

**(2008) 06 AHC CK 0045**  
**In the Allahabad High Court**

Vishwa Nath Chaudhri

APPELLANT

Vs

Town Area Committee and Others

RESPONDENT

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**Date of Decision :** 30-06-2008

**Acts Referred:**

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 9

**Citation :** (2008) 4 AWC 3544 : (2008) 105 RD 406

**Hon'ble Judges :** S.U. Khan, J

**Bench :** Single Bench

**Final Decision :** Disposed Of

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**Judgement**

S.U. Khan, J.—In this case, Judgment was reserved on 18.4.2008 by following order:

List revised. No one appears on behalf of respondents No. 1 and 2.

Heard learned Counsel for the appellant and learned Counsel for the respondents No. 3 and 4.

Judgment reserved.

2. This is plaintiffs appeal. The suit was filed for permanent prohibitory injunction seeking to restrain the defendants from interfering in the possession of the plaintiff over the land in dispute.

Defendants respondents are as follows:

1. Town Area Committee, Baragaon.

2. Bakshi Town Area Committee.

3. Sudha Sagar.

4. Smt. Janki Bai.

3. The suit (O.S. No. 207 of 1984) was dismissed on 28.3.1989 by IVth

Additional Munsif, Jhansi. However the learned trial court recorded the finding of ownership and possession in favour of the plaintiff. (The contention of town area was that the land in dispute was part of road/patri). The suit was dismissed only on the ground that plaintiff could not construct boundary wall upon the land in dispute without permission of Town Area Committee. Plaintiff had contended that he had construed boundary wall and had prayed that Town Area Committee be restrained from demolishing the said boundary wall.

4. Against the judgment dated 28.3.1989, passed by the trial court, plaintiff filed Civil Appeal No. 86 of 1989, Vishwa Nath v. Town Area Committees and Ors.. District Judge, Jhansi through judgment and order dated 13.12.1990 allowed the appeal and remanded the matter to the trial court after setting aside its judgment. The trial court was directed to decide the suit de novo i n accordance with law and in the light of the observations made in the body of the Judgment of the appellate court.

5. The learned District Judge remanded the matter only on the ground that property in dispute was not identifiable. Alongwith the plaint, map of the property in dispute had been annexed, which was only a rough sketch map giving no dimensions, only boundaries were mentioned.

The argument of learned Counsel for the appellant is that property was quite identifiable, hence appellate court should not have remanded the matter.

6. Learned Counsel for the plaintiff appellant has further argued that for constructing a small boundary wall, no permission of local authority is required, hence trial court was not justified after recording the finding of ownership and possession of the plaintiff, in dismissing the suit only on the ground that permission of Town Area Committee to construct boundary wall had not been obtained by the plaintiff.

7. The basic flaw which I find in the judgment of the trial court is that it recorded the finding of ownership and possession of the plaintiff over the property in dispute only on the ground that in proceedings u/s 122B of U.P.Z.A. and L.R. Act, the Board of Revenue, Allahabad in Reference No. 29 of 1979-80/Jhansi, Vishwa Nath v. Gaon Sabha, had held that property in dispute had settled in favour of the plaintiff u/s 9 of U.P.Z.A. and L.R. Act. The Board of Revenue through order dated 30.7.1981, passed on the aforesaid reference, set aside the orders of court below. The trial court had passed order of eviction and imposed damages of Rs. 3,000. The Commissioner had made reference to the Board of Revenue with the recommendation that damages should be reduced to only Rs. 22. However, Board of Revenue (reference) set aside the order of trial court/Tehsildar as well as Commissioner and held that land had settled with Vishwa Nath.

8. The trial court solely on the basis of aforesaid order of Board of Revenue held that the land in dispute was settled with the plaintiff. u/s 122B(4D) of U.P.Z.A. and L.R. Act order passed u/s 122B(3) or (4) is not final and is subject to result of suit filed in court of competent jurisdiction to establish the right claimed by

any party. The suit giving rise to the instant appeal was a suit filed before competent court, hence on the question of title order passed by Board of Revenue u/s 122B(3) or (4) was neither binding nor conclusive.

9. By virtue of Order XLI, Rule 33 C.P.C., this aspect of the matter could very well be seen by the appellate court. In my opinion, therefore, remand was necessary to the trial court as its decision on ownership and possession of the plaintiff was erroneous as it was merely based upon judgment of the Board of Revenue passed under Sections 122B(4) and (4A) of U.P.Z.A. and L.R. Act.

10. As the matter is to be reheard by the trial court, hence there is no harm in retaining the directions given by the lower appellate court for identification of the property in dispute.

11. Accordingly, remand order passed by the lower appellate court is maintained. It is further directed that the trial court shall decide the question of ownership and possession of the plaintiff on the basis of evidence and while doing so no reliance shall be placed either upon the judgment of the Board of Revenue or upon the judgments of Tehsildar or Commissioner, which were set aside by Board of Revenue.

Accordingly, F.A.F.O. is disposed of as above.