
(1992) 09 AHC CK 0018
In the Allahabad High Court
Case No : First Appeal No. 560 of 1992

Smt. Mithlesh

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 03-09-1992

Acts Referred:

Civil Procedure Code Amendment Act, 1976 — Order 20 Rule 5A
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 6A, 110, 2, 2(2)
Land Acquisition Act, 1897 — Section 18, 26(2), 27(1), 54
Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam, 1965 — Section 67(1), 67(2)

Citation : (1993) 1 AWC 109

Hon'ble Judges : P.P. Gupta, J

Bench : Single Bench

Advocate : K.C. Jain and Dilip Gupta, for the Appellant;

Judgement

P.P. Gupta, J.—Office has raised an objection that the Appellant has not filed copy of the decree. The learned Counsel for the Appellant has submitted that both under the provisions of Land Acquisition Act and U.P. Avas Evam Vikas Parishad Adhiniyam (hereinafter referred to as the Adhiniyam) no decree is required to be drawn in terms of Award.

2. This appeal has been filed against an Award given in a reference u/s 18 of the Land Acquisition Act (hereinafter referred to as the "Act") passed by the District Judge. Section 26(2) of the Act says that every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of Section 2. Clause (2), and Section 2, Clause (9), respectively, of the Code of Civil Procedure, 1908. A similar provision exists u/s 67(1) of the Adhiniyam. The term "decree" has been defined under Sub-section (2) of Section 2 of the CPC as follows:

(2) "Decree" means the formal expression of an adjudication which, so far as conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final...

It is, therefore, obvious that it is only a proceeding instituted by the presentation of a plaint or a proceeding which though commenced by an application has yet been specially declared to be a suit, that will be a suit within the meaning of the Code of Civil Procedure, and it is only an adjudication of the rights of parties that will be a decree. In a reference u/s 18 of the Act, the proceedings are neither initiated on a plaint nor they are specially declared to be a suit, and as such it is not necessary to prepare a decree in terms of Award. Further, Section 54 of the Act provides for appeals in proceedings before Court. It says that subject to the provisions of the Code of Civil Procedure, 1908 applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the Award, or from any part of the Award of the Court and, from any decree of the High Court passed on such appeal, as aforesaid, an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 CPC and in Order 45 thereof. Thus this section lays down that an appeal to the High Court shall lie against the Award of the Reference Court and to the Supreme Court against a decree passed by the High Court. In this section two separate words "award" and "decree" have been used. "Award" has been used for the amount of compensation determined by the Reference Court, while the word "decree" has been used for the final adjudication of compensation, etc. in appeal by the High Court. Since an appeal before the High Court lies against the Award of the Reference Court there is no necessity of preparing a decree in terms of Award given by the Claims Tribunal. There is also no provision under the General Rules (Civil) applicable to lower courts to prepare a decree in terms of the Award of the Tribunal. Since no decree is to be prepared in terms of Award, it is provided u/s 27(1) of the Act and u/s 67(2) of the Adhiniyam that every such Award or order shall also state the amount of cost incurred by either party and by what persons and in what proportion they are to be paid.

3. There has been an amendment in the year 1976 by which Rule 5-A has been added to Order 20 of the Code. It lays down that if a party certifies that the decree has not been drawn up, an appeal may be preferred against the decree without filing a copy of the decree. As has been stated above, Appellant's contention is that it is not required under the law to prepare a decree in terms of Award.

4. In the above circumstances, I direct that the memo of appeal may be admitted in view of Order 20 Rule 6-A of the Code of Civil Procedure. The Appellant shall, however, file a supplementary affidavit giving full particulars of the parties to the reference including their full names and addresses at the time of next listing of the case.

5. Before parting with the case it may be emphasised that the Award given by Tribunal should contain full and complete particulars of the parties, the amount of costs incurred by either party and by what persons and in what proportion they are to be paid.