(2001) 07 AHC CK 0038

In the Allahabad High Court

Case No : C.M.W.P. No. 24221 of 2001

Sri Net Bharti and others — APPELLANT

Vs

Board of Revenue and others — RESPONDENT

Date of Decision : 06-07-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 41 Rule 23A, Order 41 Rule 24, Order 41 Rule 25, 100
Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331, 331(4), 341

Citation : (2001) 3 AWC 2258 : (2001) 92 RD 650

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : Krishna Mohan, for the Appellant; S.C. and V.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

R. R. Yadav, J.—Heard learned counsel for the parties.

2. Perused the order dated 15.9.1998 passed by the learned trial court, order dated 28.9.1999 passed by the first appellate court and order dated 29.5.2000 passed by the Board of Revenue-respondent No. 1, copies whereof are filed and marked as Annexures-7, 11 and I respectively to the writ petition.

3. The present writ petition is posted today for admission, but with the consent of the learned counsel for the parties, I would like to dispose it of finally at admission stage. It is conceded by the learned counsel for the parties that the present writ petition can be finally disposed of without exchanging their counter and rejoinder-affidavits.

4. From perusal of the aforesaid Annexure, it is revealed that the learned trial court has dismissed the suit filed by the plaintiff whereas in appeal, the first appellate court after marshalling the evidence available on record with reference

to law on the subject set aside the judgment and decree passed by the trial court and allowed the appeal decreeing the suit in toto. It is further revealed from the perusal of the judgment and order passed by the Board of Revenue that the second appellate court instead of making an attempt to investigate the source of findings recorded by the first appellate court and evidence discussed by it, set aside the judgment and decree passed by it and remanded the case for fresh decision to the first appellate court in a casual manner.

5. It is true that findings of fact recorded by the second appellate court should not be disturbed, provided this Court is objectively satisfied that second appellate court, while setting aside the judgment and decree passed by first appellate court, has carefully analysed the evidence on record with reference to salient points of law and facts arising in the case and then weighed the evidence in an intelligent and intelligible manner. The entire material evidence on record have been so grasped and weighed must appear from the judgment of the second appellate court especially when second appellate court is reversing the findings recorded by the first appellate court which is based on analytical discussion of the oral and documentary evidence on record giving cogent and convincing reasons in support of its findings. It is to be imbibed that in those cases where second appellate court is affirming the findings of first appellate court, general agreement with the finding recorded by the first appellate court, would be sufficient compliance of Section 100, C.P.C., but in those cases where the second appellate court is setting aside the findings of first appellate court, the second appellate court is required to meet the reasons given by the first appellate court. It is held that aforesaid principle is extendable to first appellate court where it decides either to affirm the finding of the trial court or decides to reverse the findings recorded by the trial court.

6. In my considered opinion, if the judgment passed by the Board of Revenue remanding the case to the first appellate court in the present case is put on the anvil of the aforesaid test, it would go to show that the second appellate court has neither carefully analysed the evidence on record with reference to the salient points of law and facts arising in the present case nor weighed the evidence in an intelligent and intelligible manner. It is further revealed from the perusal of the judgment given by the second appellate court that it did not make any attempt to meet the reasons given by the first appellate court while reversing its findings of fact. It is held that such perfunctory judgments passed by second appellate courts remanding the cases to the first appellate courts are assailable in writ jurisdiction under Article 226 of the Constitution and an argument contrary to it is not acceptable. To my mind, justice should not only be done, but it must appear from the judgments passed by the second appellate court to others that it is being done. In the present case Judgment passed by the second appellate court is lacking in all material particulars discussed herelnabove.

7. It is well to remember that judgment passed by Board of Revenue in second appeal is amenable to writ jurisdiction, therefore, the person aggrieved with the

judgment passed by second appellate court is entitled to demonstrate before this Court that the findings recorded by the Board of Revenue is either perverse or based on no evidence or based on erroneous non-existent reasons. Reasons are link to the conclusion and second appellate court is to record reasons after weighing the material evidence on record with reference to salient point of law and fact arising in a case. The findings of fact recorded by the Board of Revenue are binding in writ jurisdiction, hence whenever and wherever the second appellate court is reversing the findings of fact recorded by the first appellate court and remanding the case to it for fresh decision, it is to look into the mandatory provisions envisaged under Order XLI. Rules 23A, 24 and 25 of Civil Procedure Code. It is evident from perusal of the judgment passed by the second appellate court that tt has Ignored the aforesaid mandatory provisions before remanding the case to the first appellate court.

8. In the Instant case, remand order passed by Board of Revenue is also not sustainable as it has ignored the mandatory provisions envisaged under amended Section 100. C.P.C.

9. For deeper and better understanding of the aforesaid controversy involved In the present case, it would be expedient to reproduce sub-section (4) of Section 331 and Section 341 of U. P. Z. A. & L.R. Act, which read thus :

331. Cognizance of suits, etc. under this Act_____

(1) _____

(2) _____

(3) _____

(4) A second appeal shall lie on any of "the grounds specified in Section 100 of the Code of Civil Procedure. 1908 (V of 1908) from the final order or decree, passed in an appeal under sub-section (3), to the authority, if any, mentioned against it in column 6 of the Schedule aforesaid.

_____ _____ _____ 341. Application of certain Acts to the proceeding of this Act.--Unless otherwise expressly provided by or under this Act. the provisions of the Indian Court Fees Act, 1870 (VII of 1870), the Code of Civil Procedure, 1908 [V of 1908). and the (Limitation Act, 1963 (XXXVI of 1963)), (including Section 5 thereof) shall apply to the proceedings under this Act.

_____ _____ _____ 10. A conjoint reading of subsection (4) of Section 331 and Section 341 of U. P. Zamindari Abolition and Land Reforms Act, 1950. reveal that unless otherwise expressly provided by or under this Act the provisions of Indian Court Fees Act. 1870. the CPC and the Limitation Act, 1963 including Section 5 thereof shall apply to the proceedings under U. P. Zamindari Abolition and Land Reforms Act. As regards second appeal, it is mandated under sub-section (4) of Section S31 that a second appeal shall lie on any of the grounds specified In Section 100 of the CPC from the final order or decree passed in an appeal under sub-section (3). to the authority, if any. mentioned against it in column 6 of the Schedule given in the end of the Act No. 1 of 1951.

11. It is evident from perusal of the judgment impugned passed by the Board of Revenue and also conceded by the learned counsel for the parties that In the present case at the time of admission under Order XLI. Rule 11. C.P.C.. no substantial question of law was formulated by second appellate court. It is stated at the Bar that Board of Revenue while exercising Its power of second appellate court Is not formulating substantial question of law as envisaged under amended Section 100 of the CPC read with sub-section (4) of Section 331 and Section 341 of the Act No. 1 of 1951.

12. This Court takes judicial notice of the aforesaid statement made at the Bar. A mere look at the amended provisions of Section 100, C.P.C. read with sub-section (4) of Sections 331 and 341 of U. P. Zamindarf Abolition and Land Reforms Act. It Is revealed that the Board of Revenue can exercise Its jurisdiction under the provisions of aforesaid Sections of CPC and U. P. Zamindari Abolition and Land Reforms Act only on the basis of substantial questions of law which are formulated at the time of admission of second appeal under Order XLI. Rule 11, C.P.C. calling upon the respondent to argue that the case does not involve such substantial question of law as contemplated under sub-section (5) of Section 100, C.P.C. Thus, second appeals before Board of Revenue are to be heard and decided on the basis of such duly formulated substantial question of law at the stage of admission calling upon respondent to argue that no such substantial question of law is involved in a second appeal.

13. In the present case, the impugned judgment (Annexure-1 to the writ petition) passed by the Board of Revenue shows that it has been passed without following the mandatory procedure prescribed u/s 100, C.P.C. read with sub-section (4) of Section 331 and Section 341 of U. P. Zamindari Abolition and Land Reforms Act.

14. In catena of Judgments. It is held by the Supreme Court, some of them being Kshitish Chandra Purkait Vs. Santosh Kumar Purkait and others, and Sheel Chand Vs. Prakash Chand, . that the Judgment rendered by the High Court u/s 100. C.P.C, without following the procedure therein are not sustalnable.

15. The ratio decidendi laid down by the Supreme Court in the case of Kshitish Chandra (supra) and in the case of Sheel Chand (supra) are extendable in second appeals heard and decided by Board of Revenue In exercise of its jurisdiction conferred upon it u/s 100, C.P.C. read with sub-section (4) of Section 331 and Section 341 of U. P. Zamindari Abolition and Land Reforms Act. It is held that under amended Section 100, C.P.C, read with sub-section (4) of Section 331 and Section 341 of U. P. Zamindari Abolition and Land Reforms Act. existence of substantial question of law is sine qua non for exercise of power by the Board of Revenue in second appeals and such second appeals can be only heard and decided on the substantial question of law so formulated at the time of admission

after affording opportunity to the respondent or respondents, as the case may be, to argue that the appeal does not involve such substantial question of law. It is true that before amendment of Section 100, C.P.C., a second appeal was entertainable on a question of law but after amendment, a second appeal is made entertainable by Parliament only on substantial question of law. The unambiguous expression "substantial question of law" used u/s 100, C.P.C. does not require any interpretation by Courts. It is thus crystal clear that question of law is not sufficient to entertain a second appeal unless such question of law partakes the shape of "substantial question of law".

As a result of aforesaid discussion, the impugned judgment dated 25.5.2001 (Annexure-1 to the writ petition) passed by Board of Revenue remanding the case to the first appellate court is hereby set aside and the instant writ petition is allowed with a direction to the Board of Revenue to decide the second appeal afresh in accordance with law after formulating substantial question of law in the light of observations made in the body of this order.