

(2011) 11 AHC CK 0399
In the Allahabad High Court
Case No : Writ - C No. - 64685 of 2011

Tilak Dhari And Others

APPELLANT

Vs

B.O.R. And Others

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

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

Citation : (2011) 11 AHC CK 0399

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Amreshwar Pratap Sahi, J.—Heard learned counsel for the petitioner.

2. This writ petition questions the order passed by the Revising Authority as affirmed by the Board of Revenue in relation to the restoration proceedings of two suits filed u/s 229-B of the U.P.Z.A. & L.R. Act, 1950.

3. The background in which the restoration came to be filed is that two suits were filed and the same are alleged to have been consolidated and compromised on the basis whereof a degree was came to be passed on 1.5.1999.

4. The respondent nos.4 and 5 are the defendants in the suit. The said respondents moved an application for restoration on 18.6.99 contending that the compromise is forged and that they had not entered into any such compromise. Therefore the degree and judgment deserves to be set aside.

5. The Trial court passed an interim order staying the operation of the judgment and degree dated 21.6.99. Aggrieved by the aforesaid order, two revisions were filed against the said interim order. The revisions were dismissed but at the same time the restoration application was allowed and the judgment and degree dated 1.5.1999 was set aside.

6. Aggrieved the petitioner approached the Board of Revenue along with

Mahadev son of Sukhnandan. The Board of Revenue also affirmed the order passed by the Commissioner, hence this writ petition.

7. The contention raised by the learned counsel for the petitioner is that the Commissioner could not have proceeded to allow the restoration application which was within the jurisdiction of the trial court where the same was pending. Learned counsel for the petitioner submits that the revision had been filed only against an interim order therefore the revising authority should not have traveled beyond its scope to allow the restoration itself. Therefore the impugned order is erroneous and the confirmation of the same by the Board of Revenue being equally in default the same also deserves to be set aside.

8. Having heard learned counsel for the petitioner and the learned standing counsel the contention raised on behalf of the petitioner technically to that extent appears to be correct, yet on a further and closure examination, the revising authority appears to have summoned the record and has found as a matter of fact, that a material irregularity was committed by the trial court while proceeding to pass the interim order. There was nothing recorded about the service of notice on the defendants in the suit. This finding could not be successfully assailed by the petitioner before the this court.

9. The second finding recorded is that the alleged compromise was simply kept on the file and it appears that there is a thumb impression of Mahadev. While contesting the revision, this version of the status of Mahadev that he was an illiterate person has been disbelieved as he has signed papers. This has also prevailed upon the revising authority to have entered into the merits of the matter where after the restoration itself has been allowed. Learned counsel for the petitioner was unable to point out any basic infirmity in the said finding as recorded by the revising authority.

10. In such a situation technically learned counsel for the petitioner may be correct yet I am not inclined to interfere with the impugned order as substantial justice has been done between the parties.

11. The writ petition is dismissed.