
Indra Bahadur Singh and Others Vs Board of Revenue and Others

Writ Petition (M/S) No"s. 205, 70 and 1338 of 2004

Court: Uttarakhand High Court

Date of Decision: Sept. 16, 2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€” Order 11 Rule 11, Order 11 Rule 21, Order 2 Rule 2#Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 â€” Section 209, 229B, 333

Citation: (2011) 113 RD 404 : (2011) 3 UC 2294

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Tarun Agarwala, J.

One Ganesh Singh S/o Shri Lal Singh was the bhumidhar of plot Nos. 14-A, 15, 16, 17, 18, 29, 35-B, 38, 51-B and

52-A of the Khata No. 120 area 35 bighas, 7 bishwas and 12 bishwansi situate at village Gorakhpur Mallah, Paragana and Tehsil Haldwani,

District Nainital. Shri Ganesh Singh expired in the year 1950 leaving behind him his two widows, namely, Smt. Amrita Devi and Smt. Hira Devi.

Their names were accordingly mutated in the revenue record as co-sharers of the aforesaid plots. The Petitioners are the sons of Smt. Radha Devi

who is the sister of late Ganesh Singh. The Petitioners filed a suit u/s 229-B/209 of the U.P. Zamindari Abolition and Land Reforms Act for

declaration of their names in the revenue records and for eviction of the Respondents from the land in dispute alleging that Smt. Amrita Devi,

widow of late Ganesh Singh had remarried and consequently, after her re-marriage, she had No. right and interest in the property in dispute left by

Shri Ganesh Singh and that the entire property devolved upon Smt. Amrita Devi and, upon her death, the Petitioners were entitled to the property

in question as the legal heirs. It was also alleged that Smt. Amrita Devi had also executed a registered Will dated 12th May, 1955 in favour of the

Petitioners and, consequently, on the aforesaid two grounds the suit was filed for declaration.

2. Before the Trial Court, it has come in evidence that Smt. Hira Devi had remarried during the pendency of the proceedings. Smt. Hira Devi filed

an application for interrogatories about the date, time and marriage of her with Prem Singh. The Petitioners duly replied to the aforesaid

interrogatories. The Respondents thereafter filed an application that since the reply of the Petitioners was evasive, the suit of the Plaintiff should be

dismissed under Order XI, Rule 21 of the CPC. The Trial Court, after considering the submission of the learned Counsel for the parties, dismissed

the application of Smt. Hira Devi and held that sufficient reply was given by the Petitioners.

3. Aggrieved by the order of the Trial Court dated 20th June, 1981, the opposite parties filed an appeal before the Commissioner which was

allowed by an order dated 19th April, 1985. The Appellate Court not only allowed the appeal but also dismissed the suit of the Plaintiffs under

Order XI, Rule 21 of the CPC. 4. The Petitioners, being aggrieved by the aforesaid order, filed a revision No. 40 of 1987-88 before the Board of

Revenue which was allowed by an order dated 5th September, 1991 and the order of the lower appellate Court was set aside. The revisional

Court directed the Trial Court to proceed with the merits of the suit.

5. It transpires that the Respondent Nos. 6 Sri Deewan Singh and Respondent No. 7 the Deputy Director Tourist Department, Kumaon Division,

Nainital filed separate applications for the recall of the order dated 5th September, 1991. The said Respondents contended that they had been

impleaded as necessary parties during the pendency of the proceedings and that the Revisional Court allowing the revision had not given them an

opportunity of hearing. The said restoration application was allowed by an order dated 14th July, 1993 on the ground that the said opposite parties

were not heard. The revisional Court accordingly fixed a fresh date of hearing of the revision. That the revisional Court, after hearing the parties,

dismissed the revision and further affirmed the order of the lower Appellate Court dismissing the suit. The revisional Court further held that the suit

of the Petitioners was also liable to be dismissed Under Order II, Rule 2 of the CPC since No. cause of action had accrued in filing the suit. The

Petitioners, being aggrieved by the said order, has filed the present writ petition.

6. Heard Shri Lokendra Dobhal, the learned Counsel for the Petitioners, Shri B.C. Pandey, the learned Senior Counsel with Shri B.D. Pandey and

Shri J.C. Belwal, the learned Counsel for the Respondents and Shri Sudhir Kumar, the learned Brief Holder for the State.

7. Under Order XI, Rule 2 of the Code of Civil Procedure, particular interrogatories proposed to be delivered is required to be submitted to the

Court. Such interrogatories for which leave has been granted is required to be answered by the other party on an affidavit. The sufficiency of the

answer given by a party to an interrogatory on an affidavit is required to be determined by the Court under Order XI, Rule 10 of the CPC. If the

Court finds that the answer given by a party is sufficient, such order is liable to be passed and the Court will proceed accordingly. But in the event,

the Court finds that the answer submitted by the parties is insufficient, the Court will direct the party to answer further under Order XI, Rule 11 of

the CPC In the event, the party fails to answer the interrogatories or fails to answer further, it would be open to the Court to pass an order in

consonance with the provision of Order XI, Rule 21 of the CPC and, in the event, where the Defendant fails to answer the interrogatories, the

Court may strike off his defence and, in the event, where the Plaintiff fails to answer to interrogatories, his suit could be dismissed for want of

prosecution. This, in the opinion of the Court, is the scheme contemplated under Order XI of the CPC In Babbar Sewing Machine Company v.

Trilok Nath Mahajan,¹ the Supreme Court held that the provision of Order XI, Rule 21 of CPC should be applied in extreme cases where there

has been obstinacy or contumacy on the part of the Defendant or willful, attempt to disregard the order of the Court is established. The Supreme

Court held that that the principles governing the Court exercising its discretion under Order XI, Rule 21 is that it is only when the default is willful

and as a last resort that the Court should dismiss the suit or strike out the defence, when the party is guilty of such willful disobedience of the orders

of the Court. In the light of the aforesaid decision of the Supreme Court, the Court is required to find out as to whether the Petitioners has wilfully

defaulted any compliance of the order of the Court below.

8. In the present case, the Court finds that in response to the interrogatories, the Petitioners submitted their reply. The reply was found satisfactory

by the Trial Court and the application of the Defendant to proceed under Order XI, Rule 21 of the CPC was rejected. The said decision of the

Trial Court was reversed by the appellate Court as well as by the revisional Court. The Court finds that in the event, the Appellate Court or the

Revisional Court was not satisfied with the answer submitted by the Petitioners in that event, the Court was required to pass a direction to the

Plaintiffs/Petitioners to further answer the interrogatories as required under Order XI, Rule 11 of the CPC This apparently was not done by the

Courts below and the appellate Court as well as the revisional Court proceeded to pass an order under Order XI, Rule 21 of the CPC In my

opinion, the appellate Court as well as the revisional Court committed a manifest error in dismissing the suit under Order XI, Rule 21 or under

Order II, Rule 2 of the CPC 9. The Court finds that No. order could have been passed under Order XI, Rule 21 of the CPC since the Court does

not find any wilful default on the part of the Petitioners in compliance of the interrogatories. In the first instance, interrogatories were answered by

the Plaintiffs and, therefore, there was a substantial compliance. There was No. occasion for the Court to proceed under Order XI, Rule 21 of the

CPC Assuming that the answer given by the Petitioners was insufficient, in that case, the Court is of the opinion that the Court could not have

proceeded under Order XI, Rule 21 but was required to direct the Petitioner to further submit answer to the interrogatories as provided under

Order XI, Rule 11 of the CPC This apparently was not done. The Court further finds from a perusal of the record that the Petitioners had given a

positive reply to the interrogatories which was neither vague nor further answers were required.

10. The revisional Court has further dismissed the suit on the ground that No. cause of action arose under Order II, Rule 2 of the CPC In the

opinion of the Court, the revisional authority had exceeded its jurisdiction provided u/s 333 of the U.P.Z.A. and L.R. Act. There was No.

occasion for the revisional Court to go into the question as to whether the cause of action existed or not liven otherwise, the Court is of the opinion

that the cause of action arose to the Petitioners to file a suit for declaration that they should be recorded in the revenue records as they are the sole

heirs of Amrita Devi who was the recorded tenure holder. In the light of the aforesaid, the Court finds that the order of the revisional Court as well

as of the appellate Court being manifestly erroneous in law is liable to be quashed. The writ petition is allowed. The Trial Court is directed to

proceed with the suit on merits.

11. After the dismissal of the suit by the lower appellate Court, it transpires that Hira Devi sold a portion of her land to Respondent Nos. 6 and 7

and based on that the said Respondents applied for mutation in the records. The said application was allowed and their names were mutated

against which the Petitioners preferred an appeal which was dismissed and, thereafter, the Petitioners preferred a revision which was allowed by

the impugned order. The revisional Court held that the mutation of Respondent Nos. 6 and 7 would be subject to the suit filed by the Petitioners.

The said Respondents Nos. 6 and 7, being aggrieved by the said order, has preferred separate writ petitions.

12. Having heard the learned Counsel for the parties, this Court is -of the opinion that prima-facie the said Respondents were bonafide purchasers

for valuable consideration and, consequently, for the time being, their names should be recorded in the revenue records. In view of the aforesaid,

the impugned order cannot be sustained and is quashed. The Court directs that their name shall be recorded in the revenue records which would

be subject to the result of the suit filed by the Petitioners u/s 229-B/209 of the U.P.Z.A. and L.R. Act.

13. In view of the aforesaid, the parties shall bear their own costs. Registry is directed to remit the record of the lower Court without any delay.