
(1973) 03 AHC CK 0002
In the Allahabad High Court
Case No : Special Appeal No. 794 of 1967

Smt. Kishan Devi

APPELLANT

Vs

Joint Director of Consolidation, U.P. and Others

RESPONDENT

Date of Decision : 28-03-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1973 All 654 : (1973) 43 AWR 599 : (1973) RD 196

Hon'ble Judges : Hari Swarup, J;G.C. Mathur, J

Bench : Division Bench

Advocate : G.P. Bhargava and Sudhir Chand, for the Appellant; B.D. Mandhyan and Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Swarup, J.—This appeal has been filed against the judgment of a learned single Judge dismissing the writ petition filed by the appellant.

2. The name of Smt. Kishan Devi, appellant, was entered in the basic year in the consolidation records. Objections were filed by respondents 5, 6 and 7 to the effect that they were Sirdars and the name of Kishan Devi was wrongly entered. The objections were allowed by the consolidation authorities and the appeal filed by the appellant was dismissed. Revision filed by the appellant was also dismissed. Appellant then filed the Writ Petition. The Writ petition was dismissed.

3. The appellant had filed suit No. 585 of 1956 in the Civil Court. The suit was decreed on 3rd January 1957 on the basis of a compromise and it was decided through the compromise decree that Smt. Kishan Devi was the Sirdar in possession of the land in dispute. Subsequently, Smt. Mathuri, from whom respondents 5, 6 and 7 are claiming, filed suit No. 85 of 1957 for cancellation of the compromise decree in suit No. 585 of 1956 on the allegation that the compromise decree had been obtained by fraud. This suit was dismissed in default. The consolidation authorities took the view that the decree passed by

the Civil Court was without jurisdiction as the Civil Court could not declare Sirdari rights. The suit was for an injunction to restrain the respondent Smt. Mathuri from interfering with the possession of Smt. Kishan Devi. The Civil Court thus had the jurisdiction to entertain the suit and the decree passed by it could not be regarded a nullity or without jurisdiction. Learned single Judge did not accept the contention of the appellant that the decree in suit No. 85 of 1957 barred the plea that the decree in the earlier suit was not binding on the ground that it had been obtained by fraud or was otherwise invalid. Learned single Judge took this view because the appellant had failed to establish from the record that the subsequent suit was dismissed in the absence of both of the plaintiff and the defendant. This circumstance was relevant because if the suit had been dismissed in the absence of both the plaintiff and the defendant, fresh suit for the same relief would not have been barred, such a suit would be barred only if the defendant was present when the suit was dismissed. Subsequently, the appellant filed an application for review of the judgment and produced before the learned single Judge a copy of the order by which suit No. 85 of 1957 was dismissed. From this order it appears that the counsel and Pairokar of defendant No. 1, Smt. Kishan Devi were present when the suit was dismissed for default of the plaintiff. The application for review was, however, dismissed. In the course of the judgment on the review application learned single Judge observed that on the basis of the document showing that the defendant No. 1 was present when the suit No. 85 of 1957 was dismissed for default he would have recalled the earlier order but as the petitioner was not entitled to succeed for another reason, the order was not recalled. The reason on which the learned single Judge decided that the petitioner was not entitled to any relief was that the respondents Nos. 5, 6 and 7 had according to him perfected their title by adverse possession. According to the learned single Judge, the effect of the decree of 3rd January 1957 was that Kishan Devi was to be accepted to be in possession till that date, but on the finding of the consolidation authorities the possession thereafter would be deemed to be the possession of respondents.

4. Learned counsel for the appellant has contended that the reason given by the learned single Judge for refusing the relief to the petitioner was not correct. We are of opinion that he is right in his submission. The consolidation operations had started in 1961 and the objection had been filed on 16th June 1961. The period of six years from the date of the decree from which respondents entered into possession would, therefore, not expire before the consolidation proceedings had commenced. The respondents could not, therefore, acquire any title by adverse possession even if their possession is deemed to commence from 3rd January 1957. Learned counsel for the respondents has contended that the issue of notification under the Consolidation of Holdings Act will not arrest the running of limitation under Sections 209 and 210 of the Zamindari Abolition and Land Reforms Act. We are, however, of opinion that it was not open to the appellant to institute a suit u/s 209 of the Zamindari Abolition Act after consolidation proceedings had commenced. Section 49 bars the jurisdiction of the Court to

entertain a suit u/s 209 of the Zamindari Abolition and Land Reforms Act. If the jurisdiction of the Court is barred, no person can file a suit. Hence, the non-filing of the suit would confer no rights on the person who was in possession on the date the consolidation proceedings had started, if the limitation for a suit u/s 209 of the U. P. Zamindari Abolition and Land Reforms Act had not till then run out.

5. In view of the dismissal of suit No. 85 of 1957, in the circumstances mentioned above, it was not open to the consolidation authorities to disregard the decree passed in suit No. 585 of 1956. That decree had to be taken as finally adjudicating rights of the parties as they existed on that date. The respondents, were claiming through Smt. Mathuri and as she was bound by that decree, respondents will also be bound by the same. The orders of the consolidation authorities, therefore, suffer from manifest error of law and cannot be upheld.

6. We accordingly allow the appeal, set aside the judgment of the learned single Judge, and allow the Writ petition and quash the orders passed by respondents 1 to 4. Parties will bear their own costs.