

(2016) 09 AHC CK 0240

ALLAHABAD HIGH COURT

Case No: Civil Misc. Writ Petition No. 40903 of 2016.

Smt. Premlata Singh -  
Petitioner @HASH  
State of U.P. And 4  
Others

APPELLANT

Vs

RESPONDENT

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Date of Decision: Sept. 30, 2016

Acts Referred:

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

Citation: (2016) 10 ADJ 681 : (2016) 6 AllWC 6120 : (2016) 133 RD 810

Hon'ble Judges: Anjani Kumar Mishra, J.

Bench: Single Bench

Advocate: Manju Rani Chauhan, Advocate, for the Petitioner; C.S.C, for the Respondents

Final Decision: Dismissed

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### Judgement

Anjani Kumar Mishra, J. - Heard Smt. Manju Rani Chauhan, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. By means of this petition, the petitioner has sought a writ of certiorari for quashing the order dated 9.11.2015, passed by the Sub Divisional Magistrate-respondent No. 4. in a suit under Section 229B, filed by respondent No. 5 whereby the parties have been restrained from creating any third party interest in the suit property.

3. A revision, filed against this order, has been dismissed vide order dated 5.7.2016 passed by the Additional Commissioner-respondent No. 3, holding the revision to be not maintainable, being directed against an interlocutory order. It is these two orders, which are impugned in the writ petition.

4. The factual background of this case briefly stated is as follows:

The dispute between the parties pertains to Plot No. 473 area 0.0021 hectare and Plot No. 473M? area 0.030 hectare, situated in Village-Kalyanpur Kalan, Tehsil Sadar, District Kanpur Nagar, which was recorded in the name of the petitioner's grand father-in-law, Ram Prasad Singh. The petitioner sought mutation over the land in question relying upon an unregistered Will in her favour alleged to have been executed by the recorded tenure-holder-Ram Prasad Singh. This mutation application was allowed on 20.1.1995 by the Nayab Tehsildar.

5. Against the order of mutation passed in favour of the petitioner, the respondent NO. 5 filed a restoration application, which was allowed on 11.3.2008. Subsequently by order dated 13.11.2009, the respondent No. 5 was ordered to be mutated over the land in place of Ram Prasad Singh.

6. The petitioner filed a restoration application, along with a delay condonation application, seeking recall of the order dated 13.11.2009. The petitioner is stated to have filed a revision also against the orders dated 13.11.2009 and 11.3.2008, which was allowed on 18.3.2015. The orders impugned in the revision dated 17.3.2008 and 13.11.2009 was set aside and the order of mutation passed in favour of the petitioner on 20.1.1995 was maintained.

7. Consequential revision, filed by the respondent No. 5, was dismissed by the Board of Revenue on 16.4.2015. Respondent No. 5, preferred a Writ Petition No. 39908 of 2015 before this Court. This Court vide order dated 21.7.2015, disposed of the writ petition on the ground that the petitioner in the said writ petition had an alternative remedy of a suit in view of Section 40A of the Land Revenue Act.

8. The respondent No. 5, thereafter has filed a suit under Section 229-B wherein an ex parte interim order dated 9.11.2015 was granted directing the parties not to create any third party interest in the land in question during the pendency of the suit.

9. The petitioner filed a revision before the Additional Commissioner challenging the interim order aforesaid. This revision has been dismissed vide order dated 5.7.2016. Hence, this writ petition challenging the interim order dated 9.11.2015 and the order dated 5.7.2016 whereby the revision of the petitioner has been disposed of.

10. The contention of learned counsel for the petitioner is that the suit under Section 229B filed by the respondent No. 5 is not maintainable in view of Section 40A of the UP Land Revenue Act. It is submitted that the word "suit", used in the said Section 40A, necessarily refers to a civil suit. The Revenue Court exercising jurisdiction under Section 229B of the UP Zamindari Abolition and Land Reforms Act grants a declaration and the same is not a title suit. The respondent No. 5 could, therefore, have filed and maintained only a civil suit and the courts below have committed illegality and have acted beyond jurisdiction in entertaining the suit and granting an interim order therein.

11. It is further contended that a residential house exists, over the plots in question. The petitioner is paying house-tax and, therefore, the plots are not land within the meaning of the word in the UP ZA and LR Act. Therefore, also the suit filed by the respondent No. 5 is not maintainable.

12. I have considered the submissions made by learned counsel for the petitioner and have perused the record.

13. Upon a consideration of the submissions made, the first point, which arises for consideration is whether a suit under Section 229B of the UP ZA and LR Act, is a title suit. The contention of learned counsel for the petitioner is that this suit is not a title suit contemplated under Section 40-A of the UP Land Revenue Act. The said Section 40-A is extracted below:

"Section 40-A. Saving as to title suits.- No order passed under Section 33, Section 35, Section 39, Section 40, Section 41 or Section 54 shall bar any suit in a competent Court for relief on the basis of a right in a holding."

A bare perusal of this provision reveals that an order of mutation, passed under Section 35 of the UP Land Revenue Act, does not bar a suit in a competent court for relief on the basis of a right in a holding.

The words "competent court" are crucial in view of the submissions made and have to be considered in the light of the provisions contained in Section 229-B of the UP ZA and LR Act, which has been invoked by the respondent. The said Section reads as follows"

"Section 229-B. Declaratory suit by person claiming to be an asami of a holding or part thereof.-

(1) Any person claiming to be an asami of a holding or any part thereof, whether exclusively or jointly with any other person, may sue the landholder for a declaration of his rights as asami in such holding or part, as the case may be.

(2) In any suit under sub-section (1) any other person claiming to hold as asami under the land-holder shall be impleaded as defendant.

(3) The provisions of sub-sections (1) and (2) shall mutatis mutandis apply to a suit by a person claiming to be [bhumidhar] with the amendment that for the word "landholder" the word "the State Government and the [Gaon Sabha] are substituted therein."

14. The quoted provision is for a declaration of the rights of the plaintiff, be it right as an asami or as a bhumidhar in a holding. Since this provision is for declaration of the rights of an individual, it is a title suit and there is no force in the submission of learned counsel for the petitioner that a title suit is necessarily a civil suit. Besides, in view of Section 331 of the UP ZA and LR Act, no court other than a court mentioned in the Column 4 of Schedule-II is entitled to take cognizance of a suit, application or

proceeding for a relief, which can be obtained by means of such suit for application. The proviso to this Section is extremely relevant and the same is extracted below:

"Section 331. Cognizance of suits, etc. under this Act.-(1) Except as provided by or under this Act no court than a court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.

Provided that where a declaration has been made under Section 143 in respect or any holding or part thereof, the provisions of Schedule II insofar as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof."

15. At this stage, it would be relevant to note that on a pointed query by the Court, learned counsel for the petitioner has not been able to demonstrate that any declaration, under Section 143 of the Act, has been granted as regards the land in question. It is, therefore, clear that in the absence of a declaration under Section 143, the Revenue Court exercising jurisdiction under Section 229B of the Act, alone is competent to adjudicate upon the title of the parties to the land in question.

16. Besides, a Full Bench of this Court in *Irfan Ali v. Rafiq*, 1991 RD 374 has held that in a case, a mutation case is decided against a person, he has two remedies; (i) he can file a revision or (ii) he can file a suit under Section 229B. In the instant case, the respondent No. 5 has filed a suit under Section 229B, which is clearly maintainable. The submissions of learned counsel for the petitioner, to the contrary, are without substance and are hereby repelled.

17. The second contention that a house exists over the plots in question assessed to municipal tax, which tax is being paid, therefore, the Civil Court alone would have jurisdiction, is also without substance.

There is no material on record to show that the entire area of the two plots in question is covered by a house. It is quite possible that only a portion of the land is covered by a house. It has been held by this Court in *Deena Nath Verma v. Gokaran and others*, 2002 (5) AWC 4109, that even if certain constructions exist on agricultural land, it will not cease to be "land" unless a declaration has been made under Section 143 of the Act. As noticed herein above, no declaration under Section 143 has been granted as regards the plots in question and, therefore, the land continues to be agricultural land and amenable to the jurisdiction to the Revenue Court under Section 229B of the UP ZA and LR Act. Hence, even the second contention of learned counsel for the petitioner cannot be accepted.

18. There is yet another aspect of the matter. It is not in dispute that the petitioner has herself been mutated over the plots in question in proceedings under Section 34

of the UP Land Revenue Act. It is, therefore, admittedly agricultural land over which the provisions of UP Land Revenue Act were applicable. In case, the argument of learned counsel for the petitioner is accepted even the UP Land Revenue Act would not be applicable in the land and, therefore, the mutation orders, passed in her favour, would also be without jurisdiction.

19. It is further relevant to record that learned counsel for the petitioner has placed reliance upon the following three judgments in support of her contentions:

(i) Gandabhai Dalpatbhai Patel v. State of Gujarat, 2004 LawSuit (Guj) 522;

(ii) State of Gujarat v. Patel Raghav Natha, 1969 AIR SC 187;

(iii) Ramji Gupta and another v. Gopi Krishan Agrawal (D) and others 2013 (3) AWC 2782.

20. The first two case cited, pertain to Bombay Land Revenue Code, 1887, which is not applicable in the instant case and, therefore, these two judgments are wholly irrelevant. The third judgment cited, namely, Ramji Gupta and another (supra) pertains to the Provincial Small Causes Courts Act, 1887 and Section 23 thereof, which provide that a Court of Small Causes cannot determine a question of title and in case, an issue of title arises, the Court may at any stage of the proceedings return the plaint to be presented to a court having jurisdiction to determine title. Even the Provincial Small Causes Courts Act, 1887, is not attracted to the instant case. Even this judgment, therefore, is irrelevant as regards the controversy involved in the instant case.

21. In view of the above discussion, the writ petition is devoid of merits and is, accordingly, dismissed.