
(2014) 05 AHC CK 0152
In the Allahabad High Court
Case No : Writ-C No. 21435 of 2014

Vikram Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : (2014) 124 RD 18

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : B. Malik and Amit Malik, Advocate for the Appellant; Mahesh Narain Singh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri B. Malik, for the petitioners. The writ petition has been filed for quashing the qurras prepared by Lekhpal dated 27.11.2012 in pursuance of preliminary decree passed in partition suit and orders of Sub-Divisional Officer dated 15.12.2012, confirming the qurras and directing for preparation of final decree, final decree dated 14.1.2013 and order dated 21.11.2013 dismissing the application of the petitioners under Order IX Rule 13 C.P.C. for setting aside final decree and of Additional Commissioner dated 12.3.2014, dismissing the revision of the petitioners, arising out of suit for declaration and partition u/s 176 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act).

2. Jagpal Singh (respondent-5) filed a suit (registered as Suit No. 88 of 2011) for partition of his 1/8 share in plots 176 (area 0.190 hectare), 198 (area 3.559 hectare), 278 (area 0.114 hectare), 282 (area 0.228 hectare) and 308 (area 0.409 hectare) of village Chhajipur, tahsil and district Meerut. In this suit the petitioners were impleaded as defendants-1, 2, 5 and 6 respectively. On the summons being issued, all the defendants put appearance in the suit, through an

advocate and jointly filed their written statement on 17.4.2012. There was no dispute relating to share of the parties as such Trial Court heard arguments of the parties on 14.5.2012 and fixed 19.5.2012 for delivery of order. On 19.5.2012 preliminary decree was passed and Lekhpal was directed to prepare qurras of the parties according to the preliminary decree. The case was adjourned time to time as qurras were awaited. Ultimately Lekhpal submitted qurras on 27.11.2012. Trial Court also recorded statements of Lekhpal on that day and invited objections of the parties on the qurras. No one filed any objection against the qurras as such Trial Court by order dated 15.12.2012 confirmed the qurras and directed for preparation of final decree. The plaintiff deposited requisite stamp papers for preparation of final decree, which was prepared on 14.1.2013.

3. The petitioners filed an application dated 22.6.2013 (registered as Misc. Restoration Application No. 119 of 2013), under Order IX Rule 13 read with section 151 C.P.C. for setting aside the final decree dated 15.12.2012, along with delay condonation application. In the application as well as the affidavit filed in support of it, it has been stated by the petitioners that as share of the parties were admitted in written statement as such the Court directed for passing the preliminary decree, Bhopal Singh (petitioner-2) came to the Court several times and inquired from the reader, who informed that preliminary decree was not passed. Thereafter for some times, the applicant did not come to the Court. No notice was given to the applicants of preliminary decree dated 19.5.2012. Lekhpal prepared qurras in collusion of the plaintiff, in which the land which was in the possession of the applicants were given in the qurra of the plaintiff and filed in the Court on 27.11.2012, behind the back of the applicants, which was confirmed by the Trial Court by order dated 15.12.2012 as no objection was filed against the qurras and thereafter final decree was prepared on 14.1.2013. It is only, when the applicants took extract of khatauni from Lekhpal on 20.6.2013, then they came to know about the qurras and its confirmation and final decree.

4. Jagpal Singh (respondent-5) filed his objection to the application for setting aside the final decree and delay condonation application on 8.11.2013. Sub-Divisional Officer, heard the arguments of the parties on the application for setting aside final decree and by his order dated 11.11.2013, held that the defendants had put appearance in the Court through an advocate and filed their written statement in the suit. They attended the proceedings in the Court upto 14.5.2012, on which date arguments were heard and 19.5.2012 was fixed for delivery of order, on that day preliminary decree was passed. Then after delay of about 6 months of passing of final decree, application for setting aside final decree was filed and there is no cause for condonation of delay. The applicants have not shown as to how they were aggrieved by the final decree. On these findings, the application for setting aside final decree filed by the petitioners was dismissed. The petitioners filed a revision (registered as Revision No. 9 of 2013-14) from the aforesaid order. The revision was heard by Additional Commissioner, who by his order dated 12.3.2014 dismissed the revision. Hence this writ petition has been filed.

5. The Counsel for the petitioners submitted that summons were not issued in the proceedings for preparation of final decree. By an ex parte order dated 19.5.2012, Trial Court directed Lekhpal to prepare qurras according to the preliminary decree. Thereafter case was adjourned several times and qurras were filed on 27.11.2012. Trial Court did not give any opportunity to the petitioners for filing objection to the qurras. Lekhpal prepared qurras in collusion of the plaintiff, in which the land which were in the possession of the petitioners were given in the qurra of the plaintiff. The petitioners by investing money and labour made the land of their possession more fertile but it has been illegally allotted to the plaintiff. The petitioners have raised specific ground in this respect in their application for setting aside ex parte decree but the Trial Court has illegally ignored it. Final decree was prepared in violation of principles of natural justice and is liable to set aside. He relied upon the judgment of Jharkhand High Court in Parwesh Sahi v. Gango Devi, AIR 2010 NOC 41 (Jhar) in which it has been held that suit for partition cannot be decreed without issuing summons to the defendants.

6. I have considered the arguments of the Counsel for the petitioners and examined the record. In this case, summons in the suit were personally served upon the defendants and they put appearance through an advocate and filed their written statement. A perusal of the order sheet shows that the petitioners attended the proceedings before Trial Court in suit up to 14.5.2012. On 14.5.2012 arguments were heard and 19.5.2012 was fixed for delivery of order. On 19.5.2012, preliminary decree was passed and Lekhpal was directed to prepare qurras according to the preliminary decree. The petitioners absented from 19.5.2012. Lekhpal submitted qurras on 27.11.2012. Trial Court also recorded statements of Lekhpal on that day and invited objections of the parties on the qurras. No one filed any objection against the qurras as such Trial Court by order dated 15.12.2012 confirmed the qurras and directed for preparation of final decree. The plaintiff deposited requisite stamp papers for preparation of final decree, which was prepared on 14.1.2013. The petitioners in their application for setting aside final decree have stated that Bhopal Singh (petitioner-2) came to the Court several times and inquired from the reader, who informed that preliminary decree was not passed. Thereafter for some times, the applicants did not come to the Court. No notice has been given to the applicants of preliminary decree dated 19.5.2012. Lekhpal prepared qurras in collusion of the plaintiff, in which the land which were in the possession of the applicants were given in the qurra of the plaintiff and filed in the Court on 27.11.2012, behind the back of the applicants, which was confirmed by the Trial Court by order dated 15.12.2012 as no objection was filed against the qurras and thereafter final decree was prepared on 14.1.2013. It is only, when the applications took extract of khatauni from Lekhpal on 20.6.2013, then they came to know about the qurras and its confirmation and final decree.

7. A perusal of the order sheet shows that order sheet in the suit was regularly maintained. In the presence of the petitioners and their counsels' arguments

were heard by 14.5.2012 and 19.5.2012 was fixed for delivery of the order. Preliminary decree was passed on 19.5.2012. Allegations that Bhopal Singh (petitioner-2) came to the Court several times and inquired from the reader, who informed that preliminary decree was not passed, appears to be incorrect. The petitioners have already engaged an advocate. They could have inspected the order sheet of the suit through his Advocate on 19.5.2012, when the preliminary decree was passed. Thus reason for not appearing before the Court below as shown by the petitioners are not correct.

8. Order IX Rule 13 C.P.C. is quoted below:--

13. Setting aside decree ex parte against defendant.--In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

Provided further that no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

Explanation.--Where there has been an appeal, against a decree passed ex parte under this Rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this Rule for setting aside that ex parte decree.

9. Second Proviso to Order IX Rule 13 C.P.C. provides that if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim, then a decree passed ex parte cannot be set aside merely on the ground that there has been an irregularity in the service of summons. In this case the defendants appeared and filed their written statement. The partition suit is decided at two stages i.e. at first stage preliminary decree is passed and second stage of final decree. Passing of the preliminary decree does not decide the suit finally. Preparation of final decree is continuation of the same suit. As such there is no requirement for issue of fresh summons to the defendants after passing the preliminary decree. Similar case came for consideration before Supreme Court in Sunil Poddar and Others Vs. Union Bank of India, in which it was held that the appellants who were defendants- 7 to 9 were aware of the proceedings before the Civil Court. They appeared before the Court, engaged an advocate and filed a written statement.

They raised preliminary objections as also objections on merits. They filed applications requesting the Court to raise certain issues and try them as preliminary issues. It was, therefore, obligatory on their part to appear before DRT, Jabalpur when the matter was transferred under the Act. The appellants, however, failed to do so. The exparte decree passed by DRT cannot be set aside.

10. So far as the objection of the petitioners against qurras/final decree is concerned, the merit of the judgment and decree is immaterial, while deciding the application for setting aside exparte decree. They could not show any reason for non-appearance before the Court on the date when qurras were confirmed or final decree was passed. The petitioners have already put in appearance in the suit through Counsel, if they committed default at the subsequent stage they have to show the sufficient cause of default. The cause shown by the petitioners is false. The Court below have not committed any illegality in dismissing the application of the petitioners for setting aside final decree. In view of the aforesaid discussions, the writ petition has no merit and is dismissed.