

Court No. - 48

Case :- WRIT - B No. - 1770 of 1977

Petitioner :- Hari Nath

Respondent :- D.D.C. And Others

Counsel for Petitioner :- R.N. Singh,A.K. Rai,S.N. Singh,Vishnu Singh

Counsel for Respondent :- S.C.,Ashutosh Mishra

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard S/Sri Narendra Shankar and Vishnu Singh, learned counsel for petitioner and Sri Ashutosh Mishra, learned counsel for respondents.

2. Learned counsel for parties have argued at length, however, both are in agreement that following facts are crux of matter -:

a. Initially proceeding was initiated by father of respondent no.4 against father of petitioner under Section 209 of U.P. Zamindari Abolition and Land Reforms Act, 1950 which was rejected and appeal thereof was also rejected. During aforesaid proceedings, there was an admission in the pleadings about possession of father of petitioner by father of respondent no.4.

b. In above circumstances, it was an admitted position that possession of father of petitioner was accepted at least since 15.09.1960. Section 210 of Zamindari Act, 1950 provides consequence of failure to file suit under Section 209 i.e. a suit for eviction. It is also not disputed that at relevant time, the limitation was of three years, therefore, three years would conclude on 15.09.1963. Few days before cut off date, admittedly father of respondent no.4 has filed a fresh suit under Section 229-B/209 of U.P.Z.A. and L.R. Act, 1950. The suit was

abated since consolidation proceedings commenced.

c. In aforesaid background, objections were filed by petitioner claiming his right on basis of adverse possession, however, he lost from all three Authorities with a concurrent finding that since father of respondent no.4 has filed a fresh suit under Section 229-B/209 of U.P.Z.A. and L.R. Act, 1950 few days before expiry of limitation, therefore, the benefit of Section 210 of U.P.Z.A. and L.R. Act, 1950 could not be granted to father of petitioner.

3. Learned counsel for petitioner has submitted argument on merit, however, he has not able to contradict above legal as well as factual findings returned by three Authorities.

4. Learned counsel for respondents in addition to above referred legal/factual aspects submits that revenue record of 1355-66F were also in favour of father of respondents and against the father of petitioner that respondents were recorded as sigmi of sir.

5. In overall facts and circumstances, petitioner's adverse possession commenced since 15.09.1960, however, before expiry of limitation, on 29.08.1963, a suit was filed at the behest of respondents, therefore, there is no doubt that benefit of Section 210 of U.P.Z.A. and L.R. Act, 1950 could not be granted to petitioner.

6. In other words, it could be said that petitioner has missed bus by 14 days.

7. No circumstance exists in present case to interfere with concurrent findings on fact as well as on law, therefore, petition is liable to be dismissed, hence, **dismissed.**

8. Interim order, if any, stands vacated.

Order Date :- 12.10.2023/Nirmal Sinha