

(2012) 03 AHC CK 0264

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 25488 of 2007

Bhagwat Singh and
others

APPELLANT

Vs

Rajendra Prasad alias
Rajender Prasad and
others

RESPONDENT

Date of Decision: March 26, 2012

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 229B

Citation: (2012) 116 RD 301

Hon'ble Judges: Amreshwar Pratap Sahi, J

Bench: Single Bench

Advocate: D.V. Jaiswal, Satendra Kumar Gupta and B.P. Agrawal, for the Appellant; Anuj Kumar, Triveni Shanker, Ajay Shanker and C.S.C., for the Respondent

Final Decision: Allowed

Judgement

Amreshwar Pratap Sahi J.

1. The petitioners are the plaintiffs in a suit u/s 229-B of the U.P.Z.A. & L.R. Act, 1950 seeking a declaration of title over the disputed holding as Bhoomidhars. The said suit was decreed ex parte on 31st December, 1996. The plea raised was of adverse possession. Respondent No. 1-defendant filed a restoration application which was allowed on 22nd January, 1997 on the same day and the petitioners allege that the same was also ex parte. Consequently, the petitioners who are the plaintiffs aggrieved by the restoration order, filed a restoration on 24.1.1997 before the Trial Court itself which remained pending for setting aside the order dated 22.1.1997. Simultaneously, they also filed a revision which was dismissed as not maintainable on 27.3.1997 and a second revision before the Board also met the same fate on 08th January, 1998. Aggrieved by the order of the learned Commissioner and the Board of Revenue referred to herein above, the

petitioners filed writ petition No. 6811 of 1998 which was dismissed subject to the direction that since the petitioners' application dated 24.1.1997 for setting aside the order dated 22.1.1997 was still pending, the same shall be disposed of by the Trial Court within a period of six weeks. The judgment of this Court dated 27.7.1998 is annexure-6 to the writ petition.

2. The date fixed before the Trial Court to decide the said application dated 24.1.1997 filed by the petitioners was 5th August, 1998. On that date the lawyers were abstaining from work and were probably on strike. It is the case of the petitioners that no order sheet was prepared on 05th August, 1998 and the case was taken up on the very next day i.e. 6.8.1998. The application filed by the petitioners on 24.1.1997 which had been directed by the High Court to be decided by the Trial Court was dismissed in default.

3. Simultaneously, the Trial Court also dismissed the suit itself in default by the same order dated 6.8.1998. The petitioners filed a revision against the same which was allowed on 17.12.2005 with a direction to decide the application dated 24.1.1997.

4. The petitioners also filed a restoration application for setting aside the order dated 6.8.1998 before the Trial Court itself on the ground that it was without any knowledge of the petitioner and in teeth of the directions of the Hon"ble High Court dated 27.7.1998.

5. Sri D.V. Jaiswal contends that once the High Court had directed the application of the petitioners to be decided then the same could have been disposed of after hearing the parties for which the date was fixed on 5.8.1998. The Trial Court without fixing any date for the next day proceeded to take up the matter on 6.8.1998 and not only dismissed the application of the petitioners but also dismissed the suit itself in default. Sri Jaiswal submits that this procedure adopted by the Trial Court was erroneous inasmuch as firstly the aforesaid action was in teeth of the directions of the Hon"ble High Court and without any notice to the petitioners or their Counsel fixing 6.8.1998, secondly even if the application filed by the petitioners for setting aside the order dated 22.1.1997 is dismissed then the consequences are that the suit still survived, and the same could not have been dismissed in default as there was no date fixed for hearing in the suit.

6. He further contends that merely because the petitioners had filed a restoration application on 12.8.1998 before the Trial Court, the Board could not have allowed the revision simply because the petitioners had availed of their remedy of filing a restoration application. The Board has set aside the said order on the ground that the petitioners could not have availed of the remedy of revision and restoration at the same time.

7. Sri Triveni Shankar for the respondent submits that the same legal principle will apply as was applied in the decision dated 27.7.1998 between the same parties and, therefore, the petitioners having filed a restoration application before the Trial Court, could not have filed a revision before the Commissioner. He further submits that the proceedings in relation to mutation were attempted by the petitioners' mother on the basis of an

unregistered sale deed dated 22.6.1971 and the said mutation order has been set aside. He therefore contends that the suit which has been preferred by the plaintiffs on the basis of adverse possession is an after thought and is a sheer harassment to the answering respondents-defendants.

8. Replying to the said submissions, Sri Jaiswal submits that the proceedings for mutation are summary proceedings and the parties would have to be governed by any decision in the suit itself. He further submits that the remedy to file a restoration or to file a revision were both available to the petitioner and he relies on the judgment of learned Single Judge of this Court in the case of Hafiz Mukhtar Ahmad v, Mumtaz Ahmad. 1987 (2) A.W.C. 1270

9. Having considered the submissions, in my opinion the Trial Court committed a manifest error and a material irregularity by passing an order on 6th August, 1998 without fixing a date on the order sheet and without notice of the same to the petitioners or their counsel. The order was, therefore, in violation of principles of natural justice and was without authority. The Trial Court further went on to commit an error by simultaneously dismissing the suit in default inasmuch as if the application filed by the petitioners as directed by the Hon"ble High Court was to be decided then the Trial Court should have fixed another date in the suit itself. The Trial Court hurriedly and without any justification dismissed the suit in default on 6.8.1998. The petitioners, therefore, rightly moved an application for restoration on 12.8.1998.

10. Instead of pursuing the restoration application, the petitioners also filed a revision which was allowed by the learned Commissioner. In my opinion the Commissioner was justified in setting aside the order dated 6.8.1998 for the reasons already given herein above.

11. The Board of Revenue without adverting to the aforesaid facts in correct perspective, allowed the revision filed by the respondents, thereby restoring the order of the Trial court. In my opinion, the Board of Revenue also committed the same error as the Trial Court.

12. I have perused the facts stated in the restoration application dated 12.8.1998 and I find that there were sufficient reasons to set aside the order dated 6.8.1998. The learned Additional Commissioner, therefore, did not commit any error while passing the order dated 17.12.2005.

13. Accordingly, the writ petition is allowed and the order dated 13.4.2007 passed by the Board is quashed. The order of the Trial Court dated 6.8.1998 dismissing the suit also stands quashed and the restoration application filed by the petitioners on 12.8.1998 also stands accordingly disposed of. As a consequence thereof and the passing of the order dated 22.1.1997, the suit stands restored. This is in the interest of justice and in the larger interest of the litigants to resolve the dispute at the earliest.

14. The parties shall now appear before the Trial Court and the Trial Court shall proceed to dispose of the suit on merits after allowing the parties to lead their evidence as expeditiously as possible preferably within one year. The writ petition is accordingly" allowed.