(2015) 04 AHC CK 0116

In the Allahabad High Court

Case No : Writ-C No. 3723 of 2015

Sushila APPELLANT

Vs

Additional Commissioner, Azamgarh and Others RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229-B

Citation : (2015) 127 RD 691

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Manish Dev Singh, for the Appellant; Om Prakash Tripathi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.—Heard Sri Manish Dev Singh learned Counsel for the petitioner and Sri Rajesh Kumar holding brief of Sri Om Prakash Tripathi learned Counsel for the respondents. This petition has been filed challenging the orders dated 27.8.2014 passed by the respondent No. 1, the Additional Commissioner (Administration), Azamgarh in Revision No. 642/735/A of 2013 affirming the order dated 24.1.2013 passed by the Deputy Collector, Sadar, Azamgarh directing Amaldaramad on the basis of a final order passed in proceedings under section 229-B of the U.P. Zamindari Abolition and Land Reforms Act.

2. The facts of the case are that one Ram Sagar Singh father and predecessor in interest of respondents No. 13 to 15, filed a suit against one Ahmad Raza and others for declaration regarding fourteen plots having an area 3.256 hectare which was numbered as Suit No. 141 of 1964. This suit was decreed ex-parte and the ex-parte decree was duly recorded in the revenue records.

3. Ahmad Raza filed a restoration application which was allowed on 23.7.1966 and the suit was restored to its original number. Subsequently, one of the defendants Mumtaz Raza died. Since no substitution application was filed, the

suit was ordered to abate vide order dated 28.5.1973. Against the order abating the suit, a review application was filed but was dismissed. Thereafter, Ram Sagar Singh preferred an appeal before the Commissioner who allowed the same and remanded the matter back to the Trial Court for a fresh decision.

4. After remand, the Trial Court by its judgment and decree dated 20.3.1975 dismissed the suit. The consequential Appeal No. 35-A/75 filed by Ram Sagar Singh was dismissed on 25.11.1978. This order and therefore, the dismissal of the suit itself, is stated to have become final not having been challenged any further.

5. After the dismissal of the suit, an application was filed by one Tahira Begum for expunging the name of Ram Sagar Singh which had been incorporated on the basis of the ex-parte decree in his favour. This application was dismissed for default on 17.8.1981. The restoration application filed on 21.12.1981 was also dismissed for default on 11.4.1983. Yet again a restoration application was filed on 30.4.1983 which again was dismissed for default on 15.2.1988.

6. It appears that on 16.2.2012 an application was filed by Irfan Ahmad, respondent No. 4. This application was filed on the basis of a family settlement arrived at in a partition suit and certain sale deeds executed by the custodian. The prayer in the application was that since the suit of Ram Sagar Singh had been dismissed finally his name incorporated on the basis of the ex-parte decree in his favour, was liable to be expunged and the names of the original tenure holders were liable to be reentered but since in the meantime the originally recorded tenure holders had died and judgment in a partition suit was passed on the basis of a family settlement and also because certain sale deeds had been obtained by the heirs of the original tenure holders from the custodian, the name of such persons was liable to be entered in the revenue records after expunging the name of the heirs of Ram Sagar Singh.

7. The Deputy Collector by the order date 24.1.2013 directed that a Parvana Amaldaramad be issued for incorporating the names of the persons mentioned in the application dated 16.2.2012, as the orders passed in the suit filed by Ram Sagar Singh, dismissing the same, had attained finality.

8. Aggrieved by this order directing Amaldaramad in the revenue records Panmati, respondent No. 13 filed a Revision No. 642/735/A of 2013 which has been dismissed. Hence, this writ petition.

9. By this very same order dated 27.8.2014 the Additional Commissioner has also allowed an appeal filed by Sadiq Raza and others. It is admitted in the writ petition that against this part of the order, allowing the appeal, a second appeal is pending consideration before the Board of Revenue. It is therefore, clear that the order dated 27.8.2014 insofar as it relates to Appeal No. 145/158/168/A of 1979, the same is not in challenge in this writ petition.

10. The submission of learned Counsel for the petitioner is that in effect the

application dated 16.2.2012 sought execution of a judgment and decree passed 32 years back. Relying upon Article 137 of the Limitation Act, it has been submitted that the limitation for execution of a decree is three years but by the order passed by the Deputy Collector a decree was being executed after a lapse of 32 years and the order therefore is without jurisdiction. Additionally it has also been submitted that the earlier application for execution was dismissed and the repeated restoration applications were also dismissed for default. This fact was not disclosed by Irfan Ahmad in his application dated 16.2.2012 and therefore, also, his application was liable to be dismissed on the ground of concealment of material facts. Lastly, it has been submitted that the revision has been dismissed holding it to be not maintainable which is also patently incorrect.

11. I have considered the submissions made by learned Counsel for the parties and have perused the record.

12. Perusal of the record and the facts noticed above clearly establish that the name of the respondent Nos. 13 to 15 who are the daughters of Ram Sagar Singh have been incorporated in the revenue records consequent to the death of Ram Sagar Singh. The name of Ram Sagar Singh himself had came to be recorded on the basis of an ex-parte decree in his favour. This ex-parte decree was admittedly set aside and thereafter the suit itself came to be dismissed and such dismissal has attained finality. In these circumstances, the Courts below have committed no illegality in issuing Parvana Amaldaramad for expunging the name of Ram Sager Singh and his heirs and for recording the name of heirs of the defendants taking into consideration the subsequent developments, alleged in the application itself.

13. Insofar as the submission that the order passed by the Deputy Collector amounts to execution of orders passed in a declaratory suit, it would suffice to state that the submissions made by learned Counsel for the petitioner are entirely misconceived. Orders passed in a declaratory suit are necessarily to be implemented by the revenue authorities and the same cannot be termed as execution. It is the duty of revenue authority to implement such orders in the revenue records and no application for such implementation is necessarily required. The matter in any case, is one of the reversal of an entry made in the revenue records on the basis of an order, which has admittedly been set aside. The basis of an entry made, having ceased to exist, the earlier entry must be necessarily restored.

14. Rule 39 of the Revenue Court Manual provides that in any case in which the effect of the order or decree passed by a Court involves a change in the Patwari''s records other than a change in the Khewat'' the Court shall draw up a separate order in the prescribed form giving full details of the entries to be made and the entries to be expunged and direct the Tehsildar to have the new entries recorded in the Patwari''s papers. It is clear from said provision that once an order is passed it is the duty of the Court to ensure that the relevant revenue entries are corrected. It is thus clear that since no application by the person in

whose favour the order has been passed is contemplated and therefore there can be no limitation for the same. Accordingly, the submissions of learned Counsel for the petitioner that the application filed in the year 2012 was barred by limitation as it sought to implement a decree passed 32 years ago cannot be accepted. Since it was the duty of the Court concerned to get the revenue entries corrected and the Court appears to have failed to perform its duty, the application filed by Irfan was rightly allowed. This view is supported by a Division Bench decision of this Court in the case of Nanhun Vs. Deputy Director of Consolidation, AIR 1973 All 360 : (1973) 43 AWR 1 : (1973) RD 146 .

15. Since in view of the provision contained in Rule 39 of the Revenue Court Manual it is the duty of the Court to issue an order in the prescribed form directing the Tehsildar to correct the entries in pursuance of the order passed by the Court itself, the impugned order directing for correction of entries, in case they had not been corrected is merely a consequential order and therefore the same cannot be held to be revisable. Under the circumstances, the impugned order insofar as it dismisses the revision of the petitioner holding it to be not maintainable also cannot be faulted with. Accordingly and for the reasons that the submissions of learned Counsel for the petitioner have been repelled, the writ petition must necessarily fail and is therefore dismissed.