
(1994) 12 AHC CK 0052

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 36093 of 1993

Vidya Devi

APPELLANT

Vs

Board of Revenue, Alld. and Others

RESPONDENT

Date of Decision : 06-12-1994

Acts Referred:

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

Citation : (1994) 12 AHC CK 0052

Hon'ble Judges : R.R.K. Trivedi, J

Final Decision : Allowed

Judgement

R. R. K. Trivedi, J.—Heard counsel for the petitioner. In this writ petition, counter and rejoinder affidavits have been exchanged. Both the learned counsel have agreed that the writ petition may be decided finally at this stage.

2. The facts giving rise to this writ petition are that a suit under section 229B of U.P.Z.A. and L.R. Act was filed by Smt. Surajo Devi against petitioner, Smt. Vidya Devi. During pendency of the suit by order, dated 25th September, 1984, trial court closed the evidence of plaintiff. This order was challenged in revision before Commissioner and in this revision the record of the trial court was summoned. The revision was ultimately rejected on 8th July, 1985. The record of the case was received by trial court on 22nd January, 1987. Thereafter suit was decreed on 8th April, 1989. On knowing the ex. pane decree petitioner filed an application on 20th June, 1989. Along with this application an application for condoning delay duly supported affidavit was also filed. Against this application and affidavit filed by petitioner no objection was filed by respondent No. 4. The trial court, vide order, dated 29th July, 1991 allowed application and set aside

This order of the trial court was challenged in revision before the Additional Commissioner, Meerut Division, Meerut who by order, dated 17th February, 1992 referred the case to the Board of Revenue and made recommendation to set aside the order of the trial court, dated 20th July, 1991 setting aside ex pane decree. This reference has been accepted by Board of Revenue. Consequently ex

pane decree dated 5th April, 1969 has been maintained. Aggrieved by the aforesaid order of the Board of Revenue, dated 22nd August, 1993, this petition has been filed under Article 226 of the Constitution.

3 Normally the revisional court in exercise of the revisional jurisdiction should not interfere with the orders granting restoration or setting aside the ex pane decree, on the finding that the notice was not given to the aggrieved party. For interfering with such discretionary orders there should be very strong and exceptional reasons.

4. I have perused the order of the Board of Revenue and in my opinion, the order suffers from manifest error of law and cannot be sustained. The Board of Revenue has signed three reasons for not allowing application of petitioner for setting aside the ex pane decree. First reason is that in the order, sheet, dated 4th June, 1987, 23rd December, 1987 and 31st August, 1988 her thumb impressions are present. It may be noticed that against affidavit and application of petitioner, no objection was filed and she had denied the knowledge of the pendency of the suit after receipt of the record from the Court of Commissioner. She had also denied her thumbimpressions on the order sheet. The affidavit remained uncontroverted. The Board of Revenue has failed to consider this aspect of the case. It is well established that uncontroverted affidavit should be accepted, unless there is something on record to show that averment made are incorrect.

5. The second ground mentioned by the Board of Revenue is that the petitioner had lost interest she had already executed saled deed in favour of Bachan Singh and that can be . a reason for her deliberate absence. In my opinion, this ground taken by the Board of Revenue is also not very sound. Even after executing saled deed petitioner as vendor remained under obligation to pass on a clear title and in discharge of this obligation towards vendee she is supposed to have interest in suit as she has to establish .that she had full interest in the land in dispute on the date of saled deed. Thus her interest continued until the suit is decided in accordance with law after providing her full opportunity of hearing. Thus she had every interest to get the ex pane decree set aside.

6. In the facts and circumstances of the case, the inference drawn by the Board of Revenue, on basis of the execution of the sale saled deed by petitioner, is not justified.

7. The third ground taken by the Board of Revenue is that along with application for setting aside the ex pane decree, no application under section 5 of Limitation Act for condoning the delay was filed. This reason adopted is factually incorrect and against record. The trial court has specifically referred to the application and affidavit filed by petitioner for condoning delay. However the trial court did not think it necessary to pass any order on this application as according to it, the application for setting aside ex pane decree was filed within time from the date of knowledge. Thus the Board of Revenue clearly fell in error in rejecting the

application of petitioner for setting aside ex pane decree.

8. Thus all the three grounds adopted by the Board of Revenue were incorrect and insufficient to justify interference with the discretionary order of trial court allowing restoration of the suit after setting aside ex pane decree by which both parties could have contested the suit on merits and the decree could have been passed after hearing parties.

9. There is yet another reason for which the impugned order of Board of Revenue cannot be sustained. The plaintiff had filed revision against order of the trial court, dated 25th September, 1994 by which her evidence was closed. The revision was dismissed on 8th July, 1985 and the order of the trial court closing evidence of plaintiff become final. There could not be any legal and valid reason for trial court to permit the plaintiff to adduce further evidence as the trial court's order has been upheld by revisional court. However, plaintiff was allowed to adduce further evidence and thereafter suit was decreed on 5th April, ; 1989. This aspect of the case was specifically dealt with by trial court while allowing application of petitioner for setting aside ex pane decree. However, learned Member of Board of Revenue failed to consider this material aspect of the case that the decree was passed on basis of the evidence which could not be legally taken on record. It was definitely a serious mistake committed on the part of court. It is well established position of law that a decree or order passed by mistake of the court may be recalled or set aside by the court in exercise of its inherent jurisdiction, as no party to proceeding can be allowed to suffer for the mistake of the court. In fact of such a case even an application is not required to be moved by the aggrieved party. Only the mistake of the court has to be brought to its notice and then it is open to court to assess the impact of the mistake in passing the impugned order and to rectify its mistake by passing a just and proper order. In this exercise it may even maintain the order or decree if the impact is negligible and is not such which may justify the setting aside of the order. In the present case, however, trial court recorded a specific finding that the evidence of plaintiff was recorded against the order of revisional court. It was one of the reasons on the part of trial court for setting aside the ex pane decree. In these circumstances, the order of the Board of Revenue suffers from manifest error of law and cannot be sustained.

10. The writ petition is thus allowed, order of the Board of Revenue, dated 22nd August, 1993 is quashed and the order of the trial court, dated 29th July, 1991 shall stand restored. The suit now shall be decided between the parties in accordance with law expeditiously. No order as to costs.