

(2007) 04 AHC CK 0167
In the Allahabad High Court
Case No : Second Appeal No. 814 of 1973

Suraj Bhan Singh and Another	Vs	APPELLANT
Bishwanath Singh and Others		RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2007) 04 AHC CK 0167

Hon'ble Judges : S.P.Mehrotra, J

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—Causelist has been revised.

2. Learned Counsel for the parties are not present.

3. It appears that Triveni Singh and others filed a Suit for partition and separate possession of various properties, as mentioned in the plaint.

4. The said Suit was registered as Original Suit No. 485 of 1954.

5. It further appears that by the judgment and order dated 10.1.1962, the Trial Court decreed the said Suit against the defendants, and directed for preparation of preliminary decree for partition accordingly.

6. Thereafter, it appears that an Appeal, being Civil Appeal No. 104 of 1962, was filed by the defendants against the said judgment and decree dated 10.1.1962.

7. The Lower Appellate Court by its judgment and order dated 6.12.1963, allowed the said Civil Appeal No. 104 of 1962.

8. The plaintiffs, thereafter, filed a Second Appeal before this Court, being Second Appeal No. 678 of 1964,

9. This Court by its judgment and order dated 13.10.1970 allowed the said Second Appeal No. 678 of 1964, and set aside the decree dated 6.12.1963 passed by the Lower Appellate Court, and remanded the case to the Lower

Appellate Court with the direction to restore the said Civil Appeal to its original number and decide the same on merits in accordance with law.

10. Pursuant to the said judgment and order dated 13.10.1970 passed by this Court in the aforesaid Second Appeal, the Lower Appellate Court decided the said Civil Appeal No, 104 of 1962 on merits by its judgment and order dated 10.11.1972.

11. By the said judgment and order dated 10.11.1972, the Lower Appellate Court allowed the said Civil Appeal, and set aside the judgment and decree dated 10.1.1962 passed by the Trial Court.

12. The Lower Appellate Court dismissed the said Suit in regard to the House in dispute scheduled at "H" with proportionate costs, whereas, the Suit and Appeal in regard to the plots in question were held to have abated under section 5 of the U.P. Consolidation of Holdings Act.

13. The Lower Appellate Court examined the evidence on record, and, inter alia, held that the ancestors of the plaintiffs had separated from the other members of the family, and the ancestors of the plaintiffs had been living in a separate house from the other members of the family after partition in the family, hence, the plaintiffs were not entitled to any share in the house in dispute.

14. It was, inter alia, further held by the Lower Appellate Court, that there was no compromise for Abadi properties left by Kaloo at all, and it was only compromise for agricultural plot on 8th June, 1946, whereby the parties divided half and half share in the Khewat and similarly share in agricultural plots were divided.

15. Thereafter, the present Second Appeal has been filed by the plaintiffs,

16. I have perused the record.

17. The Lower Appellate Court, on a consideration of the relevant material on record, has recorded various findings of fact in its judgment and order dated 10.11.1972.

18. In my opinion, there does not appear to be any illegality or perversity in the findings recorded by the Lower Appellate Court. The present Second Appeal is concluded by findings of fact and is liable to be dismissed.

19. The present Second Appeal is, accordingly, dismissed. However, on the facts and in the circumstances of the case, the parties are left to bear their own costs in the Second Appeal.