
(2015) 08 AHC CK 0180
In the Allahabad High Court
Case No : Writ B. No. 35442 of 2015

Vipin Kumar and Others

APPELLANT

Vs

Board of Revenue, U.P. and Others

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

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

Citation : (2015) 129 RD 54

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

Bench : Single Bench

Advocate : Jeevan Prakash Sharma, for the Appellant; Anuj Kumar and Siya Ram Sahu, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Jeevan Prakash Sharma, for the petitioners and Sri Siya Ram Sahu, for respondents-4 and 5. Supplementary Affidavit filed by the petitioners is taken on record. The writ petition has been filed for quashing the orders of Assistant Collector dated 21.12.2010, approving kurra prepared by Lekhpal and passing final decree in the partition suit, Additional Commissioner dated 4.6.2011 and Board of Revenue, U.P. dated 8.5.2015, dismissing the appeal and second appeal of the petitioners, under U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act).

2. Plot 438 (area 3.379 hectare) of village Paharpur, Pargana Naraini, district Banda was holdings of two sisters namely Madhuri and Narbadia. Madhuri executed a sale deed dated 1.7.2003 in respect of her 1/2 share in the land in dispute in favour of Smt. Saraswati, grand mother of the petitioners. Subsequently Narbadia executed another sale deed in respect of her 1/2 share in the land in dispute, in favour of Vishnu Prasad and Aman Prasad (respondents-4 and 5). Respondents-4 and 5 filed a suit (registered as Suit No. 5) under section 176 of the Act, for partition of their 1/2 share in the land in dispute. Preliminary

decree in the suit was passed on 30.11.2005, holding 1/2 share of the plaintiffs. Assistant Collector by order dated 30.11.2005 directed Lekhpal to prepare kurra. Thereafter Lekhpal prepared kurra on 25.6.2007 and submitted in the Court.

3. Smt. Saraswati died on 16.10.2007. Initially, the father of the petitioners was substituted as her heir by order dated 2.8.2008 but later on by order dated 4.2.2009, the petitioners were substituted as her heirs. The petitioners filed an objection on 5.3.2010 against kurra, and stated that there had been a private partition between Narbadia and Madhuri, in which share of Narbadia was in northern side of plot 438 and share of Madhuri was in southern side. Smt. Saraswati purchased southern side of plot 438 on 1.7.2003 and from the date of sale deed she was in exclusive possession of southern side. About after one year, Narbadia sold her northern 1/2 share to Vishnu Prasad and Aman Prasad. Lekhpal has not prepared kurra, according to previous possession of the parties, in collusion with the plaintiffs. Kurra has been prepared in the name of dead person, Smt. Saraswati and is liable to be set aside.

4. Assistant Collector, after hearing the parties, by order dated 20.12.2010 held that kurra has been prepared by Lekhpal in accordance with law, in which both the parties were given frontage on roadside and also access of nali. Although kurra was prepared in the name of Smt. Saraswati but no prejudice has been caused to the petitioners. Allegation that Smt. Saraswati purchased the land on roadside does not appear to be correct as had Smt. Saraswati purchased the land on roadside then she should get her portion partitioned at that time itself. Both the parties has to be allotted equal valuation of the land, if one co-sharer is allotted roadside land then high valuation land would go in his share. On these findings, he rejected objection of the petitioners, confirmed the kurra and passed final decree in the suit. The petitioners filed an appeal (registered as Appeal No. 77/116) from the aforesaid order, which was dismissed by Additional Commissioner, by order dated 4.6.2011. The petitioners filed a second appeal (registered as Second Appeal No. 24 of 2010-2011), which was dismissed by Board of Revenue, U.P. By order dated 8.5.2015, at admission stage. Hence this writ petition has been filed.

5. The Counsel for the petitioners submitted that there had been a private partition of plot 438 between Narbadia and Madhuri, previous owners of the land in dispute. In which share of Narbadia was in northern side and share of Madhuri was in southern side. Smt. Saraswati purchased southern side of plot 438 on 1.7.2003 from Madhuri. Since then, she was in exclusive possession of southern side. About after one year, Narbadia sold her northern 1/2 share to Vishnu Prasad and Aman Prasad. Lekhpal has not prepared kurra, according to previous possession of the parties, as provided under Rule 131 of U.P. Zamindari Abolition and Land Reforms Rules, 1952. Kurra has been prepared in the name of dead person, Smt. Saraswati. He relied upon judgment of this Court in Balak Ram v. Board of Revenue and others 2005 (98) RD 655, and Board of Revenue, U.P. in Kanchhed Singh v. Bholu Singh 1988 RD 78, in which it has been held that while

preparing kurra, previous possession of the parties has to be taken into account. Trial Court passed final decree, without passing preliminary decree. The decree of Courts below are illegal and liable to be set aside.

6. I have considered the arguments of the Counsel for the parties and examined the records. So far as the arguments no preliminary decree was passed in the suit, is concerned, in order to verify this fact, the petitioners were directed to file copy of order sheet of the suit, which has been filed along with Supplementary Affidavit, from which it was found that preliminary decree was passed on 30.11.2005. The arguments that kurra was prepared against dead person Smt. Saraswati, is also incorrect Smt. Saraswati died on 16.10.2007, while Lekhpal prepared and submitted kurra in the Court on 25.6.2007. Initially, the father of the petitioners was substituted as her heir by order dated 2.8.2008 but later on by order dated 4.2.2009, the petitioners were substituted as her heirs and they filed objection against kurra on 5.3.2010.

7. The arguments that there had been partition between two sisters Madhuri and Nabadia, is also not proved. Copy of sale deed dated 1.7.2003 executed by Madhuri, in favour of Smt. Saraswati has been filed as Annexure-2 to the writ petition, in which joint 1/2 share has been sold. Thus it is proved that she sold her joint 1/2 share in the land in dispute, in which partition has not been mentioned. There is no other evidence to show that any partition had taken place either before obtaining the sale deed by grand mother of the petitioners or thereafter. Arguments in this respect is baseless.

8. So far as the arguments that kurras are disproportionate in valuation is concerned, the petitioners alleged that southern portion, which has been given to respondents is in rectangular form while northern portion which has been given to them is in triangular form. A perusal of the map shows that the land in dispute situates in west of the road and its shape is triangular. Northern portion, which has been given in kurra of the petitioners has bigger frontage on roadside than southern portion. Total area of the land in dispute was 3.379 hectare and the share of the petitioners is 1.689 hectare. There can be no other mode for partition of this plots, except as partitioned in the kurra. Thus one of the party has to take share in northern side. The Counsel for the petitioners submitted that share of the petitioners be allotted in southern side. This Court, in exercise of writ jurisdiction, is not competent to change the shares, in the absence of consent of the respondents. The Counsel for the respondents states that the respondents do not agree for change of their share. In view of the aforesaid discussions, the writ petition has no merit and is dismissed.