
(2014) 04 AHC CK 0147

Allahabad High Court

Case No: Writ-B No. 20969 of 2014

Nargis Bano

APPELLANT

Vs

Board of Revenue

RESPONDENT

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 court was 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.