
(1997) 07 AHC CK 0139

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2667 of 1985

Union of India, through General Manager, Northern Railway
and Ors.

APPELLANT

Vs

11nd Additional Distt. Judge, Fatehpur & Ors.

RESPONDENT

Date of Decision : 30-07-1997

Acts Referred:

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

Citation : (1997) 07 AHC CK 0139

Hon'ble Judges : P.K.Jain, J

Final Decision : Allowed

Judgement

P. K. Jain, J.—Heard Shri A.K. Gaur, learned Counsel for the petitioners and Shri O.K. Singh, brief holder for Shri R.N. Singh, learned Counsel for respondent No. 3,

2. By the present writ petition, the petitioners challenge the order of the civil Judge, Fatehpur dated 26784 (Annexure 1 to writ petition) whereby an amendment application in the written statement was rejected as also the order of the revisional Court dated 15185 rejecting the revision against the said order. It is undisputed that both parties claimed that they were owners and possession of plot No. 2191. The plaintiff/respondent No. 3 appears to have alleged that this name has been recorded in the revenue records and also appears to have given boundaries of the land in respect of which prayed for injunction. It further appears that the petitioners had moved an application for issuing commission for identifying the land in suit but application for commission was rejected by the trial Court on the ground that the plea of identifiability of land was not taken. Consequently, the petitioner moved an application for amendment in the written statement in order to add the pleas about identifiability of the land as also maintainability of the suit in view of the provisions contained in Section 331 of the U.P.Z.A and L.R. Act (hereinafter referred as the Act).

3. Admittedly the land is still recorded to be the agricultural land and both

parties claim that they are recorded, tenure holder of the land. In this view of the matter the question of title is prima facie involved. Therefore, the plea of maintainability of the suit in view of the provisions contained in Section 331 of the Act should have been allowed by the trial Court.

4. As regards identifiability of the suit land no doubt earlier the defendants did not took such a plea in their written statement but once they moved an application for issuing commission, their intention to challenge the ground of injunction of the ground of nonidentifiability of the suit land was clear and since the application for commission was rejected by the trial Court, the amendment has become necessary. In my view the amendments sought by the petitioners were necessary for disposal of real controversy between the parties. Therefore, the petition deserves to be allowed.

5. The petition is allowed. The impugned orders of the Courts below one quashed. The trial Court is directed to dispose of the matter of amendment in the written statement afresh in the light of the observations made in the body of the judgment. Since the suit pertains to the year 1983 the trial Court shall dispose of the same expeditiously within 6 months from the date of filing of a certified copy of this order before the trial Court.

6. A certified copy of this order shall be furnished to the learned Counsel for the parties on payment of usual charges within a week. Petition allowed.