

Narendra Singh & Another Vs Deewan Singh & Others

Court: Uttarakhand High Court

Date of Decision: May 6, 2021

Acts Referred: Code Of Civil Procedure, 1908 " Section 80, 80(2), 115
 Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 " Section 209, 229B
 Code Of Civil Procedure, 1908 " Order 7 Rule 11

Hon'ble Judges: Sharad Kumar Sharma, J

Bench: Single Bench

Advocate: Sarvesh Agarwal, Piyush Garg, R.C. Joshi

Final Decision: Dismissed

Judgement

Sharad Kumar Sharma, J

(Via video conferencing)

1. The petitioners, before this Court, are the defendants in a suit being Suit No.16 of 2021, "Deewan Singh & others Vs. Shri Chandan Singh &

others". In the suit in question, which was instituted by the plaintiffs/respondents, the plaintiffs have filed an application under sub-section (2) of

Section 80 of the CPC, seeking permission to institute the proceedings, as against the Defendant No.13 i.e. the State of Uttarakhand, and the

permission as contemplated under sub-section

(2) of Section 80 of the CPC, has been sought qua the Defendant no.13 only.

2. On the said application, under Section 80 (2) of the CPC, the learned trial court of Civil Judge, (Junior Division), Haldwani, District Nainital; by one

of the impugned order dated 12.02.2021, had granted the permission under Section 80 (2) of the CPC, for the purposes of the institution of the suit

against Defendant No.13 i.e. State. This order was put to challenge by the petitioners in the revision being Civil Revision No.01 of 2021, "Narendra

Singh and another Vs. Deewan Singh and others", the Revisional Court too by the impugned order dated 18.04.2021, had dismissed the revision.

3. This Court is deliberately refraining itself from making any observations on the merits of the matter, which may have a bearing on the pending

application of the petitioners under Order 7 Rule 11 of the CPC, in the light of the earlier proceedings, which has culminated by way of the

proceedings drawn under Section 229-B of the UPZA&LR Act, which has to be read with Section 209 of the UPZA&LR Act. Hence, this Court is

not venturing into those aspect.

4. But this Court is of the considered view that, if the legislative mandate and intent for the purposes of the institution of the proceedings, as against

the State is taken into consideration, once the State is one of the contesting respondents or a defendant in the suit, the exemptions contemplated under

sub-section (2) of Section 80 of the CPC, is only for the purposes of an inter se status of dispute and relief claimed, between the court and the

plaintiff, who seeks the permission under Section 80 (2) of CPC, for institution of the proceedings against the State, as one of the party respondent to

the proceedings. Any decision which has been rendered under sub-section (2) of Section 80 of the CPC, whereby granting the liberty to the plaintiff to

proceed with the suit, as against the defendant/State, as a party to the suit, I am of the view that it will not fall to be within the ambit of case decided,

qua the other co-defendants in order to make the revision maintainable at their behest i.e. of the petitioners, who was a co-defendants, along with a

State Government in the said suit, in the light of the provisions contained under Section 115 of the CPC.

5. If the findings, which have been recorded by the Revisional Court, are taken into consideration, the Revisional Court has quite elaborately dealt with

an aspect, of the impact of the earlier proceedings of Section 229-B/209 of the UPZA&LR Act, and also the directions given in the subsequent

judgment which was rendered by the Coordinate Bench of this Court in WPMS No.205 of 2004, *“Inder Bahadur Singh and other Vs. Board of*

Revenue and others”. But, however, while recording its reasoning and rationale in the light of the directions issued by the Coordinate Bench of this

Court in the aforesaid writ petition, the learned Revisional Court while placing reference to the judgment reported in 2012 (5) ADJ 110 *“Smt.*

Rekha Vs. Smt. Veermati and others”, the learned Revisional Court has dealt with the impact of Section 80 of the CPC, and that reasoning has been

assigned in Paragraph Nos.15 and 16 of the impugned revisional judgment. As far as the aforesaid judgment, which are put to challenge in the present

writ petition is concerned, which are confined and limited to the liberty granted to the plaintiff for institution of the proceedings as against the

Defendant No.13 i.e. State, it would not create any embargo or prejudice to the petitioner in deciding the petitioner’s application under Order 7

rule 11 of the CPC, which is pending consideration, which is yet to be decided independently by the learned Trial Court. But I am of the considered

view that as far as the present petitioners are concerned, who are the Defendant Nos.7 and 2 respectively in the pending suit, no prejudice is caused

to them by allowing of the application under sub-section (2) of Section 80 of the CPC.

6. Hence, while dismissing the writ petition, it is made clear that the findings recorded therein granting them permission to the plaintiff to institute the

suit qua the defendant no.13 i.e. State, will not create any embargo or restrictions in deciding the application under Order 7 Rule 11 of the CPC

independently, which has been preferred by the petitioners, who happens to be the co-defendants in the said suit. The said application is to be decided

independently.

7. Subject to the aforesaid liberty, the writ petition lacks merit and the same is accordingly dismissed.