
(2012) 03 AHC CK 0115

In the Allahabad High Court

Case No : Second Appeal No's. 2145 and 2151 of 1972

Sukhai and Others

APPELLANT

Vs

Hari Nath and Others
Sukhai Vs Hari Nath

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Specific Relief Act, 1963 — Section 31, 34
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176,
229(B), 331

Citation : (2012) 03 AHC CK 0115

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Judgement

Hon'ble Sibghat Ullah Khan, J.—Heard learned counsel for the parties. These appeals were dismissed as abated on 10.01.1984, however the said orders were recalled on 08.02.1995.

2. The legal question involved in these appeals is as to whether decree for partition of agricultural land u/s 176 of U.P.Z.A. & L.R. Act granted by the revenue court/Sub-Divisional Officer and affirmed by Additional Commissioner and in second appeal by Board of Revenue, Allahabad can be questioned/sought to be set aside by the civil court on the ground of fraud or any other ground.

3. The partition decree by the revenue court/S.D.O. was granted on 20.07.1964. First appeal filed against the same was dismissed by Additional Commissioner and thereafter second appeal was dismissed by Board of Revenue, Allahabad on 15.12.1968. However during pendency of second appeal before Board of Revenue, Allahabad, one of the suits challenging partition decree granted by the S.D.O. had been instituted in civil court in the form of O.S. No. 435 of 1968 giving rise to the instant second appeals.

4. O.S. No. 435 of 1968 was filed by Ram Nandan giving rise to the Second Appeal No. 2145 of 1972. O. S. No. 542 of 1968 was filed by Hari Nath giving rise to Second Appeal No. 2151 of 1972. Both the suits were consolidated. Hari

Nath is son of Ram Nandan. After the death of Ram Nandan, he was substituted as plaintiff in the other suit also. Both the suits were dismissed on 25.05.1971 by IV Additional Munsif, Varanasi. Against the said decrees two appeals were filed, i.e. Civil Appeal No. 285 of 1971 and Civil Appeal No. 306 of 1971. First A.D.J. Varanasi consolidated both the appeals and decided them through judgment and order dated 14.02.1972. Both the appeals were allowed. Judgments and decrees passed by the Munsif were set aside. Judgments and decrees passed by the revenue court were cancelled hence these second appeals.

5. The appellate court held that Hari Nath also had share in the agricultural plots in dispute since his birth on account of the property being ancestral property.

6. The lower appellate court entered into minute details of the claim. Hari Nath asserted that he was not made party in the partition suit u/s 176 of the U.P.Z.A. & L.R. Act. In the partition suit those persons who were recorded bhomidhars were made parties. Hari Nath was not recorded bhoomidhar. Principles of Hindu Law or Muslim Law do not apply to the agricultural lands after enforcement of U.P.Z.A. & L.R. Act. There is no concept of joint family property under U.P.Z.A. & L.R. Act. Civil Court is debarred from deciding the question of title to agricultural land by virtue of Sections 229-B and 331 of U.P.Z.A. & L.R. Act.

7. In any case the decree for partition passed by the revenue court could not be set aside by the civil court. The Supreme Court in Sita Ram Vs. C. Bhondey and Others, has held that order passed by consolidation courts cannot be set aside by civil court. Same principle applies to orders passed by revenue courts. It is only in rarest of rare case that a contested decree can be set aside in a subsequent suit. The earlier judgment of revenue court cannot be said either to be utterly without jurisdiction or based on fraud. Even independently of the earlier judgment by the revenue court decree granted by the lower appellate court is utterly without jurisdiction as the lower appellate court has decided the title of the parties to agricultural land. Even if there had not been any partition decree by the revenue court, the relief of declaration granted by the civil court would have been without jurisdiction under Sections 229-B and 331 of U.P.Z.A. & L.R. Act.

8. Reference to Sections 31 & 34 of Specific Relief Act made by learned counsel for the respondent is misplaced. Absolutely no fraud was involved. Even Ram Nandan who was party and who hotly contested the proceedings before revenue court also filed one of the two suits giving rise to the Second Appeal No. 2145 of 1972.

9. Hari Nath had further pleaded that his father was negligent in conducting the case. This plea was not open to him. Defendants appellants had contended that a person who was not party in the earlier suit could not seek cancellation of the decree passed in that suit.

10. Learned counsel for the respondent has referred to two authorities. One is

reported in Mt. Jahandar Begam and Another Vs. Chinta and the other is Uma Pandey Vs. Purshottam 1960 ALJ 676 (D.B.). The said authorities do not advance the case of the respondent. The first authority was given under U.P. Tenancy Act, 1901. In that case it was specifically held that fraud had been played before the revenue court. In the instant case Ram Nandan plaintiff in one of the suits giving rise to these second appeals was a party in the earlier revenue suit. It has not been specified by the lower appellate court that what fraud was played upon Hari Nath either by his father or by the plaintiff of the revenue suit. In the other authority of Uma Pandey Vs. Purshottam, it was held that whether the decree was obtained from the revenue court by playing fraud can be seen by the civil court. That was also a case under U.P. Tenancy Act, 1939. Under U.P.Z.A. & L.R. Act, the jurisdiction of civil court regarding declaration and partition of agricultural land is specifically barred by virtue of Section 176, 229-B and 331. Accordingly, the judgments and decrees passed by the lower appellate court are patently erroneous in law. Question involved in these second appeals is decided in favour of the appellant. Second appeals are allowed. Judgements and decrees passed by the lower appellate court are set aside. Judgements and decrees passed by the trial court are restored.