
(1990) 11 AHC CK 0133

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 21666 of 1988

Wadil

APPELLANT

Vs

The Borad of Revenue and Others

RESPONDENT

Date of Decision : 09-11-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 17 Rule 2, Order 9 Rule 13
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (1991) 1 AWC 64 : (1991) RD 21

Hon'ble Judges : M.P. Singh, J

Bench : Single Bench

Advocate : S.D.N. Singh, for the Appellant;

Final Decision : Allowed

Judgement

M.P. Singh, J.—The Petitioner is a Defendant. The Respondent No. 4 filed a suit u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act for declaration of bhumidhari rights.

2. After examining all the witnesses, the Plaintiff closed his evidence. Four witnesses were also examined on behalf of the Defendant. 28-10-1985 was fixed for further evidence of the Defendant. On 27-10-1985 the Petitioner met with an accident and his one leg was fractured, as a result of which he could not appear on 28-10-1985. However, on that date the court closed the Defendant's evidence and fixed 30-10-1985 for arguments.

3. On account of his inability, the Defendant could not appear even on that day i.e. 30-10-1985. After the arguments of the Plaintiff, 14-11-1985 was fixed for delivery of the judgment.

4. In the meantime, on 6-11-1985 the Defendant filed an application alongwith a medical certificate giving reasons for his non-appearance on 28th October, 1985. It was prayed in that application that the ex-parte order may be set aside and the Defendant may be permitted to lead further evidence.

5. The Sub-Divisional Officer rejected the said application on 14-11-1985 holding that the ground for recalling the order was insufficient.

6. The Commissioner and the Board of Revenue affirmed the said order while dismissing the revisions filed by the Petitioner. The present writ petition is directed against these orders.

7. Heard learned Counsel for the parties.

8 The only question to be considered on this case is whether this case is covered by the provisions of Order 17 Rule 2 of the Code of Civil Procedure. Admittedly, the Defendant has led some evidence, but on account of his meeting with an unfortunate accident he became unable to lead further evidence on 28-10-1985. The learned member of the Board of Revenue has held that the impugned order of the trial court did not fall within any of the provisions of Order 9 and it could fall only under Order 17 Rule 2 of the Code of Civil Procedure.

9. Now the question is if this case is covered by the provision of Order 17 Rule 2 of the Code of Civil Procedure, then the application for setting aside the ex-parte order was maintainable or not.

10 This question has been considered by Full Bench of this Court M.S. Khalsa Vs. Chiranji Lal and Others, , in which the Court took the view that a case, in which the Defendant obtains an adjournment on the date of final hearing of the suit and fails to appear on the adjourned date, would be covered by Order 17 Rule 2 of the CPC and an application under Order 9 Rule 13 will lie.

11. The trial court reacted the application of the Petitioner on the ground that the medical certificate was not genuine and there was no good ground for his non-appearance on the adjourned date.

12. After hearing learned Counsel for the parties and perusing the record, I am of the view that the courts below have taken a highly technical view of the matter. The view of the Supreme Court now is that technicality should be avoided as far as possible in procedural matters. In a case Bhag-wan Swaroop v. Mool Chand 1983 SC 355, it was held that the laws of procedure are devised for advancing justice and not impeding the same. In another case, Sangram Singh v. Election Tribunal Kotah 1955 SC 425 , it was further held that the Code of procedure is designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties not a thing designed to trip people up. This view was reaffirmed in Kalipada Das alias Mahanto and Others Vs. Bimal Krishna Sen Gupta (Dead) by Lrs., .

13. In the instant case since the Petitioner had met with an accident and was unable to attend the court on 28-10-1985, therefore the remaining witnesses could not be examined by him. In my opinion, under these circumstances the court below should have given an opportunity to the Petitioner to lead evidence so that the case could have been decided on merit.

14. Following the views of the Supreme Court, I allow the writ petition but without any order as to cost. The impugned orders dated 14-11-1985, 13-8-1986 and 15-9-1988 are hereby quashed.

15. The learned Counsel for both the parties agree that since it is an old case the trial court may be directed to decide the suit within a reasonable period.

16. Accordingly, I direct the trial court to decide the suit, within a period of three months from the date of production of a certified copy of this order before it, after giving full opportunity to the parties. However, it is made clear that the parties will not be allowed to seek any adjournment.

17. Let a copy of this order be issued to learned Counsel for the parties on payment of usual charges within a week.