

(1956) 03 AHC CK 0036
In the Allahabad High Court
Case No : Misc. Writ No. 1251 of 1955

Smt. Ram Kunwar

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 29-03-1956

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47
Constitution of India, 1950 — Article 221
Uttar Pradesh Land Revenue Act, 1901 — Section 45

Citation : (1956) 26 AWR 354

Hon'ble Judges : Chaturvedi, J;Agarwala, J

Bench : Division Bench

Advocate : A.P. Pandey, for the Appellant; S.C. and Bhawani Prasad, for the Respondent

Final Decision : Allowed

Judgement

Agarwala, J.—This is a petition Under Article 221 of the Constitution.

2. The petitioner was the Plaintiff in a suit which she filed against the Respondent for their ejectment u/s 80 of the U.P. Tenancy Act. She was herself a tenant and she alleged that the Respondents had taken possession without her consent and were trespassers. The suit was decreed by the trial court. The Respondents appealed. During the pendency of the appeal execution proceedings were taken out and the Appellant was put in possession of the holding on February 6, 1953. Against these execution proceedings there was an appeal u/s 47 of the Code of Civil Procedure. This execution appeal and the appeal from the original decree both came up together for hearing before the Assistant Commissioner. The execution appeal was allowed and consequently the Respondents withdrew their appeal from the original decree. Both these things happened on the 8th of September, 1953.

3. The Petitioner then filed a revision before the Board of Revenue which dismissed the same on the 30th August 1955. A review application was also

dismissed. The Petitioner has now come to this Court and the point urged before us is that the ground upon which the appeal was allowed by the Assistant Commissioner and the revision was dismissed by the Board of Revenue was untenable. The ground on which the Assistant Commissioner allowed the appeal was that as the execution proceedings were pending when the Zamindari Abolition and Land Reforms Act came into force and Under Rule 4(2) the execution proceedings were to be stayed, the execution proceedings could not have been completed in favour of the Petitioner and the Respondents were entitled to get back possession.

4. Rule 4 runs as follows:

Section 6(i). Stay of certain suits and proceedings.--(1) All suits and proceedings whether of the first instance, appeal or revision of the nature as herein below specified, in respect of the area for which a notification u/s 4 has been issued, pending in any court for hearing, on the date of vesting, and

(2) All proceedings (except in so far as they relate to the realisation, otherwise than by ejectment of the judgment-debtor, of cost or compensation awarded in any suit or proceedings) upon any decree or order, unless it is a decree or order which became final before the date of vesting, but is not a decree which may be executed by ejectment of the judgment-debtor passed in any such suit or proceedings previous to the date of vesting shall be stayed.

(i) Appointment of lambardars u/s 45 of the U.P. Land Revenue Act, 1901.

(ii) All proceedings under Chapter VI of the U.P. Land Revenue Act, 1901.

(iii) Partition or union of mahals under Chapter VII of the U.P. Land Revenue Act, 1901.

(iv) Suits, applications proceedings (including appeals, references and revisions) relating to or pending Under Sections 15, 16, 55, 70, 71, 79(a) and (b), 80, 81, 84, 113, 114, 115, 116, 117, 118, 154, 171, 172, 190, 194 and 195 of the U.P. Tenancy Act, 1939, and Under Sections 175 and 179 of the said Act except those against persons who are asamis of the land referred to in Clause (b) of Section 202, (also suits, applications or proceedings of similar nature against Thekadars).

(v) Suits, applications and proceedings including appeals, references and revisions u/s 180 of the U.P. Tenancy Act, 1939, or similar nature pending in a civil court, except where the Plaintiff is a tenant or where the land was the Sir, Khudkasht or grove of an intermediary and in which rights have not accrued to the Defendant u/s 16 or any other section of the U.P.Z.A. and L.R. Act, 1950.

(vi) Cases of liquidation of decrees under the U.P. Encumbered Estates Act, 1934.

(vii) All cases of execution of decrees relating to debts which are wholly or partially charged upon or decreed against an estate or any part thereof.

Explanation.--For the purpose of this clause debt means--an advance in cash or in kind and includes any transaction which is in substance a debt but does not

include a debt due to--

- (i) The Central Government or "Government of any State;
- (ii) a local authority,
- (iii) a scheduled bank; and
- (iv) a co-operative society registered under the Co-operative Societies Art, 1912.

5. The contention of the learned Counsel for the Petitioner is that his case falls under Sub-rule (2) of Rule 4 which read with Clause (v) of that rule entitled him to continue the execution proceedings which were not stayed under any of the provisions of Rule 4. It appears to us that this contention is right. Rule 4 has two sub-rules. Under Sub-rule (1) certain suits and proceedings whether of the first instance, appeal or revision of the nature specified below, that is in Clauses (i) to (vii), were directed to be stayed. Under Sub-rule (2) proceedings on the basis of any decree or order in suits or proceedings mentioned in Sub-rule (1) were stayed with certain exceptions. Clauses (i) to (vii) apply to both these sub-rules. What has been stayed in Sub-rule (2) are proceedings by way of execution or otherwise taken in pursuance of any decree or order passed in suits or proceedings of the nature specified in Clauses (i) to (vii). The proper construction of Sub-rule (2), leaving out the exceptions therefrom is as follows: "All proceedings upon any decree or order passed in any such suit or proceedings previous to the date of vesting shall be stayed." The phrase "shall be stayed" really applies to both the sub-Rules (1) and (2) and should have been printed separately from Sub-rule (2), so as to apply to both these sub-rules. The word "such" in the phrase "such suit or proceedings" refers to Clauses (i) and (vii) of the rule, "Suits or proceedings" are mentioned in Sub-rule (1) and Sub-rule (1) refers to what is "given below," that is to say, in Clauses (i) to (vii). What are exempted from the operation of Sub-rule (2) are

- (1) proceedings relating to realisation of cost or compensation awarded in any suit or proceedings, and
- (2) proceedings upon any decree or order which became final before the date of vesting, except when it is a decree for ejectment of a judgment debtor.

6. A decree for the ejectment of a judgment-debtor is exempted from the exception and, therefore, is to be stayed, but it is to be stayed only if it falls under the main Sub-rule (2), that is to say, if it is covered by any of the Clauses (i) to (vii).

7. Now the present case was under Clause (v)--suits, applications and proceedings including appeals, references and revisions u/s 180 of the U.P. Tenancy Act. From this Clause (v) are excepted cases of ejectment of trespassers u/s 180 of the U.P. Tenancy Act, where the Plaintiff is a tenant or where the and was the sir, khudkasht or grove of an intermediary and in which rights have not accrued to the Defendant u/s 16 or any other section of the U.P. Z.A. and L.R.

Act.

8. The Petitioner here was a tenant and, therefore, her case was exempted from the operation of Clause (v). If it were a suit, appeal or revision, it would not have been stayed. The proceeding in execution of the decree passed in her suit was also not to be stayed upon a proper reading of Sub-rule (2) read with Clause (v).

9. Sub-rule (2) could not have reference to execution proceedings in pursuance of decrees or orders in all kinds of suits or proceedings under the U.P. Tenancy Act, even though they were not Covered by Clauses (i) to (v) of Rule 4. It will be noted that suits or proceedings mentioned in Clauses (i) to (iii) and (v) of Rule 4 were abated under Rule 5. In certain cases also suits or proceedings covered by Clause (iv) were also abated under the section.

10. If Sub-rule (2) had included proceedings outside the scope of Clauses (i) to (v), then some provision would have been made for them also as to what was to happen to them after the stay. No such provision was made in Rule 5.

11. For all these reasons we are, of opinion that Sub-rule (2) applies to proceedings upon those decrees or orders, which were passed in suits or proceedings mentioned in Clauses (i) to (vii). As a tenant's suit is excluded from the purview of Clause (v) and is not to be stayed, execution proceedings upon a decree passed in such a suit are also not to be stayed.

12. In our opinion, the Additional Commissioner and the Board of Revenue committed a manifest error in holding otherwise.

13. In the result we allow this application, quash the orders of the Board of Revenue and the Additional Commissioner and restore that of the first court. The Petitioner shall be put in possession of the disputed plots.

14. The parties will bear their own costs of the proceedings in this Court.