
(2009) 05 AHC CK 0064
In the Allahabad High Court

Smt. Kunti Devi and Others

APPELLANT

Vs

Guru Ram Vishwakarma (Madhukar) and Others

RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11(d)

Citation : (2009) 3 AWC 2628 : (2009) 4 CivCC 103 : (2010) 7 RCR(Civil) 1369

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Judgement

S.U. Khan, J.—Heard learned Counsel for the petitioner and learned Counsel for the respondent No. 1 plaintiff. Through this writ petition order dated 22.8.2008, passed in O.S. No. III of 1980 and order dated 20.2.2009, passed in Civil Revision No. 207 of 2008 which was directed against the first order have been challenged and prayer of quashing the entire proceedings of the suit has also been made. Copy of the plaint is Annexure-1 to the writ petition. Respondent No. 1 is the plaintiff and petitioners and respondent Nos. 2 and 3 are the defendants.

2. Through the impugned orders application of the defendants petitioners for rejecting the plaint under Order VII, Rule 11 of C.P.C. has been dismissed. It was alleged in the said application that property in dispute is situate within the limits of a city, where Zamindari is still continuing hence it is governed by U.P. Tenancy Act, 1939 that plaintiff had also filed a suit before Revenue Court (S.D.O. Sadar, District Ghazipur) u/s 59 of U.P. Tenancy Act which had been dismissed on merit.

3. The relief in the plaint of O.S. No. III of 1980 is that defendant might be restrained from interfering in the possession of the plaintiff over the land in dispute.

4. In the application under Order VII. Rule 11 of C.P.C, it was stated that in fact plaintiff was claiming declaration of his rights under the guise of relief of permanent injunction.

5. The plaintiff respondent No. 1 filed objections and contended that land in

dispute was allowed to him and it was also mutated in the revenue records in his name through order dated 21.12.1963 which was subsequently found to be correct.

6. In the plaint it was also stated that over the land in dispute plaintiffs hut and other constructions were standing and that he had obtained the land through deed dated 26.8.1962 from one Chaudhari Mahavlr Singh, Zamindar. Defendants denied execution of any patta by Zamindar in favour of the plaintiff and claimed that they had purchased the land in dispute through registered sale deed dated 7.6.1972 from its tenant Mithai Lal and that constructions and hut standing over the land in dispute did not belong to the plaintiff but to the defendant.

7. The trial court held that through order dated 13.2.1991 it had been directed that the said question would be decided alongwith other issues after the conclusion of evidence.

8. Ultimately, the trial court held that all the questions would be decided simultaneously. Revision filed against the said order was also dismissed on 26.2.2009 by A.D.J. Court No. 3, Ghazipur.

9. The Judgment of the trial court runs into 12 pages and the judgment of the revisional court in 14 pages. The . application was extremely frivolous and resulted in wastage of lot of time. The suit is pending for 29 years. The courts below should have rejected the application through short orders and saved the time for final decision of the suit. The scope of the Order VII, Rule 11 of C.P.C. is very limited. The application under Order VII, Rule 11 of C.P.C. was filed on 31.1.2008, i.e., after 28 years of filing of the suit. The only possible clause on which application could be maintained is clause (d) of Order VII, Rule 11 of C.P.C, which is to the following effect:

Where the suit appears from the statement in the plaint to be barred by any law.

10. In the Full Bench authority of this Court in Jagannath Prasad and Others Vs. Smt. Chandrawati and Another, it has been held that plaint is to be rejected at preliminary stage and not at any other stage of suit. However, in Samar Singh Vs. Kedar Nath alias K.N. Singh and Others, it has been held that this power can be exercised even after settlement of issues.

11. However, a defendant is not at liberty to apply for rejection of plaint at his leisure and after inordinate delay. This provision cannot be used as weapon to delay the proceedings of the suit.

12. In any case it had been held that the question of bar of suit under any of the provisions of U.P. Tenancy Act would be considered at the time of final decision of the suit. There was absolutely no occasion to file application under Order VII, Rule 11 of C.P.C. after 11 years of the said direction. The application was heavily based upon the assertions made in the written statement and documents filed by the defendant. The application under Order VII, Rule 11 of C.P.C. may be allowed and plaint may be rejected under Clause (d) (supra), only and only on the basis

of averments made in the plaint.

13. In my opinion filing of the application was utter abuse of the process of the Court and sheer wastage of time of the Court. Accordingly, writ petition is dismissed with Rs. 5,000 costs. The costs shall be paid within two months from today, failing which petitioner shall not be permitted to participate in the proceedings of the suit.

14. As the suit is already 29 years old hence it shall be decided very expeditiously and on top priority basis. Absolutely no unnecessary adjournment shall be granted to any of the parties if any adjournment in any form is granted then it shall be on a very heavy cost which shall not be less than Rs. 500 per adjournment.

15. However, it is clarified that all the points raised by the defendants should specifically be dealt with in the final judgment of the suit.