

(2015) 04 AHC CK 0202

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 16807 of 2015

Surendra Singh

APPELLANT

Vs

Additional Commissioner (IInd), Varanasi and Others

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (2015) 5 ADJ 411 : (2015) 112 ALR 163 : (2015) 6 AWC 5686 :
(2015) 128 RD 169

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Ashish Kumar Singh and Ajay Kumar Singh, for the Appellant;
Birendra Pratap Singh and Manoj Kumar Yadav, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J—Heard Sri Ajay Kumar Singh, learned counsel for the petitioner, learned Standing Counsel for the State respondents, Sri B.P. Singh, learned counsel for the respondent Nos. 3 and 4 and Sri M.K. Yadav, learned counsel for the gaon sabha. By means of this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the orders dated 22.12.2014 passed by the Additional Commissioner (II) Varanasi Division Varanasi in Revision No. C-2014140000450 of 2014 (Surendra Singh v. Vibhuti Narain Singh and others) and order dated 17.2.2014 passed by the Sub-Divisional Officer Zamania Ghazipur in Suit No. 146/7-8-13 (Vibhuti Narain v. Shyam Chandra) filed under Section 176 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short the Act").

2. By order dated 17.2.2014, the Sub-Divisional Officer has directed to prepare the preliminary decree, whereas by the subsequent order dated 22.12.2014, revision filed by the petitioner against the preliminary decree dated 17.2.2014 has been dismissed.

3. The facts giving rise to this case are that the respondent No. 3 has filed a suit under Section 176 of the Act, which was numbered as Suit No. 146/7-8-13 (Vibhuti Narain v. Shyam Chandra) impleading Shyam Chandra and Surendra Singh as defendants. In the aforesaid suit, notices were issued and the parties have put in their appearance. The defendant No. 2 has filed written statement whereas the petitioner has not filed written statement and in absence of the written statement of the petitioner, preliminary decree was ordered to be prepared by the Sub-Divisional Officer on 17.2.2014.

4. Learned counsel for the petitioner has invited attention of the Court towards the order-sheet of the Court of the Sub-Divisional Officer. In his submissions in the aforesaid suit, eight dates were fixed. On the first date i.e. on 6.9.2013, the defendant/respondent No. 2 has filed written statement. No written statement however was filed by the present petitioner. On 13.12.2013, vakalatnama has been filed on behalf of the present petitioner by one Sri Mohd. Imran. Thereafter the date was fixed on 17.1.2014. On 17.1.2014, due to lawyer's strike, the Court proceeding did not commence and the date was fixed for 7.2.2014. On 7.2.2014, again the lawyers were on strike and 28.2.2014 was fixed.

5. It is contended that counsel for the petitioner after noting the date of 28.2.2014 the counsel left the Court and it is thereafter the application was filed by the plaintiff for proponing the date alongwith the written argument, thereupon the date was proponed by fixing 14.2.2014. On 14.2.2014, no order could be passed and it is on 17.2.2014, the order has been passed for preparing the preliminary decree. The submission of learned counsel for the petitioner is that when the petitioner went in the Court for filing written statement alongwith his counsel, then he was told by the reader of the Court to first of all examine the order-sheet and thereafter file written statement. After inspection of the order-sheet, it transpired that the date was proponed on the application of the respondent Vibhuti Narian Singh to which no notice was given to the petitioner. After coming to know the order dated 17.2.2014, the petitioner has filed revision before the Additional Commissioner (II) Varanasi Division Varanasi stating all those facts, which have been stated here in this writ petition. In the submission of Sri Singh, the Additional Commissioner has although noted the statement of facts but without recording any finding thereon has dismissed the revision. In the submission of Sri Singh, preliminary decree is an ex parte one and is outcome of the clandestine approach of the plaintiff as well as the Court.

6. Sri B.P. Singh, who appears for the plaintiff, submits that it is the dispute between the real uncle and nephew and the preliminary decree was prepared in accordance with law. In his submissions, since October, 2013, the petitioner has not filed written statement whereas in view of the provisions contained under Order VIII, Rule 1 of the Code of Civil Procedure, the written statement should be filed within a period of 30 days from the date of service of summons. In his submissions, no illegality has been committed by the Court concerned and the writ petition deserves to be dismissed.

7. However, on being confronted as to whether he is willing to file counter-affidavit or the writ petition be decided on the existing facts and law, he submits that he does not propose to file any counter-affidavit and the writ petition may be decided on merit.

8. After hearing learned counsel for the parties and perusing the record it transpires that the petitioner has put in appearance on 6.9.2013 through counsel. However, on 13.12.2014, he has changed his counsel and one Mohd. Imran has filed vakalatnama. The Court thereupon fixed 17.1.2014 for filing written statement. On 17.1.2014, there was strike of lawyers and the date was fixed 7.2.2014. On 7.2.2014, there was strike of bar and date was fixed for 28.2.2014. It is stated that the counsel for the petitioner has noted the date of 28.2.2014 and left the Court but on the application of the plaintiff for preponing the date alongwith written argument, the date was preponed by fixing 14.2.2014. On 14.2.2014, no order was passed. It is contended that at no point of time, opportunity to file written statement has been closed by the Court concerned and everything is ex parte.

9. I find substance in the submissions of learned counsel for the petitioner as the Court has never closed the opportunity of the petitioner to file written statement and the date was preponed without there being any notice to the petitioner and on the basis of written argument filed by the plaintiff/respondent, order for preparing the preliminary decree was passed. The procedure adopted by the Sub-Divisional Officer is patently illegal and it cannot be sustained in the eye of law. The revisional Court too did not address on the issues involved, therefore the Courts below have erred in exceeding its jurisdiction and passing the order for preparing the preliminary decree and dismissing the revision.

10. However, another aspect of the matter cannot be brushed aside as the petitioner for the first time has put in appearance in September, 2013 through counsel and did not file written statement upto November, 2013 and got his counsel changed. Again he has not filed written statement.

11. Order VIII, Rule 1 of the Code of Civil Procedure provides that written statement is to be filed within thirty days from the date of service of summons. According to the proviso to this Rule, in case, the defendant fails to file written statement within thirty days, it may be filed after extension of the time granted by the Court but not later than ninety days from the date of service of summons.

12. While interpreting Order VIII, Rule 1 of the Code of Civil Procedure, this Court in Smt. Muneshra Devi and Others Vs. Smt. Chandrawati Devi @ Chanara Devi and Another, (2013) 9 ADJ 574 : (2014) 104 ALR 802 : (2013) 101 ALR 90 : (2014) 124 RD 261 : (2013) 121 RD 436 , taking note of the decision of the Apex Court in Smt. Rani Kusum Vs. Smt. Kanchan Devi and Others, AIR 2005 SC 3304 : (2005) 4 CTC 809 : (2005) 7 JT 409 : (2005) 141 PLR 627 : (2005) 6 SCC 705 : (2005) 2 SCR 752 Supp : (2005) 2 UJ 1270 : (2005) AIRSCW 3985 : (2005) 5 Supreme 620 , Salem Advocate Bar Association, Tamil Nadu Vs. Union

of India (UOI), AIR 2005 SC 3353 : (2005) 3 ARBLR 81 : (2005) 6 JT 486 : (2005) 6 SCC 344 : (2005) 1 SCR 929 Supp : (2005) AIRSCW 3827 : (2005) 5 Supreme 236 and Kailash Vs. Nanhku and Others, AIR 2005 SC 2441 : (2005) 3 CTC 355 : (2005) 4 JT 204 : (2005) 141 PLR 558 : (2005) 4 SCC 480 : (2005) 3 SCR 289 , has held that in the event of failure to file written statement as required under Order VIII, Rule 1 of C.P.C., the period of ninety days can be extended in appropriate circumstances.

13. Considering the facts of this case noted, herein above, I find it appropriate to grant one more opportunity to the petitioner of four weeks to file written statement from the date of receipt of certified copy of the order of this Court. In the result, the writ petition succeeds and is allowed. The impugned orders dated 22.12.2014 passed by the Additional Commissioner (II) Varanasi Division Varanasi in Revision No. C-2014140000450 of 2014 (Surendra Singh v. Vibhuti Narain Singh and others) and order dated 17.2.2014 passed by the Sub-Divisional Officer Zamania Ghazipur in Suit No. 146/7-8-13 (Vibhuti Narain v. Shyam Chandra) are hereby quashed. The petitioner, herein, is directed to file written statement within a period of four weeks from the date of receipt of certified copy of the order of this Court. The Court below is directed thereafter to proceed in accordance with law and pass a fresh order regarding preliminary decree after hearing both the sides expeditiously without granting any unnecessary adjournments to the learned counsel for the parties.