
(2006) 04 AHC CK 0080

In the Allahabad High Court

Case No : Civil Revision No"s. 413 and 427 of 2002

Union of India (UOI)

APPELLANT

Vs

Smt. Harnandi Devi

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 1(2), Order 14 Rule 1(3), 115

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331

Citation : (2006) 3 AWC 2216 : (2006) 2 RD 54

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : V.K. Goel and Pankaj Lal, for the Appellant; W.H. Khan, N.K. Sharma, Raj Kumar Jain, Pankaj Mithal, Rahul Jain, Madan Mohan and S.K. Tyagi, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—These two revisions were heard together and are being disposed of by a common Judgment. This is plaintiffs revision of ordinal Suit No. 52 of 1998 in which the opposite party is the defendant.

2. The Revision No. 413 of 2002 is directed against the order dated 8th March. 1998 by which the trial court rejected the application No. 68C of the plaintiff to hear and decide question of jurisdiction as a preliminary issue.

3. Civil Revision No. 427 of 2002 is directed against the order of 3rd of April, 1999, rejecting the application No. 70C of the plaintiff whereby the court below has refused to frame two additional issues as proposed by the plaintiff.

4. Suit No. 52 of 1998 giving rise to the present revision has been filed on the pleas inter alia that the plaintiff Union of India is the owner in possession of new plot Nos. 439, 440, 421, 422 and 417 in village Doyami Park, Tehsil Hapur, Distt. Ghaziabad, the Northern Railway, Moradabad Division was earlier known as East

India Railway which was taken by the Union of India and thus the plaintiff acquired the title of the aforesaid plots; these plots were used for Railway Lines Station, Staff Quarters and for other activities connected with the Railway; in the year 1996 the Naib Tehsildar, Hapur on the basis of auction Sales Certificate of the 1946 by East India Railway mutated the name of defendant; the said mutation order is void and illegal. The relief of declaration that the defendant does not acquire any right, title or interest over the property in dispute on the basis of auction sale certificate dated 23rd of 1946 (the month has not been mentioned in the copy of the plaint filed before this Court) and for permanent injunction restraining the defendant, her agents, servants and relatives from Interfering in the peaceful possession of the plaintiff over the disputed property, have been claimed.

5. The suit is being contested by the defendant on number of pleas including that the jurisdiction of civil court is barred in view of Section 331 of U.P.Z.A. and L.R. Act. It has been pleaded that the plaintiff has got raised her house since the last 13 years and the disputed property was sold by East India Railway Company by means of auction dated 22/23 April, 1948 and it was never vested in the present plaintiff. The auction took place as the Railway was not utilizing the said land and for it, it was waste land which was declared as such on or before 1920 when the Railway got removed its lines from the disputed land and constructed new Railway Line which is still in operation.

6. On the basis of the pleadings of the parties, the trial court framed eight issues out of them Issue No. 4 is to the effect that whether the present suit is not maintainable in view of Section 331 of U.P.Z.A. and L.R. Act. The plaintiff by means of application 68C pressed that Issue No. 4 be decided as a preliminary issue. The court below by means of its order dated 8th March, 1999, which is under challenge in the present revision has held that It Is not appropriate to decide aforesaid issue as a preliminary Issue as it requires evidence. The Court was of the view that since the date for recording of evidence has already been fixed, the plaintiff may produce the same and the issue shall be decided thereafter. Against this order the Revision No. 413 of 2002 has been filed.

Revision No. 413 of 2002

7. Shri V.K. Goyal, learned Counsel for the applicant, submitted that the court below was not Justified in not deciding the aforesaid issue as a preliminary issue and postponing its decision only after recording of evidence. He submitted that if the aforesaid Issue is decided against the present applicant it would immediately take the necessary legal steps before court of competent jurisdiction. In contra, Shri Pankaj Mithal, submitted that the revision is not maintainable as it is against an interlocutory order. Elaborating the argument it was submitted that the decision of the court below does not amount to "case decided" within meaning of Section 115 of the Code of Civil Procedure.

8. Shri V.K. Goyal also submitted that the plaintiff does not propose to give any

evidence on the aforesaid issue and since the said issue has been framed on the basis of allegations made in the written statement, it is appropriate that the Issue relating to jurisdiction should be decided first.

9. There is dispute between the counsel for the parties on the question as to whether the evidence of the parties has been closed or is still to be recorded. Shrt Pankaj Mithal submitted that evidence of plaintiff has already been closed vide order dated 1st of February, 2000. The said order has been confirmed in revision by the High Court. Undaunted by the failure of the revision, the plaintiff filed Writ Petition No. 34370 of 2000, Union of India v. Smt. Harnandi, challenging the order dated 1st of February, 2000 and the writ petition has been dismissed vide judgment and order dated April, 13, 2005. Reference in this connection was made to the contents of para 10 of the counter-affidavit sworn by Shri R.K. Tyagi, filed alongwith the stay vacation application No. 120206 of 2005. However, in reply Shri Goyal submitted that although that writ petition has been dismissed but the Court has permitted the plaintiff to lead the evidence. In the absence of the copies of relevant orders and judgments referred to above, it is not possible to say anything further in the matter. Be that as it may it is for the trial court to take a decision in this regard.

10. Coming to the objection raised by Shri Pankaj Mithal that the revision is not maintainable as the court below has decided nothing and has just postponed the decision of Issue No. 4 to a subsequent date, there is substance in his argument that such an order does not amount to "case decided" within meaning of Section 115 of C.P.C., 1908. In the case of Baldevdas Shivilal and Another Vs. Filmistan Distributors (India) P. Ltd. and Others, wherein Supreme Court has held that every order of the Court in the course of suit does not amount to a case decided. A case can be said to be decided if the Court adjudicates same rights or obligations. Every order in the suit cannot be regarded as a case decided within the meaning of Section 115. C.P.C. Orders passed merely for the progress of proceedings are not orders deciding a case. They are steps towards the final adjudication of the case, and only regulate the procedure and do not affect any right or obligation of the parties.

11. In the case of M.L. Sethi v. R.P. Kapoor AIR 1970 SC 2379, it has been held that the jurisdiction of High Court u/s 115 is a limited one. The section is not directed against conclusion of law or fact, in which question of jurisdiction is not involved.

The section empowers the High Court to satisfy itself on these matters?(a) the order of the subordinate court is within jurisdiction, (b) the case is one in which the Court ought to exercise the jurisdiction (c) that in exercise of jurisdiction the Court has not acted illegally, i.e., law, or with material irregularity by committing some error of procedure in the course of trial which is material that, it may have affected the ultimate decision. And if the High Court is satisfied on these matters it has no jurisdiction to interfere because it differs with the subordinate court on question of fact or law. A distinction has to be drawn between the errors

committed by subordinate courts in deciding questions of law which have relation to, or are concerned with question of jurisdiction of the said Court, and errors of law which have no such relation or connection.

12. In view of above, the order under revision cannot be interfered with by this Court. However, it may be noted that during the course of argument Shri V.P. Goyal candidly stated at the Bar that the plaintiff does not want to give any evidence on Issue No. 4. The evidence of the parties have been closed, as per stand taken by Shri Pankaj Mithal, learned Counsel for the opposite party. It shall be open to the trial court to hear and decide Issue No. 4 as a preliminary issue and this order shall not come in its way, If an application for deciding the Issue No. 4 as a preliminary issue is filed before it by the plaintiff.

13. With the aforesaid observation the revision is dismissed with cost of Rs. 1,000. The plaintiff has got the proceedings unnecessarily stayed for a period of about 7 years. It filed the revision with delay and thereafter the application for condonation of delay was dismissed in default which was subsequently restored. The case of the defendant is that the present suit is a frivolous suit and the plaintiff wants to linger the hearing of the suit for one reason or the other. Therefore, the plaintiff should pay the cost of revision assessed at Rs. 1,000.

Civil Revision No. 427 of 2002

14. The trial court by the order dated 7th April, 1999, rejected the application No. 70C of the plaintiff to frame the following two issues as additional issues:

(1) Whether the land in suit was agricultural land?

(2) Whether the defendant has acquired any right in the agricultural land?

15. The court below has refused to frame the aforesaid two proposed issues as additional issues on the ground that they do not arise from the pleadings of the parties. The suit has been instituted for declaration, declaring that the proceedings for mutation are null and void and for permanent injunction. The question as to whether the disputed property is an agricultural land or it is otherwise has no relevancy. There is no such allegation in the plaint nor the nature of land has been disputed by the defendant in the written statement. Reliance placed by the plaintiff in this regard on para 12 of the plaint has been held by the trial court to be misplaced one. The learned Counsel for the plaintiff except making submission that it is duty of court to frame proper issues could not make out a case that the nature of the land is in dispute between the parties. It may be of some relevance that the plaintiff in para 2 of the plaint has stated that in the year 1977-78 consolidation proceedings took place in the village, new numbers were allotted in place of old numbers to the disputed plot.

16. Order XIV of C.P.C. provides settlement of issues and determination of suit on issues of law or on issues agreed upon. Rule 1 of Order XIV prescribes the framing of issues. Sub-rule 2 of Rule 1 of Order XIV, says that material propositions are those propositions of law or fact which plaintiff must allege in

order to show a right to sue or a defendant must allege in order to constitute his defence. Further Sub-rule (3) says that each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue. A bare reading of Order XIV, Rule 1 and its various sub-rules shows that in the absence of allegation made by the plaintiff in the plaint with regard to the fact to show a right to sue, an issue would not arise. In the present case, the trial court has found that the factual averment that the land in question is agricultural land has neither been stated in the plaint nor it has been said so in the written statement, the question of framing of the aforesaid two additional issues does not arise and no fault can be found out in the order of the trial court. The allegation of the defendant is that the plaintiff during the course of hearing did not seriously press for the framing of aforesaid two additional issues. Apart from it, the proposed Issues are neither necessary nor proper issues. The issues which have already been framed covered the entire gamut of dispute as per pleadings of the parties. The issues were framed after due opportunities to the parties.

17. Strong reliance was placed by the plaintiff on the judgment of Punjab and Haryana High Court; *Rajendra Tandon v. Thomas Nasir Masih* 1999 (1) CCC 702. It consists of only three paragraphs. In paragraphs No. 1 and 2 the respective case of the parties has been noted. The paragraph 3 on which reliance was placed, is being reproduced:

It goes without saying that it is the duty of the Court to frame issues. The same should be framed correctly taking note of the controversy that arises from the pleadings of the parties for the disposal of the suit. From the pleadings of the parties, it is abundantly clear that it is in controversy whether the property was purchased by the said defendant vide sale deed dated 22.12.1993 and Sardar Masih had executed a Will dated 13.1.1987. Once it is so, merely because the petitioner had on earlier occasions not claimed the additional issue will not debar them from approaching the Court for framing the additional issue. It is for the added reason that the evidence had not yet started in the trial court.

18. No doubt it is duty of court to frame issues that arise from the pleadings of the parties for the disposal of the suit. It necessarily follows that the factual averments which have not been pleaded cannot be subject-matter of an issue. In my view the aforesaid judgment does not advance the case of the plaintiff.

19. There is no jurisdictional error in the order of the trial court.

20. In view of the above, there is no merit in the revision. The revision is also dismissed with cost of Rs. 1.000.

21. Both the revisions lack merit and are dismissed with cost of Rs. 1,000 (in each revision).