
(1965) 12 AHC CK 0009

In the Allahabad High Court

Case No : Second Appeal No's. 4008 of 1961 connected with No's. 3294, 3295 and 5314 of 1961

Smt. Indra

APPELLANT

Vs

Raj Bali Tiwari and others

RESPONDENT

Date of Decision : 22-12-1965

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B, 229C, 234A

Citation : AIR 1966 All 559

Hon'ble Judges : S.N. Singh, J

Bench : Single Bench

Advocate : R.B. Misra, for the Appellant; G.P. Dixit and Gyan Prakash, for the Respondent

Final Decision : Allowed

Judgement

S.N. Singh, J.—These four appeals arise out of a suit u/s 229C of the U.P. Zamindari Abolition and Land Reforms Act.

2. The appellant in all the four suits is the lame but there are different defendants respondents in the four appeals. The point in all the four appeals being the same and the two Courts having decided the cases by a common judgment I also propose to decide them by a common Judgment.

3. The case of the plaintiff in all the four suits in brief was that she claimed to be the bhumidhar of the plots in suit and alleged that the defendants in respective suits claimed to be asamis but as a matter of fact they were not asamis and as such it might be declared that the defendants had no concern with the plots in dispute. The defendants in these cases contested the suit on the ground that they were sirdars and in the alternative adhivasis and that they never claimed asamis rights. The allegation made in the plaint that the defendants claimed asamis rights was false.

4. The trial Court on a consideration of the evidence on the record came to the conclusion that the plaintiff was the bhumidhar and the defendants in those cases had no concern with the plots in suit and as such decreed the suit of the plaintiff with a declaration that plaintiff was the bhumidhar and the defendants had nothing to do with the plots in suit.

5. The defendants preferred appeals before the lower appellate Court and the lower appellate Court allowed the appeals and dismissed the suit solely on the ground that the suit u/s 229C was not maintainable in the circumstances of the case. The reason given by the lower appellate Court for holding that the suit was not maintainable is that the defendant in these cases never claimed asami rights but that they claimed sirdari rights or adhivasi rights in the plots in suit. According to the learned Judge if the defendants claimed to be sirdars or adhivasis the plaintiff could not file a suit u/s 229C and the proper course for the plaintiff was to have instituted the suits u/s 229B of the U.P. Zamindari Abolition and Land Reforms Act. In my opinion the view of law taken by the lower appellate Court is erroneous and cannot be upheld.

6. Section 229C of the U.P. Zamindari Abolition and Land Reforms Act is as follows.

A Gaon Samaj or a bhumidhar or sirdar of any land may sue any person claiming to be an asami of such land for a declaration of the rights of such person.

Section 234A of the U.P. Zamindari Abolition and Land Reforms Act has made section 229C applicable to the adhivasis as well. It appears that the learned Civil Judge lost sight of this provision and held that in case when the defendants claimed to be sirdars and adhivasis a suit under S. 229C of the U.P. Zamindari Abolition and Land Reforms Act was not maintainable. Even on the defence allegation that the defendants claimed to be adhivasis such a suit was clearly maintainable u/s 229C of the U.P. Zamindari Abolition and Land Reforms Act.

7. Jurisdiction of a Court or maintainability of a suit is determined on the allegation made in the plaint as has been held in *Mt. Ananti Vs. Chhannu and Others* and *D.N. Rege, Solicitor through Gopal Lal Mukhtaram Vs. Kazi Muhammad Haider and Another*, . Allegations or assertions made in the written statement cannot oust the jurisdiction or affect the maintainability of the suit. If after going into the merits of the case of the plaintiff it is found to be false and the defence contention is upheld then in that case the suit has to be dismissed as held in *Mt. Ananti Vs. Chhannu and Others* In these cases the plaintiff asserted and proved that she was the tenure-holder of the plots in suit and the trial Court was satisfied that the defendants had failed to prove any title in themselves The lower appellate Court erred in not entering into the merits of the case and decided the case on the preliminary points of non-maintainability In my opinion the suits as framed were clearly maintainable u/s 229C of the U.P. Zamindari Abolition and Land Reforms Act and the lower appellate Court should have decided that on merits.

8. Accordingly these appeals are allowed, the judgments and the decrees of the lower appellate Court in all the four cases are set aside and the cases are remanded to the lower appellate Court with a direction to readmit the appeals to their original numbers and to decide them on merits. The appellant will be entitled to her costs in all the four appeals.