

(2005) 05 AHC CK 0195

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 39743 of 2005

Udan Singh, Chandra Bhushan Singh, Dharam Pal Singh and
Indresh Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 23-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, Order 9 Rule 13, 100, 100(3), 104
Limitation Act, 1963 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B, 331, 341

Citation : (2005) 4 AWC 3386 : (2005) 99 RD 217 : (2005) 2 RD 217

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : K.K. Tripathi, for the Appellant; V.K. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—Heard learned counsel for petitioners.

2. A Suit instituted by petitioners u/s 229-B of U.P.Z.A. and L.R. Act was decreed ex parte. Application for restoration against the ex parte decree filed by defendant- respondent was rejected by trial court, but was allowed by appellate court. The order allowing the appeal and restoration application is impugned in the present writ petition.

3. Learned counsel for petitioners urged that the appeal was not maintainable under U.P. Zamindari Abolition and Land Reforms Act and an order allowing restoration application in appeal is unsustainable in law. Impugned order is liable to be quashed.

4. Duly considered the arguments of learned counsel for petitioners and perused the record.

5. Section 341 of U.P.Z.A. and L.R. Act and Order 43 Rule 1 (d) are quoted below for reference:

341. Application of certain Acts to the proceeding of this Act- Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court Fees Act, 1870, (VII of 1870), the CPC 1908, (V of 1908), and the Limitation Act 1963 (including Section 5 thereof) shall apply to the proceedings under this Act.

Order XLIII- Appeals from orders:

1. Appeal from orders- An appeal shall lie from the following orders under the provisions of Section, 104, namely-

Rule 1 (d) - an order under Rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set aside a decree passed ex parte.

6. Section 341 of U.P.Z.A. and L.R. Act makes it clear that provisions of C.P.C. are applicable to the extent that if there is no provision under the U.P.Z.A. and L.R. Act. Order 43 Rule 1 (d) of C.P.C. makes it clear that an order rejecting restoration application is appealable.

7. Section 331 of U.P.Z.A. and L.R. Act is also necessary to be quoted for reference:

331. Cognizance of suits, etc, under this Act.- (1) Except as provided by or under this Act no court other than a court mentioned in column 4 of Schedule II shall, notwithstanding anything contained in the CPC 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in column 3 thereof or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.

(2) Except as hereinafter provided no appeal shall lie from an order (or decree) passed under any of the proceedings mentioned in column 3 of the Schedule aforesaid.

(3) An appeal shall lie from any decree or from an order passed u/s 47 or an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908), or in Order 43, Rule 1 of the First Schedule to the Code passed by a court mentioned in column No. 4 of Schedule II to this Act in proceedings mentioned in column No. 3 thereof to the court or authority mentioned in column No. 5 thereof)

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under Sub-section (3), to the authority, if any, mentioned against it in column 6 of the Schedule aforesaid).

8. Since an order under Order 43 Rule 1 (d) of C.P.C. rejecting restoration application was passed, therefore, against said order, appeal lies u/s 331 of

U.P.Z.A. and L.R. Act. In view of the above, appeal u/s 331 of U.P.Z.A. and L.R. Act was rightly filed. I also considered the finding recorded by appellate court on merits. Finding was recorded on the basis of appraisal of evidence of the parties. There is no perversity or any infirmity in the order of appellate court.

9. Now parties have been provided opportunity to complete their pleadings, lead evidence and of hearing in support of their respective cases.

10. Learned counsel for petitioners then urged that a direction may be issued to decide the suit as early as possible.

11. Considering the facts of the case. I am of the view that suit be decided expeditiously.

12. With the above observation, writ Petition is dismissed.