

(2015) 07 UK CK 0033
In the Uttarakhand High Court
Case No : W.P. No. 115 of 2006 (M/S)

Surendra Singh and Others	Vs	APPELLANT
Addl. Chief Revenue Commissioner and Others		RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209

Citation : (2015) 129 RD 60

Hon'ble Judges : Alok Singh, J.

Bench : Single Bench

Advocate : Alok Mehra, for the Appellant

Final Decision : Dismissed

Judgement

Alok Singh, J.—Mr. Sudhir Kumar, learned Counsel, appearing for respondent Nos. 7/1, 7/2, 7/3 and 7/4 submits that petitioners herein have filed Revenue Suit for possession under section 209 of U.P.Z.A. & L.R. Act on 22.5.1975 in the Court of Assistant Collector, 1st Class, Bhabar, Haldwani, District Nainital against Shiv Narain Singh, Bishan Singh and Dewan Singh all sons of Bachi Singh wherein State of Uttarakhand and Gaon Sabha Dhanpur were also impleaded as defendant Nos. 4 and 5; defendant No. 3 Dewan Singh had expired on 8.8.1991 during the pendency of the suit, however, his legal heirs were never substituted within time as required by Order XXII Rule 4, C.P.C.; therefore, on expiry of 90 days from the date of death of Dewan Singh, original defendant No. 3, Suit stood abated as per sub-Rule (5)(a) of Order XXII Rule 4, C.P.C. Further contends that since cause of action of all the three defendants was joint, therefore, entire suit ought to have been declared abated. Mr. Sudhir Kumar, learned Counsel for respondent Nos. 7/1 to 7/4 further contends that it seems that factum of death of Dewan Singh, original defendant No. 3 was not brought in the notice of the Trial Court, however, fact remains that suit itself was dismissed on merit by the Trial Court, vide judgment and decree dated 21.5.1998; original plaintiff/

petitioners, herein, feeling aggrieved by the dismissal of the suit, vide judgment and decree dated 21.5.1998, have preferred First Appeal No. 135/166 of 1997-98 in the Court Additional Commissioner, Kumaon impleading Dewan Singh S/o. Bachi Singh as party respondent No. 2. Mr. Sudhir Kumar, -teamed Counsel, further contends that since Dewan Singh S/o. Bachi Singh, original defendant No. 3 and respondent Nos. 2 in the First Appeal had expired during the pendency of the suit, therefore, First Appeal against the dead person, i.e. Dewan Singh, original defendant No. 3 was not maintainable; however, First Appeal was allowed by the Additional Commissioner, Kumaon, vide judgment and decree dated 14.1.2003 against the dead person, i.e. Dewan Singh, original defendant No. 3 and respondent No. 2 in the First Appeal According to Mr. Sudhir Kumar, learned Counsel for the respondent Nos. 7/1 to 7/4, judgment and decree dated 14.1.2003, passed against the dead person is nullity.

2. Mr. Sudhir Kumar, learned Counsel, further contends that Second Appeal No. 5 of 2002-03 was preferred by Surendra Singh, Kundan Singh, Smt. Shiv Narayan Singh alias Narayan Singh wife of Shiv Narain Singh by impleading therein deceased Dewan Singh, as appellant No. 4. Mr. Sudhir Kumar, learned Counsel further contends that there is no vakalatnama available on behalf of Dewan Singh in the file of (Second Appeal No. 5 of 2002-03). He further contends that since Dewan Singh had expired in the year 1991, therefore, mere was no question of filing second appeal on behalf of dead person, i.e. Dewan Singh.

3. On the other hand, Mr. Alok Mahra, learned Counsel for the plaintiffs/petitioners submits that petitioners came to know, in the year 2007 only from the applications moved by the L.Rs. of Dewan Singh, that Dewan Singh original defendant No. 3 had expired in the year 1991. He further contends that prior to 2007, it was neither in the knowledge of the plaintiffs/petitioners nor in his knowledge that Dewan Singh, original defendant No. 3 had expired in the year 1991.

4. On being asked repeatedly, Mr. Alok Mahra, learned Counsel for the plaintiffs/petitioners does not dispute the factum of death of Dewan Singh, original defendant No. 3. Learned Counsel for the petitioners in so many words admits that Dewan Singh, original defendant No. 3 had expired in the year 1991 as claimed by legal heirs of Dewan Singh, original defendant No. 3.

5. In view of the statements made by Mr. Alok Mahra, learned Counsel for the plaintiffs/petitioners that Dewan Singh had expired in the year 1991, First Appeal filed against the dead person, i.e. Dewan Singh, original defendant No. 3 was not maintainable. Consequently, judgment passed by the First Appellate Court against the dead person, i.e. Dewan Singh, original defendant No. 3 was nullity.

6. Since both the parties are admitting that Dewan Singh, original defendant No. 3 had expired in the year 1991, therefore, filing of Second Appeal on behalf of dead person, i.e. Dewan Singh, original defendant No. 3 was also not appropriate and proper, therefore, Second Appeal on behalf of Dewan Singh, original

defendant No. 3 was not maintainable. Consequently, decision passed in the Second Appeal which is impugned in the present writ petition in favour of dead person, i.e. Dewan Singh, original defendant No. 3, on the face of it, is nullity.

7. In view of the discussion made hereinbefore, judgment passed by the Trial Court after the death of Dewan Singh, original defendant No. 3 without substitution his legal heirs as well as judgment passed by the First Appellate Court against the dead person and judgment passed by the Second Appellate Court, i.e. in favour of dead person are without jurisdiction and nullity.

8. Consequently, judgment dated 14.1.2003 passed by the First Appellate Court as well as judgment dated 9.11.2005 passed by the Second Appellate Court are hereby quashed. Suit of the plaintiffs is dismissed as abated. Writ petition stands disposed of accordingly. No order as to cost.