
Rang Bahadur Singh Vs Kapil Deo and Others

Criminal Revision No. 387 of 1982

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: April 25, 1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 145, 307, 386, 389, 390#Uttar Pradesh Consolidation of Holdings Act, 1953 " Section 12

Citation: (1983) 7 ACR 313

Hon'ble Judges: K.N. Misra, J

Bench: Single Bench

Advocate: M.R. Misra, for the Appellant;

Judgement

K.N. Misra, J.

This criminal revision u/s 397 of the Code of Criminal Procedure is directed against the judgment and order dated 30th

July, 1982, passed by Sri R.P. Pandaya, Sessions Judge, Sultanpur arising out of proceedings u/s 145, Code of Criminal Procedure. Briefly

stated, the facts of the case are as follows.

2. There arose a dispute with regard to chak Nos. 13 and 225, situate in village Meopur Barchauli, district Sultanpur. Kapil Deo, Rishi Dev and

Paras Nath, opposite parties Nos. 1 to 3, who had purchased the aforesaid chaks through registered sale deed dated 8-12-1977 from Vijai

Bahadur and Ajai Bahadur, moved an application u/s 145, Code of Criminal Procedure before the Sub-Divisional Magistrate. On being satisfied

regarding existence of apprehension of breach of peace, the learned Magistrate passed preliminary order dated 8-3-1979. The crops standing on

the said chak-land was also attached and given in the Supurdigi of the Supurdgar. It appears that by order dated 17th March, 1981, Sub-

Divisional Magistrate stayed the proceedings holding that there is no apprehension of breach of peace. Against that order revision was filed by

opposite party Nos. 1, 2 and 3. The learned Sessions Judge vide order dated 30-7-1982, set aside the said order and remanded the case to the

Sub-Divisional Magistrate for deciding it on merits. It appears that litigation regarding the land in question was also continuing before the

Consolidation Authorities u/s 12 of the U.P. Consolidation of Holdings Act. The opposite parties Nos. 1, 2 and 3 had applied for mutation in their

names on the basis of aforesaid sale deed. The revisionist Rang Bahadur Singh had contested the sale case alleging that in family settlement

between him and Vijai Bahadur and Ajai Bahadur the land in dispute situate in village Meopur Barchauli, district Sultanpur was given to him and

land situate in village Jainapur, district Faizabad was given to Ajai Bahadur and Vijai Bahadur where they were residing. The Consolidation

Officer, after taking evidence of the parties had decided the said objection u/s 12 vide order dated 17-3-1981 and rejected the said plea of family

settlement and directed that the names of opposite parties 1, 2 and 3 be mutated in place of Vijai Bahadur and Ajai Bahadur in whose names

Chaks were carved out and possession was also delivered to them. After remand of the case by the Sessions Judge, both the parties led their

evidence in support of their respective case. The opposite parties 1, 2 and 3 also brought on record a copy of the judgment and order dated 17-3-

1981 passed by the Consolidation Officer in their favour. It would be relevant to mention here that against said order, revisionist had filed an

appeal which, according to the learned Counsel for the revisionist, has not been decided as yet. The opposite parties 1 to 3 had also filed copy of

the aforesaid sale deed and also examined witnesses. The revisionist also examined witnesses in support of his claim regarding possession over the

land in dispute. He also filed in original an alleged letter said to have been written by Ajai Bahadur to him. The said letter was not admitted in

evidence nor it was proved. Learned Counsel for the revisionist asserted that no opportunity for proving the said letter was given by the trial

Magistrate. Opposite parties Nos. 1 to 3 had also filed extract of C.H. Form No. 23 which was issued in the name of the vendors and also

documents regarding delivery of possession to the vendors. The trial Magistrate, vide order dated 12-1-1982, decided the case in favour of the

revisionist holding him to be in possession within two months prior to the date of the preliminary order and ordered the property to be released in

his favour and restrained the opposite parties from interfering in his possession without having recourse to law. Feeling aggrieved by the said order,

opposite party Nos. 1 to 3 filed revision which was heard and allowed by the Sessions Judge, Sultanpur vide order dated 30-7-1982 holding that

the revisionist (opposite parties Nos. 1 to 3) be put in possession over the land in dispute. It was further observed that the lower court had not

appraised the evidence from a correct angle of vision which has resulted in mis-carriage of justice. Aggrieved by the said order, Rang Bahadur

Singh revisionist, has filed this revision in this Court.

3. Learned Counsel for the revisionist, Sri Madho Ram Misra urged that the Sessions Judge had no jurisdiction, to upset the findings of fact in

exercise of revisional jurisdiction. In support of his contention, he placed reliance upon State of Orissa Vs. Nakula Sahu and Others, and also cited

Akalu Ahir and Others Vs. Ramdeo Ram, . In reply, learned Counsel for the opposite parties No. 1 to 3 Sri S.D. Misra submitted that the

Sessions Judge in view of the provision contained in Section 399, Code of Criminal Procedure, is vested with the powers which may be exercised

by the Sessions Judge u/s 401, of the Code. Referring to Section 401 of the Code, learned Counsel urged that the High Court may, and so also

the Sessions Judge, in its discretion, exercise, any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 and 391 or on a

Court of Session by Section 307. His contention was that while exercising revisional jurisdiction, the High Court as well as the Sessions Judge can

interfere with the findings of fact recorded by the Trial Court if the same are found to be perverse or the same are based on non-consideration of

material evidence on record. Learned Counsel, thus, contended that the Sessions Judge had rightly interfered with the findings of fact recorded by

the Trial Court. Hon"ble Supreme Court in Akalu Ahir and Others Vs. Ramdeo Ram, , while considering the powers of revisional Court observed:

Now advertent to the power of revision conferred on a High Court by Section 439 read with Section 435, Code of Criminal Procedure it is an

extraordinary discretionary power vested in the superior Court to be exercised in aid of justice, in other words, to set right grave injustice. The

High Court has been invested with this power to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that

the subordinate Courts do not exceed their jurisdiction or abuse the power conferred on them by law. As a general rule, this power, in spite of the

wide language of Sections 435 and 439, Code of Criminal Procedure does not contemplate interference with the conclusions of fact in the absence

of serious legal infirmity and failure of justice. This power is certainly not intended to be so exercised as to make one portion of the Code of

Criminal Procedure conflict with another; as would seem to be the case when in the garb of exercising revisional power, the High Court in effect

exercised the power of appeal in face of statutory prohibition.

In later decision State of Orissa Vs. Nakula Sahu and Others, Hon"ble Supreme Court observed:

Although the revisional power of the High Court u/s 439 read with Section 435 is as wide: as the power of Court of appeal u/s 423 of the Code is

now well settled that normally the jurisdiction of the High Court u/s 439 is to be exercised only in exceptional cases when there is a glaring defect in

the procedure or there is a manifest error on point of law which has consequently resulted in flagrant miscarriage of justice. In spite of the wide

language of Section 435, the High Court is not expected to act u/s 435 or Section 439 as if it is hearing an appeal.

4. It is, thus, settled that the revisional power can be exercised only where:

(1) There is glaring defect in the procedure; or

(2) There is a manifest error on a point of law which has consequently resulted in flagrant miscarriage of justice; or

(3) The findings recorded by the trial Court are perverse being not based on the evidence on record, or non-consideration of material evidence on

record.

5. In the present case, the Sessions Judge has based his order referring only to the documentary evidence filed by opposite parties No. 1 to 3,

namely, registered sale deed dated 18-12-77 and copy of the judgment and order passed by the Consolidation Authorities in favour of opposite

parties No. 1 to 3 and also C.H. Form No. 23 in the name of Ajai Bahadur and Vijai Bahadur in respect of the chak land in question. He has

observed that the documentary evidence, referred to above, proves the possession of the revisionists (opposite parties No. 1 to 3) as no case was

pleaded by the other side regarding their dispossession. Learned Sessions Judge has not considered the oral evidence led by the parties while

recording a finding in favour of opposite parties No. 1 to 3, who were revisionists before him. Since oral evidence has not been taken into

consideration by the learned Sessions Judge and as such the impugned order passed by him cannot be sustained. But similar error appears to have

been committed by the trial Magistrate as well. Although he has considered the oral evidence, but omitted to consider aforesaid material

documentary evidence on record. Both oral and documentary evidence has got to be considered together, and reasons have to be recorded as to

why one is to be accepted in preference to the other. It is a prudent rule of appraisal of evidence that oral testimony which is corroborated by

documentary evidence is to be preferred to one which is not corroborated by any documentary evidence on record. However, where either no

documentary evidence exists or it has not been brought on record, the oral testimony can not be viewed with suspicion and rejected merely

because of want of documentary evidence. In the absence of documentary evidence the oral evidence led by the parties is to be scrutinized with

great care and caution. In the present case, as already mentioned above, the opposite parties had filed documents which the trial Magistrate has

completely over-looked. He has thus, committed a manifest legal error in not considering the entire evidence on record while deciding the case.

When relevant documentary evidence is ignored the findings recorded stood vitiated in law and deserve to be quashed.

6. In the present case the opposite parties had filed copy of the order passed by the Consolidation Officer in favour of the opposite parties No. 1

to 3, extract of C.H. Form No. 22 and delivery of possession to the said vendors Ajai Bahadur and Vijai Bahadur was also brought on record.

The said mutation order has not been taken into consideration by the trial Magistrate while recording a finding on the question of possession. The

names of the vendors as well as opposite parties No. 1 to 3 appear to have come on revenue records. These revenue entries deserved to be

considered on merits as held by this Court in Ram Sri Vs. Sri Kishan and Others, , wherein it was held that:

Order of Revenue Court in mutation proceedings is order of competent Court determining the person entitled to possession.

7. Learned Counsel for the opposite parties No. 1 to 3 urged that since the Consolidation Officer rejected the case of family settlement as was set

up by revisionists Rang Bahadur Singh and held that the vendors were in possession over the chak land in question, the trial Magistrate erred in not

taking into consideration the aforesaid documents which go to indicate that the said transferors transferred the said land to the opposite parties No.

1 to 3 and they came in possession over the same and recital was also made in the sale deed about the delivery of possession to them over the

land in question.

8. I do not express any opinion on the merits of this argument as, in my opinion, the case requires to go back to the trial Magistrate for

consideration of the matter afresh and the said submission will be considered by the trial Magistrate while deciding the case afresh.

9. In the result, I allow this revision, and set aside the order dated 30-7-1982 passed by the Sessions Judge, Sultanpur and also the order dated

12-1-1982 passed by the Sub-Divisional Magistrate, Sultanpur and remand the case to the trial Magistrate for deciding the case afresh. It appears

that specific order regarding attachment of the land in dispute was not passed by the Sub-Divisional Magistrate, although it is not disputed that the

plots in question remained in Supurdigi of the Supurdgar. The trial Magistrate will now pass appropriate order regarding attachment of the plot in

question and the same will be kept under attachment till final decision is recorded in the case.

10. The parties are, however, directed to bear their own costs.