
(2010) 08 AHC CK 0213
In the Allahabad High Court

Uma Shanker Tiwari and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Limitation Act, 1963 — Section 5

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

Citation : (2010) 08 AHC CK 0213

Hon'ble Judges : S.C. Chaurasia, J

Bench : Single Bench

Judgement

S.C. Chaurasia, J.—Heard learned Counsel for the petitioners, Sri R.K. Upadhyay, learned Counsel for opposite party No. 4, learned Standing Counsel and perused the record.

2. This writ petition under Article 226 of Constitution has been filed with the prayer that a writ, order or direction in the nature of certiorari may be issued quashing the impugned order dated 14-06-2010 passed by the opposite party No. 2 in revision No. 82/2009-2010, Uma Shanker and Ors. v. Ashok Kumar and Ors. and the order dated 29-03-2010 passed by opposite party No. 3 and the order dated 09-05-2005 passed by Sub. Divisional Officer, Patti, district-Pratapgarh in suit No. 154/80, contained as Annexure Nos. 1, 2 and 3 to the writ petition.

3. Learned Counsel for the petitioners has submitted that opportunity of hearing was not provided to the petitioners and the suit was decreed ex-parte, although, a general date was fixed due to strike of lawyers. He has further submitted that an application for restoration moved on behalf of petitioners was rejected by the courts below illegally and hence, the application for restoration may be remanded with a direction that it may be disposed of afresh in accordance with law.

4. Learned Counsel for opposite party No. 4 has submitted that the suit for partition was decreed ex-parte and the preliminary decree dated 09-05-2005 was

passed after service of notices on the petitioners. He has further submitted that an application moved on behalf of petitioners for setting aside order dated 09-05-2005 was time-barred and it was not maintainable, as no application u/s 5 of the Limitation Act was moved for condonation of delay. He has further submitted that the petitioners and the opposite party No. 4 are real brothers and their shares have not been disputed and hence, no useful purpose would be served by remanding the restoration application for disposal afresh.

5. From perusal of record, it transpires that the suit for partition u/s 176 of the U.P.Z.A. and L.R. Act was filed against the petitioners and notices were issued against them but after service of notices, no objection/Written Statement was filed on their behalf and hence, the case was directed to proceed ex-parte against them vide order dated 04-05-2005 and after hearing the plaintiff, 09-05-2005 was fixed for delivery of ex-parte judgment, contained as Annexure No. 5 to the writ petition. The copy of order-sheet dated 09-05-2005, indicates that lawyers were absenting themselves from judicial work and hence, a general date i.e. 21-07-2005 was fixed and thereafter, ex-parte judgment dated 09-05-2005 was delivered. The petitioners moved an application on 14.07.2005 for setting aside the order dated 09-05-2005 and for grating time to file objection. Learned S.D.O., Patti, Pratapgarh has rejected the said application, being time barred, on the ground that neither any affidavit nor other evidence was filed by the petitioners in support of the said application and the application u/s 5 of the Limitation Act was also not moved for condonation of delay. Feeling aggrieved by the said order, the petitioners filed the revision in the court of Additional Commissioner (Ist) Allahabad Division Allahabad. Learned Additional Commissioner, after considering the record and hearing learned Counsel for the parties, dismissed the revision at the admission stage.

6. Learned Counsel for the petitioners has submitted that on 09-05-2005, when a general date, i.e. 21-07-2005, was fixed due to strike of lawyers, there was no justification for delivering ex-parte judgment on that date.

7. From perusal of the order dated 04-05-2005, it transpires that 09-05-2005 was fixed for delivery of ex-parte judgment and it was delivered on 09-05-2005 itself, although, after fixing a general date due to lawyers' strike. It may be an irregularity, but, it would not vitiate the judgment as it was delivered on the date already fixed. In the preliminary decree, shares of petitioners and the opposite party No. 4 have been defined and learned Counsel for the petitioners have not been able to dispute the shares of the parties defined in the preliminary decree.

8. Learned courts below have given valid reasons for rejecting the restoration application moved on behalf of the petitioners for setting aside the impugned order dated 09-05-2005. Under these circumstances, no useful purpose would be served by remanding the restoration application for disposal afresh, particularly, when the shares of the parties in property in suit are not disputed.

9. The grievance of the petitioners is that the petitioners have not been able to

put up their case before the concerned court in respect of the specific plots, which are in their possession. Learned S.D.O., Patti, Pratapgarh is expected to provide reasonable opportunity to the petitioners to put up their case, while effecting the partition of specific plots in the property in dispute.

10. I do not find any manifest error of law in the impugned orders warranting interference by this Court in exercise of its writ jurisdiction. The writ petition is devoid of merit and it is dismissed accordingly.

11. However, the opposite party No. 3, Sub. Divisional Officer, Patti, District-Pratapgarh is directed to provide reasonable opportunity of hearing including the opportunity to produce evidence, if any, to the petitioners in the proceedings initiated for preparation of final decree in pursuance to the preliminary decree in question.