

(2013) 01 AHC CK 0457

Allahabad High Court

Case No: C.M.W.P. No. 21109 of 2006

Haji Chhiddu

APPELLANT

Vs

Commissioner, Moradabad
Region and Others

RESPONDENT

Date of Decision: Jan. 17, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 176

Citation: (2013) 4 AWC 3712 : (2013) 119 RD 280

Hon'ble Judges: Sibghat Ullah Khan, J

Bench: Single Bench

Advocate: Rakesh Kumar and Prakash Padia, for the Appellant; K.M. Garg, Krishna Mohan and N.L. Pandey, for the Respondent

Final Decision: Disposed Of

Judgement

Sibghat Ullah Khan, J.

Heard Shri Rakesh Kumar, learned counsel for the petitioner. Shri K.M. Garg, learned counsel for respondent No. 4, Shri Krishna Mohan, learned counsel for respondent No. 3, Zila Panchayat, Bijnor and learned standing counsel for respondent Nos. 1 and 2. Plot No. 468 area 0.77 hectare and plot No. 471 area 0.297 hectare jointly belong to Zahid Hussain son of Sahid Hussain respondent No. 4 and petitioner. Shahid Hussain was real brother of the petitioner. Shri Sahid Hussain died on 8.12.2013 and his share in the plots in dispute was inherited by respondent No. 4. Shahid Hussain until his death was having licence to run cattle market over the plots in question granted to him by Zila Panchayat Bijnor. After the death of Sahid Hussain lot of litigation is going on between the petitioner and his nephew respondent No. 4 Zahid Hussain son of Sahid Hussain regarding the cattle market which is held on every Wednesday.

2. The licence was granted in the year 1964. According to the petitioner even though the licence was in the name of Shahid Hussain but he was sharing the profits with the petitioner and the licence was granted exclusively in the name of Shahid Hussain with the consent of the petitioner. After the death of Shahid Hussain dispute started between the petitioner and respondent No. 4. Petitioner claimed that on 5.4.2002 Shahid Hussain had executed an agreement mentioning therein that petitioner would be entitled to get his name entered in the licence as co-licensee alongwith him. Respondent No. 4 asserted that petitioner had agreed and had also filed some affidavit in that regard that the portion over which cattle market is held had come in private partition in the share of Shahid Hussain and respondent No. 4 has covered that portion with boundary wall hence petitioner has got no right to object to holding of cattle market exclusively by respondent No. 4. The case taken up by each party is seriously opposed and denied by the other party.

3. Immediately after the death of Shahid Hussain the name of respondent No. 4 was entered in the licence as licensee. Petitioner filed an application before " the District Magistrate asserting that on 5.4.2002 late Shahid Hussain had agreed for entry of the name of the petitioner in the licence. D.M. on the application of the petitioner dated 27.3.2003 passed an order on the same date. The total order is in seven words to the effect that "his name should also be included". Respondent No. 4 was not even issued notice before passing the said order. The name was actually entered on 31.3.2003. The said order was set aside by this Court through order dated 18.7.2003 passed in writ petition No. . 15644 of 2003 and the D.M. was directed to pass order after hearing respondent No. 4. D.M. on 5.5.2004 again passed the order directing entry of name of both in the licence. Against the said order respondent No. 4 filed writ petition No. 20251 of 2004 which was dismissed on 24.5.2004 with liberty to the petitioner to approach the civil court for appropriate relief. Original Suit No. 418 of 2003, Zahid Hussain v. Hazi Chiddu, had already been filed for cancellation of agreement dated 2.4.2002. The licence was renewed jointly in the name of both from 1.4.2005 to 31.3.2006 by order dated 30.3.2005 passed by Upper Mukhya Adhikari Zila Panchayat, Bijnore. Against the said order also writ petition was filed on the ground that suit was already pending. Respondent No. 4 also filed revision against order of the District Magistrate dated 5.5.2004 before Commissioner, Moradabad division, Moradabad. The revision was filed on 26.6.2004, i.e., after dismissal of the writ petition directed against the same order of the D.M. on 24.5.2004. The Commissioner allowed the revision on 29.3.2006 and remanded the matter to the D.M. to pass fresh order after hearing both the parties. In the order passed by the Commissioner there is no mention that counsel for Hazi Chiddu who was opposite party in the revision was heard. However, it is mentioned that notice was sent through registered post but no one had appeared on his behalf. The order dated 29.3.2006 has been challenged through this writ petition.

4. As far as alleged agreement dated 5.4.2002 is concerned, even if it was executed, it has got absolutely no binding effect on the authority granting the licence. Licence

to run cattle market is not a property much less a transferable property either in whole or in part. On the other hand agricultural land cannot finally be divided through private partition. It has to be divided through a decree passed u/s 176 of U.P.Z.A. and L.R. Act. until then by maximum it can be only a mutual arrangement. Accordingly, even if it is assumed that some mutual arrangement took place between petitioner and respondent No. 4 dividing the joint land still the authority granting the licence to run cattle market cannot take its notice. It is to be guided only by revenue entries. Unless partition takes place through decree u/s 176 of U.P.Z.A. and L.R. Act, the property is actually divided by metes and bounds and names of tenure holders are recorded in the revenue record on separate specified portions of the Agricultural plot, licensing authority is bound to treat the land as joint. In case of joint land licence cannot be granted unless all the joint owners agree and continue to agree for grant of licence. If there is least dispute licence will have to be refused. In the instant case a raging dispute is going on in between petitioner and respondent No. 4 regarding the right to run the cattle market. Plots over which market is held have not formally been divided through decree u/s 176 of U.P.Z.A. and L.R. Act. Accordingly, no licence can be granted to any one.

5. Accordingly, Zila Panchayat. Bijnore is directed not to renew the licence for holding cattle market on plot No. 468 and 471 (or any other plot of which petitioner and respondent No. 4 are joint Bhoomidhars) after 31.3.2013 under any circumstances. If any of them is interested in getting the licence/renewal then he may separately apply and mention such plot for holding the market which stands exclusively in his name in the revenue record. In such matter no mutual arrangement can be accepted. However, in case before 31.3.2013 both the parties get the plots over which cattle market is at present being held (no. 468 and 471) partitioned through final decree of the revenue court; then each of them, may apply for grant of separate licence on the portion which is shown in his share in the revenue record on alternate Wednesdays.

6. If both the parties apply for separate licence on such lands which are exclusively recorded in the name of each party then question of grant of licence may be considered and in that eventuality any observation earlier made in any case, order or judgment will not be taken into consideration.

7. Learned counsel for the petitioner has further argued that the order which is being passed in this writ petition will be in conflict with the Division Bench judgment dated 24.5.2004 given in writ petition No. 20251 of 2004 which is on page 35 of the paper book of this writ petition and which is quoted below:

Shri V.M. Zaidi learned counsel for the petitioner prays for and is permitted to withdraw the writ petition with liberty to approach the civil court for appropriate reliefs.

The writ petition is dismissed with liberty to the petitioner to approach the civil court for the appropriate reliefs.

8. It has further been argued that a civil suit has also been filed being Original Suit No. 418 of 2003. In my opinion the order which is passed is not in conflict with the said judgment and on the basis of this judgment any party may apply for dismissal of the suit under Order VII, Rule 11, C.P.C. before the civil court which may be considered in accordance with law.

9. With the above observations, writ petition is disposed of. Office is directed to supply a copy of this order free of cost to Shri Krishna Mohan, learned counsel for Zila Panchayat within a week.