

## Nargis Bano Vs Board of Revenue

**Court:** Allahabad High Court

**Date of Decision:** April 17, 2014

**Acts Referred:** Civil Procedure Code, 1908 (CPC) – Order 23 Rule 3, Order 9 Rule 13, 96(3)

**Citation:** (2014) 123 RD 777

**Hon'ble Judges:** Ram Surat Ram (Maurya), J

**Bench:** Single Bench

**Advocate:** Faujda Rai, Chandra Kumar Rai and Rajesh Maurya, Advocate for the Appellant; J.A. Azmi and R.C. Upadhyay, Advocate for the Respondent

**Final Decision:** Disposed Off

### Judgement

Ram Surat Ram (Maurya), J.

Heard Sri Chandra Kumar Rai for the petitioner and Sri S.C. Verma and Sri J.A. Azami for the contesting

respondents. The writ petition has been filed against the order of Board of Revenue dated 28.2.2014, allowing the revision and setting aside the

orders of appellate Court as well as Trial Court passed on the basis of admission contained in written statement and remanding the matter to the

Trial Court for deciding the suit on merit after giving opportunity of hearing to the parties.

2. The petitioner filed a suit u/s 229-B of U.P. Act No. 1 of 1951. In this suit, written statement, admitting the claim of the petitioner was filed and

the suit was decreed by the order dated 15.11.2008, in view of admission in written statement. Against the decree of Trial Court, three appeals

were filed. The appeals were consolidated and heard by Additional Commissioner, Azamgarh Division, Azamgarh, who by his order dated

12.4.2010 held that as the suit was decreed in terms of admission contained in written statement. u/s 96(3) C.P.C., an appeal against consent

decree is barred. The defendant-appellant are denying service of summons of the suit and filing of the written statement then they could have filed

an application under Order IX, Rule 13, C.P.C. for setting aside the decree and the appeal was not maintainable. On these finding the appeals

were dismissed. The orders were challenged in revisions before Board of Revenue which have been allowed by the impugned order dated

28.2.2014 and the orders of Trial Court as well as the Appellate Court were set aside and the matter has been remanded for trial of the suit before

the Trial Court. Hence this writ petition has been filed.

3. The Counsel for the petitioner submits that u/s 331(3) of U.P. Act No. 1 of 1951, a second appeal is maintainable against the appellate decree

on the substantial question of law. As no substantial question of law was involved as such revision was filed to by pass the mandatory requirement

of substantial question of law. Therefore the revision was not maintainable and ought to have been dismissed on this ground alone. In view of

specific provision as contained in section 96(3) C.P.C., the appeals were not maintainable and Additional Commissioner has rightly dismissed the

appeals. As the factum relating to service of summons of the suit and filing of written statement was challenged. The trial could have been in better

position to decide the factum relating to service of summons and filing of written statement. The order of Board of Revenue is illegal and liable to

be set aside.

4. I have considered the arguments of the Counsels for the parties and examined the records. The revision is filed u/s 333 of U.P. Act No. 1 of

1951, which provides that Board can call for record of any suit or proceeding decided by any Court subordinate to him in which no appeal lies or

where an appeal lies but has not been preferred, for the purposes of satisfying himself as to the legality or propriety of any order passed in such

suit. Thus revision is maintainable in the cases where an appeal lies but has not been preferred. Similar provisions contained in U.P. Consolidation

of Holdings Act, 1953. The same controversy has been raised and the matter was referred to and decided by Division Bench in Faujdar Vs.

Deputy Director of Consolidation and Others, , Division Bench held that in spite of the fact that the appeal is maintainable and no appeal has been

filed, the revision can directly be filed. Thus this case is fully covered by the dictum of Division Bench of this Court. There is no force in this

argument.

5. So far as bar contained u/s 96(3) C.P.C. is concerned, by Act No. 104 of 1976, a Proviso has been added under Order XXIII, Rule 3,

C.P.C., authorizing the Court to examine the validity of the compromise, if challenged by any of the parties. Corresponding amendment was also

made under Order XLII and Rule-1A has been added in it, providing an appeal from the order passed under Order XXIII, Rule 3 (Proviso). The

matter came for consideration before Supreme Court in Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, , Supreme Court held that

when factum of compromise is disputed, then bar contained u/s 96(3) will not be applicable and in view of amending provisions, the Trial Court as

well as the Appellate Court are competent to examine the filing of the compromise.

6. Board of Revenue found that filing of the written statement has been denied by the parties. It has been further found that notice has not been

served upon the defendants and in the circumstances that notice was not served and defendants denied of filing the written statement the Lower

Appellate Court could have set aside the decree of the Trial Court based on the admission in the written statement and dismissal of the appeal was

illegal. The suit has been decided without service of summons on the basis of a forged compromise and the Appellate Court has failed to take

notice of the amended provisions of law as well as judgment of Supreme Court, then it was substantial question of law. The order of Board of

Revenue does not suffer from any illegality.

7. The Counsel for the petitioner submits that the husband of the petitioner is deaf and dumb. The respondents are residing in Mumbai and they are

powerful and moneyed persons. They have no interest of the property at Azamgarh and they are willing to sell the property while this property is

only source of livelihood of the family of the petitioners as such the defendants be restrained from selling the property of Azamgarh during

pendency of the suit. As this Court is deciding the writ petition finally, it is not appropriate for this Court to pass any interim order. The petitioner

may file a suitable application before the Trial Court. In case the application for interim injunction is filed within ten days, then Trial Court shall

decide the application in accordance with law within a period of two weeks thereafter, after hearing the parties concerned. The Trial Court shall

also decide the suit expeditiously, if possible, within a period of nine months. The writ petition is disposed of.