing standing constructions over the land in dispute and not to interfere in the peaceful possession. During the pendency of the proceedings, respondent No. 5 moved an application under Order I Rule 10 of the Code of Civil Procedure, 1908 for being impleaded in the proceedings as defendants. Trial Court vide order dated 24.12.2001 allowed the said application. Petitioners went up in revision. Revisional Court finding that the order passed by the trial Court was cryptic order without recording any reason vide order dated 3.4.2002 allowed the same and directed the trial Court to decide the application afresh in accordance with law. After remand, there was dispute before the trial Court as to whether impleadment application is liable to be decided afresh or the same has been dismissed by the revisional Court and the suit has to proceed. Trial Court passed an order dated 29.10.2007 that application for impleadment is to be heard afresh as earlier order was set aside by the revisional Court. Petitioners again went up in revision. Revisional Court vide order dated 24.1.2008 dismissed the revision, against which present writ petition has been filed.

3. It has been urged by the learned Counsel for the petitioners that when the revisional Court allowed the revision vide order dated 3.4.2002 setting aside the

order of the trial Court passed on the impleadment application the said application stood dismissed and the trial Court is wrongly proceeding to decide the same afresh.

4. My attention has been drawn to the operative portion of the order dated 3.4.2002 where it was recorded by the revisional Court that revision is disposed of at admission stage and the impugned order is set aside. The learned Court below is directed to decide the suit according to law.

5. It has been urged by the learned Counsel for the petitioners that since there was a direction in the revision to decide the suit according to law as such application cannot be heard again and stood dismissed when the order passed by the trial Court allowing the said application was set aside. Argument is totally misconceived. A perusal of the entire judgment dated 3.4.2002 goes to show that the order passed by the trial Court was set aside on the ground that there was no specific finding recorded by the trial Court that the party was a proper and necessary party. As a matter of fact, the order passed by the trial Court was set aside by the revisional Court on the ground that it was devoid of any reasons. It appears that by mistake revisional Court instead of directing the Court below to decide the application afresh according to law the word "suit" was mentioned and the petitioners are trying to take advantage of the said mistake. The import of the entire judgment appears to be that trial Court was directed to decide the impleadment application afresh in accordance with law.

6. In this view of the matter, I find no infirmity in the order passed by the Courts below directing to decide the application for impleadment afresh. The writ petition accordingly fails and stands dismissed.