

(2005) 07 AHC CK 0195

Allahabad High Court

Case No: Civil Misc. Review Application No. 124672 of 2005 in Civil Misc. Writ Petition No. 23503 of 2005

Jahar Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision: July 18, 2005

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 131, 131(1)

Citation: (2005) 3 AWC 2877 : (2005) 99 RD 326 : (2005) 2 RD 326

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

Bench: Single Bench

Advocate: Rajeev Sharma, for the Appellant; V.K. Singh, Anupam Kulshreshtha, S.K. Mehrotra and Akhil Sharma and S.C., for the Respondent

Final Decision: Disposed Of

Judgement

S.U. Khan, J.

This is a review petition filed by the petitioner seeking review of my judgment and order dated 24.3.05 as modified on 24.5.05 on the application of Rajaram respondent No. 6 in the writ petition.

2. Matter relates to preparation of final decree in respect of agricultural land jointly held by the petitioner and private respondents in the writ petition. The order of the Board of Revenue dated 28.2.05 challenged in the writ petition has the effect of directing the trial court to prepare fresh Kuras (lots). Initially the trial court had refused to accept the Kuras submitted by the Lekhpal. The said order was set aside in the revision by the Additional Commissioner, However, the order of Additional Commissioner was set aside by the Board of Revenue in revision. The effect of order of Board of Revenue is that trial court / S.D.O. is to re-determine Kuras.

3. There is absolutely no dispute regarding the shares, which have already been declared through preliminary decree.

4. It appears that a particular plot of land is adjacent to road (National High Way) hence each party is very much keen to have that plot in his Kura (lot). The contention of learned counsel for the petitioner/applicant in the review petition is that the said plot is in exclusive possession of the petitioner for about 40 years hence under Rule 131 (1) (e)of U.P.Z.A.L.R. Act it shall be allotted to the petitioner. Rule 131(1) of U.P.Z.A.L.R. Act, is being quoted below:

"131. (1) In making partition of a holding into two or more portions the following principles shall be observed:

(a) The valuation of the portion allotted to each party shall be proportionate to his shares in the holding.

(b) The portion allotted to each party shall be as compact as possible.

(c) As far as possible no party shall be given all the inferior or all the superior classes of land.

(d) As far as possible existing fields shall not be split up.

(e) Plots which are in the separate possession of a tenure-holder shall as far as possible be allotted to such tenure-holder if they are not in excess of his share."

5. Under Clause (e) of the aforesaid Rule separate possession of plot is relevant only as far as possible. It is not conclusive .Portion of agricultural plot adjacent to a road, commercial building or. abadi has got potential market value which is several time more than the market value of agricultural land or partition thereof not having such advantage of vicinity. Such agriculture land or its portion is valued under Stamps Act and the Rules for the purpose of payment of stamp duty as commercial or abadi land. Similarly in case where such agriculture land is acquired under Land Acquisition Act higher compensation is payable for that portion of the acquired land which has got any of the above advantages. In view of this there is absolutely no reason as to why this factor of market value shall not be taken into consideration while actually partitioning the agriculture land amongst joint owners. There is nothing under Rule 131, which prohibits such course. The only restriction is that factors provided under the said rule should be taken consideration. It is, therefore, clear that within the frame work of Rule 131 market value shall also be taken into consideration while preparing Kuras/lots at the stage of final decree of partition. This view instead of being against Rule 131 finds support from Rule 131 (1)(c).However, I hasten to add that market "value at the time of preparation of final decree is to be taken into consideration independently of Rule 131 (1) (c).

6. The position may be clarified from X illustration. Suppose a plot of half hectare is jointly held by the two persons. The plot is adjacent to a road. The length of the plot along side the road is 100 meter and its depth 50 meters. In preliminary decree both the joint: holders are declared to be entitled to equal share. At the stage of preparation of final decree two sets of Kuras are prepared. In first set one Kura

consists of 100 meter along side the road and 25 meters depth. The other Kura is proposed just behind the first Kura. In second set of Kuras, both the Kuras consist of land 50 meters along side the road and having 50 meter depth. If none of the joint holder was in exclusive possession of any specific portion of the plot and if the entire plot has got equal rent rate then both the sets of Kuras fully satisfy the criteria laid down under Rule 131. However, first set would be highly unjust and the person who gets the back portion will be put to great disadvantage in comparison of the person who gets the front Kura, However, the second set of Kuras will be perfectly just giving land of equal market value to both the parties. The difference of market value of both the Kuras in the first set may be about 1 4. If both the sets are in accordance with Rule 131 then Kuras of second set must be preferred as it takes into consideration market value also . The fundamental principle of partition is that as far as possible in every regard all the parties must get equal type of the property in accordance with their share hence potential market value is always the first criteria for partition of the property.

7. In view of the above exclusive possession for about 40 years (which fact itself is denied by some of the contesting respondent) cannot confer any right upon the petitioner to have that plot in his share and leave the other co-sharer to take the other plots .Possession of one co-sharer is always possession of all the co-sharers. Actual occupation of share holders may be a relevant factor only whom other things including market value are equal. Accordingly it is directed that while making Kuras the S.D.O. shall keep in mind the factor of market value along with the factors provided under Rule 131 (1).

8. An authority of Supreme Court reported in Kale and Anr. v. D.D.C. reported in 1976 (2) ALR 173 has been cited. In I the said authority family arrangement had been finalized and mutation had been effected on the basis of the said family arrangement. In this back ground the Court held that the partition had already taken place .In the instant case no such plea was raised by the petitioner that actual and final partition had already taken place. In any case stage to raise such an objection was over when preliminary decree was passed. In the proceeding for preparation of final decree no such objection can be taken for the reason that if such an objection had been tenable then there would not have been any necessity to pass preliminary partition decree.

9. Accordingly review petition is disposed of.