
(1999) 11 AHC CK 0168

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 1826 of 1999

Tarabi and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 11-11-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145

Criminal Procedure Code, 1973 (CrPC) — Section 482

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 229B

Citation : (1999) 3 ACR 2701

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Rahaul Sripat, for the Appellant; R.S. Verma and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

B.K. Rathi, J.—This is a petition u/s 482. Code of Criminal Procedure to quash the orders dated 1.12.98 and 22.5.99 passed by the S.D.M., Rampur in Case No. 13 of 1997 u/s 145. CPC and Special Judge, Rampur in Criminal Revision No. 194 of 1997 by which they have held the opposite party No. 2 to be in possession of the disputed agricultural land.

2. I have heard Sri Rahul Sripat, learned Counsel for the Petitioners and Sri R.S. Verma. learned Counsel for the opposite parties and perused the record.

3. The contention of the learned Counsel for the Petitioners is that the plots in dispute are plot Nos. 101, 277, 279, 285 and 286 situated in village Paimpur, Tehsil Sadar, district Rampur. Regarding these plots, the Petitioner filed a suit for injunction to restrain the opposite party No. 2 from interfering in the possession of the Petitioners over the said plots. The said suit was decreed on 15.3.89 by the IVth Additional Munsif, Rampur and the copy of the judgment is Annexure-2. It is, therefore, contended that the rights of the parties have been decided by the civil court and, therefore, the proceedings u/s 145, CPC are not maintainable and

the impugned orders are liable to be quashed. The learned Counsel in support of his case referred to Smt. Neelam Singh and Anr. v. State of U.P. 1999 (1) JIC 607 (All). It was held that if the rights of the parties have been decided by the civil court, the proceedings u/s 145, CPC cannot be taken.

4. As against this, the contention of opposite party No. 2 is that all the plots in dispute originally belonged to Smt. Allahrakhi, who died in the year 1976. That she was a prostitute and had illicit relations with Anwar Ali, father of Tarabi, Petitioner No. 1. On the basis of the said relations, Anwar Ali posed himself as husband of Allahrakhi and filed a suit under Sections 229B and 209, U.P.Z.A. and L.R. Act before the S.D.M., Rampur, which was numbered as Case No. 32 of 1987-88, which was decided against him and the appeal was also dismissed. However, Board of Revenue has set aside both the judgments and remanded the case on 29.1.96, which is still pending. Anwar Ali died and in his place Tarabi was substituted and other Petitioners are relations of Tarabi. That opposite party No. 2 is the daughter of Allahrakhi. Allahrakhi died in the year 1976 and after her death, the name of opposite party No. 2 was recorded in her place and she continued to be in possession. It is contended that the suit was decreed ex parte by IVth Addl Munsif, Rampur, and no information was given to opposite party No. 2, that the Petitioners were not recorded as tenure-holders of the land in dispute and, therefore, the civil court had no jurisdiction to issue injunction in respect of agricultural land. That the decree relied on by the learned Counsel for the Petitioners is, therefore, without jurisdiction.

5. The learned Additional Sessions Judge has considered the matter in great detail and has held that after the death of Smt. Allahrakhi in the year 1976, the name of the Petitioner was recorded over the land in dispute and she was cultivating the land. That the Petitioners filed a suit under Sections 229B and 209, U.P.Z.A. and L.R. Act, which was dismissed and the appeal was also dismissed, but in revision the matter has been remanded back and is still pending. Opposite party No. 2 is the recorded tenure holder and no order has been passed in the suit in favour of the Petitioners. The suit under Sections 229B and 209, U.P.Z.A. and L.R. Act was pending in the meantime an ex parte order was obtained from the civil court on 15.3.89. That order was without jurisdiction. The learned Additional Sessions Judge has rightly ignored that decision. A decision without jurisdiction can be ignored in proceedings u/s 145, Code of Civil Procedure.

6. In the circumstances, it cannot be doubted that opposite party No. 2 is in possession of the land in suit and, therefore, she was rightly declared in the possession.

7. I do not find any ground to interfere in any of the orders. The petition is dismissed.