

Jagdish and Another Vs Board of Revenue and Others

Court: Allahabad High Court

Date of Decision: Jan. 21, 2014

Acts Referred: Constitution of India, 1950 " Article 226

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

Citation: (2014) 122 RD 597

Hon'ble Judges: Ran Vijai Singh, J

Bench: Single Bench

Advocate: Prakash Chandra, Advocate for the Appellant; Ashish Kumar Srivastava, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Ran Vijai Singh, J.

Heard Sri Prakash Chandra, learned Counsel for the petitioners, learned Standing Counsel for the State-respondents

and Sri Ashish Kumar Srivastava, learned Counsel for the Gaon Sabha. Through this writ petition the petitioners have prayed for issuing a writ of

certiorari quashing the order dated 14.11.2013 passed by the learned Member, Board of Revenue in Second Appeal No. 3 of 2003-04

(Raghuwar v. State of U.P. and others) and order dated 30.10.2003 passed by the Additional Commissioner, Agra Division, Agra in Appeal No.

24 of 1997 (Smt. Batto v. Raghuwar and others).

2. Vide order dated 30.10.2003 the learned Additional Commissioner has allowed Appeal No. 24 of 1997 filed against the judgment and order

dated 28.12.1996 passed in Suit No. 40 of 1995-96 filed u/s 229B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short the

Act) after setting aside the order dated 28.12.1996 passed by the Sub-Divisional Officer and remitted the matter before him for deciding the case

on each and every issues after providing opportunity of hearing/to adduce evidence etc. The petitioners have filed second appeal that has been

dismissed.

3. The facts giving rise to the present writ petition are that respondent No. 6 has filed Case No. 40 of 1995-96 u/s 229B of the Act in which the

Trial Court has decided four preliminary issues and held that the suit itself is not maintainable. Against that judgment an appeal was filed. Before the

Appellate Court it was argued that the appeal is barred by time and the delay has wrongly been condoned. The Appellate Court held that appeal is

within time and set aside the order passed by the Sub-Divisional Officer dated 28.12.1996. Against this judgment second appeal was filed before

the Board of Revenue and before the Board of Revenue where only question of limitation was raised. Learned Member, Board of Revenue

refused to interfere with the impugned order and dismissed the appeal taking note of the fact that there was no delay in filing the appeal keeping in

mind that ultimately substantial justice is to be done to the parties.

4. Learned Counsel for the petitioners contends that apart from limitation other points have also been raised but the same have not been taken into

consideration by the Board of Revenue. There is no affidavit of the Counsel who has argued the second appeal endorsing the stand taken by the

petitioner's Counsel in this writ petition and there is nothing on record to indicate that those points have been taken and pressed and the Court

below has not taken into consideration while dismissing the second appeal. Therefore, I am not inclined to interfere with the impugned order under

Article 226 of the Constitution of India.

5. So far as delay is concerned, it is not in dispute that the limitation for filing an appeal against the judgment and decree passed by the Trial Court

is 30 days. Here the judgment was delivered by the Sub-Divisional Officer on 28.12.1996 and application for obtaining certified copy of the same

was filed on 31.12.1996 within the prescribed period of limitation. Certified copy of the same was prepared on 21.1.1997. The respondent filed

appeal on 18.2.1997. From the date of the judgment the appeal could be filed by 27th January, 1997. Twenty-one days time has been consumed

in preparation of the copy of the judgment. If that time is excluded while computing the period of limitation the appeal would be barred by time by

only two days. There is nothing on record to show as to when decree was prepared and the learned Counsel for the petitioner could not show any

material from which it can be ascertained as to when decree was prepared. In the facts and circumstances of the case, I refuse to exercise the

discretion under Article 226 of the Constitution of India. The writ petition is dismissed. However, dismissal of the writ petition will not preclude the

petitioner to seek review of the order passed by the learned Member, Board of Revenue on the reviewing points.