
(2014) 05 AHC CK 0067
In the Allahabad High Court
Case No : Writ-B No. 50270 of 2002

Yashwant

APPELLANT

Vs

Bhumi Prabandhak Samiti

RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (2014) 124 RD 9

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

Bench : Single Bench

Advocate : Nagendra Kumar Srivastava, Advocate for the Appellant; V.K. Singh and H.P. Tripathi, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Nagendra Kumar Srivastava, for the petitioner and Sri H.P. Tripathi, for the contesting respondents. This writ petition has been filed against the order of Board of Revenue, U.P. dated 12.8.2002, allowing the review application of Devi Prasad (now represented by respondents-3 to 6) and remanding the matter to Additional Commissioner for deciding the revision afresh after giving opportunity of evidence in rebuttal to the respondents, arising out of proceedings under Rule 115-P of U.P. Zamindari Abolition and Land Reform Rules, 1952 (hereinafter referred to as the Rules).

2. The dispute is in respect of the land of area 9 yard x 9 yard bounded as in North-Land of Gaon Sabha, South-Public passage. East-Pond of Gaon Sabha and West-Public passage, situated in village Dhakan Shiwali, pargana Akbarpur, district Kanpur Dehat. The petitioner claimed that the land in dispute was allotted to him by Land Management Committee of the village on 25.6.1968. Devi Prasad earlier filed a civil suit (registered as Suit No. 217 of 1977) for permanent injunction restraining the petitioner from interfering in his possession over the land in dispute. It was alleged in the plaint that the land in dispute was appurtenant land to the house of the plaintiff and his brother Prem Chand

(respondent-2) and has been in their possession since before date of vesting. Land Management Committee had no jurisdiction to allot the land in dispute to the petitioner. The petitioner, on the basis of patta granted by Land Management Committee, was trying to raise a boundary wall over the land in dispute. The suit was contested by the petitioner. Additional Munsif, Kanpur by his judgment dated 30.7.1979 dismissed the suit. Prem Chand filed an appeal (registered as Civil Appeal No. 514 of 1979) which was dismissed by judgment dated 20.4.1983. Prem Chand filed a second appeal (registered as Second Appeal No. 1851 of 1983), which was dismissed at the admission stage by judgment dated 1.5.1984 by this Court.

3. In the meantime Devi Prasad and Prem Chand (hereinafter referred to as the respondents) filed an application dated 3.2.1981, for cancellation of the Patta dated 25.6.1968, under Rule 115 P of the Rules. It has been stated by the respondents that they were resident of the village from the time of their ancestors. Main gate of their house is towards east. The land in dispute was in their use and occupation where they were tying their cattle and keeping agricultural appliances and bullock cart etc. Without circulating any agenda for allotment and notice to the members and general public and without any meeting or resolution of Land Management Committee, patta was granted to the petitioner on 25.6.1968. The petitioner was not the resident of the village and was not entitled to grant of patta. The land in dispute was not vacant and was in their possession and its allotment was illegal. The petitioner filed his reply to the aforesaid application and stated that the land in dispute was never in use and occupation of the respondents. The respondents earlier filed a criminal complaint against the petitioner which was dismissed 31.10.1977. Thereafter they filed an application before Sub-Divisional Officer against the allotment of the land in dispute, which was rejected after inquiry. Prem Chand then filed Suit No. 217 of 1977 for permanent injunction restraining the petitioner from interfering in his possession over the land in dispute, on the same allegation that the land in dispute was appurtenant land to their house and had been in their possession since before the date of vesting. Land Management Committee had no jurisdiction to allot the land in dispute to the petitioner. The suit was dismissed by Additional Munsif, Kanpur by his judgment dated 30.7.1979. The land in dispute was allotted to the petitioner on 25.6.1968 while the application for cancellation of patta was filed on 3.2.1981 and is barred by limitation. The land in dispute was allotted to the petitioner after following the procedure and by the resolution of Land Management Committee. After allotment, the petitioner has constructed boundary wall and has also raised construction over it in which he was residing.

4. Additional Collector after hearing the parties, by order dated 7.10.1985 held that the petitioner had not filed copies of notice for meeting, agenda of the meeting, proclamation and the resolution of Land Management Committee regarding allotment of the land in dispute to him. The patta was not issued to the petitioner on the prescribed format. On the basis of patta issued by the Pradhan,

the petitioner cannot claim any title over the land in dispute. Deposit of lease money without any resolution of Land Management Committee is irrelevant. The petitioner was not in preferential category of eligible persons. On these findings the patta of the petitioner dated 25.6.1968 was cancelled by order dated 7.10.1985. The petitioner filed a revision (registered as Revision No. 11 of 1985-86) from the aforesaid order. The revision was heard by Additional Commissioner, who by order dated 30.6.1988 held that the village Dhakan Shiwali was included in Town Area in 1977. Neither Land Management Committee of the village nor the Town Area Committee were impleaded as parties in the application filed for cancellation of patta. The papers relating to notice, agenda, proclamation and resolution etc. were not in possession of the petitioner and it was not expected from him to file it. The copy of resolution was filed but it was illegally ignored by Additional Collector. On these findings, he, by order dated 30.6.1988, submitted a reference to Board of Revenue U.P. for allowing the revision. Thereafter the respondents filed an application dated 27.7.1988 for recall/review of the order dated 30.6.1988, on the ground that after admitting the papers filed by the petitioner, the respondents were not given opportunity of rebuttal. Additional Commissioner, by order dated 18.7.1989 rejected the recall/review application. The reference was heard by Board of Revenue U.P., who by order dated 17.7.1992 held that the main ground for cancellation of patta was taken by the respondents was that they were in possession of the land in dispute and it was not vacant on the date of allotment as such its allotment was illegal but in civil suit, the respondents could not prove their possession over the land in dispute, as such main basis of their application was not established. So far as resolution for allotment of the land in dispute to the petitioner is concerned, the copy of resolution was filed before Revisional Court as such it was proved that resolution was passed by Land Management Committee for allotment of the land in dispute. This paper was filed in the knowledge of the respondents but they have not raised any objection against it. On these findings the revision was allowed and order of Additional Collector was set aside. Devi Prasad filed an application for review on 18.1.1996 before Board of Revenue U.P. which was allowed by impugned order dated 12.8.2002 and the record was remitted to Additional Commissioner to decide the revision afresh after giving opportunity of rebuttal to the respondents. Hence this writ petition has been filed.

5. The Counsel for the petitioner submitted that the respondents specifically argued that Additional Commissioner had not provided opportunity of rebuttal of the documents filed in the revision. But Board of Revenue U.P. in the order dated 17.7.1992 held that the copy of resolution was filed in the revision, to the knowledge of the respondents but they had not raised any objection against it nor they filed any objection in the reference in this respect. Board of Revenue did not find any illegality in this respect as no objection was filed by the respondents against the application for additional evidence. Board of Revenue recorded findings that the land in dispute was allotted to the petitioner on the basis of resolution of Land Management Committee as such there was illegality in the

order. There was no error apparent on the face of record. The review application was filed after more than three years of the judgment. Earlier order was not liable to be reviewed. He relied upon Division Bench judgment of this Court in Vijai Bahadur Vs. State of U.P. and Others, in which it has been held that an erroneous judgment cannot be reviewed.

6. In reply to the aforesaid arguments, Counsel for the respondents submitted that section 273 of U.P. Tenancy Act, 1939 confers unfettered power of review upon Board of Revenue U.P. By virtue of Rule 339 of the Rules, the provisions of section 273 of U.P. Tenancy Act, 1939 has been applied to the proceedings of Schedule II of U.P. Act No. 1 of 1951. Otherwise also by section 341, provisions of Code of Civil Procedure, 1908 are applied. Board of Revenue was competent to review its order as held by this Court in Smt. Kalindi Deve Vs. Board of Revenue, Additional Commissioner, Gorakhpur Division, Prithvi Chand and Gaon Sabha Mauja Chapathia Tappa, The litigants are required to prove their cases by adducing best evidence in their favour before the Trial Court as held by Supreme Court in Union of India (UOI) Vs. Ibrahim Uddin and Another, Additional evidence cannot be permitted to be filed before Appellate Court to fill up the lacuna in evidence as held by Privy Council in AIR 1931 143 (Privy Council) and Supreme Court in Union of India (UOI) Vs. Ibrahim Uddin and Another, The Revisional Court has illegally admitted additional evidence filed by the petitioner. Civil Court has no jurisdiction in respect of cancellation of patta. Judgment of Civil Court in O.S. No. 217 of 1977 or the appeals arising out of this suits are irrelevant for this proceeding. Additional Commissioner has illegally relied upon the judgment of Civil Court. He relied upon the judgment of Supreme Court in Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., in which it has been held that judgment of the Court having no jurisdiction can be ignored, in subsequent proceedings. The order of Board of Revenue does not suffer from any illegality and the writ petition is liable to be dismissed.

7. I have considered the arguments of Counsel for the parties and examined the record. The judgment of Board of Revenue passed in the review application has been challenged in this case. Rule 339 of the Rules, applies the provisions of section 273 of U.P. Tenancy Act, 1939 to the proceedings of Schedule II of U.P. Act No. 1 of 1951. The application for cancellation of patta has not been mentioned in Schedule II of U.P. Act No. 1 of 1951 as such section 273 of U.P. Tenancy Act, 1939 has no application in this case. The power of review as has been provided u/s 114 read with Order XLVII Rule 1 C.P.C. is applicable by virtue of section 341 of U.P. Act No. 1 of 1951.

8. Order XLVII Rule 1 CPC which provides jurisdiction of review is quoted as under:

1. Application for review of judgment.--(1) Any person considering himself aggrieved--

(a) by a decree or order from which an appeal is allowed, but from which no

appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation.--The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a Superior Court in any other case, shall not be a ground for the review of such judgment.

9. Supreme Court in *S. Bagirathi Ammal Vs. Palani Roman Catholic Mission*, held that review is permissible (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason. If any of the conditions satisfy, the party may apply for a review of the judgment or order of the Court which passed the decree or order. The provision also makes it clear that an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled to rehearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set right by reviewing the order.

10. Supreme Court in *The State of West Bengal and Others Vs. Kamal Sengupta and Another*, held that term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order XLVII Rule 1 CPC. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the Court/Tribunal concerned cannot sit in appeal over its judgment/decision. Similar view has been taken by Supreme Court in *Haridas Das Vs. Smt. Usha Rani Banik and Others*, and *Commissioner of Cental Excise, Belapur, Mumbai Vs. RDC Concrete (India) P. Ltd.*,

11. In this case, additional evidence in the shape of certified copy of the resolution of Land Management Committee was filed before Additional Commissioner along with an application for additional evidence. As no objection was filed by the respondents and it being certified copy of public document was admitted in evidence. After decision in revision, the respondents filed an application for review which was rejected by order dated 18.7.1989. The respondents raised arguments in this respect before Board of Revenue at the time of judgment dated 17.7.1992. Board of Revenue did not accept the arguments of the respondents on the ground that as the respondents had not filed any objection against the application for additional evidence nor any objection was filed against reference as such their arguments in this respect was not accepted. This view may be an erroneous but it could not be corrected in exercise of review jurisdiction.

12. The argument of the Counsel for the respondents that judgment of Civil Court are irrelevant and no reliance can be placed on it, is also not liable to be accepted. The respondents filed Civil Suit for permanent injunction in respect of abadi land, claiming it to be their appurtenant land and in their possession since before the date of vesting. Suit for injunction in respect of abadi land was maintainable in Civil Court and judgment of Civil Court on the issue of possession over the land in dispute was binding upon the parties and operate as res-judicata. It was admitted by the respondents that the petitioner was granted patta of the land in dispute. The grounds for cancellation of patta as taken by the respondents were that the land in dispute was not vacant on the date of allotment, without circulating any agenda for allotment and notice to the members and general public and without any meeting or resolution of Land Management Committee, patta was granted to the petitioner on 25.6.1968. The petitioner was not the resident of the village and was not entitled to grant of patta. Findings of Civil Court in respect of possession over the land in dispute is res-judicata. Additional Commissioner and Board of Revenue found that there was a valid resolution of Land Management Committee for allotment of the land

in dispute to the petitioner. Devi Prasad filed an application for review on 18.1.1996 before Board of Revenue U.P. for review of judgment dated 17.7.1992. Under Article 124 of the Limitation Act, 1963 thirty days limitation has been provided. The review application was highly time barred and was illegally allowed. In view of the aforesaid discussions, the writ petition succeeds and is allowed. The order of Board of Revenue, U.P. dated 12.8.2002, allowing the review application of Devi Prasad is set aside.