

Neutral Citation No. - 2023:AHC:206307**Reserved On:9.10.2023****Delivered On:30.10.2023****Court No. - 51****Case :-** WRIT - C No. - 25986 of 2023**Petitioner :-** Dayaram Singh And Another**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Shreyas Srivastava**Counsel for Respondent :-** CSC, Arun Kumar Pandey, Krishna Mohan**Hon'ble Chandra Kumar Rai, J.**

1. Heard Mr. Shreyas Srivastava, learned counsel for the petitioners, Mr. Krishna Mohan, learned counsel appearing for plaintiff-respondent no. 2, Mr. Arun Kumar Pandey, learned counsel for respondent no. 3 (Gaon Sahba) and Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents.

2. Brief facts of the case are that plaintiff respondent no.2 filed a suit no.4625 of 2022 for division of holdings in Khasra No.1096 (old no.714/4) area 0.1010 hectare situated in Village- Goharwar Hallu, Pargana Boodpur, Tahsil- Chandpur, District- Bijnor. Defendant-petitioners filed a written statement stating specifically that revenue Court had no jurisdiction to try a suit under Section 116 of U.P. Revenue Code, 2006 as the property had been earmarked as abadi. Sub-Divisional Officer / respondent no.4 passed a preliminary decree vide judgment dated 13.12.2022 declaring 1/3 share of plaintiff, 1/3 share defendant no.1 and 1/3 share of defendant no.2. Against the judgment dated 13.12.2022 passed by the Sub-Divisional Officer / respondent no.2, petitioners filed an appeal under Section 207 of U.P. Revenue Code, 2006, which was registered as Case No.228 of 2023, Computerized Case No.202313000000223. Commissioner, Moradabad Division, Moradabad / respondent no.5 dismissed the appeal filed by the petitioners vide order dated 10.7.2023, hence this writ petition. This

Court vide order dated 10.8.2023 issued notice to respondent no.4. In pursuance of the order dated 10.8.2023 respondent no.2 has put in appearance and filed his counter affidavit. Petitioners have filed his rejoinder affidavit also.

3. Learned counsel for the petitioners submitted that the property in question was recorded as abadi in the revenue records, as such, the suit for partition is not maintainable before the revenue Court. He further submitted that the specific objection was taken before the Sub-Divisional Officer/ respondent no.4 at the instance of the defendant / petitioners that land in dispute is abadi, as such, the suit for partition under Section 116 of U.P. Revenue Code, 2006 is not maintainable but without considering the objection of the petitioners in accordance with law, the Court has proceeded and passed the preliminary decree in the matter. He further submitted that the property in question had been earmarked as abadi in the consolidation proceeding and kept outside the consolidation scheme. He further placed the C.H. Form 2A, C.H. Form 18 and C.H. Form 41 prepared during consolidation operation, which has been annexed as Annexure Nos.6, 7 & 8 to the writ petition in order to demonstrate that the plot no.1096 (old no.714/4) was recorded as abadi. He further placed the revenue map of the village, which has been annexed as Annexure No.RA-2 to the rejoinder affidavit dated 8.10.2023 in order to demonstrate that the plot no.1096 has been shown as abadi. He next submitted that the Sub-Divisional Officer has not considered the documentary evidences filed on behalf of the petitioners before the Court and in the arbitrary manner preliminary decree has been passed, which has been maintained in appeal by the Commissioner. He placed the reliance upon the judgment of Hon'ble Apex Court as well as of this Court in order to demonstrate that the suit for partition before the Revenue Court in respect to the abadi land is not maintainable as well as the revenue entry made during consolidation operation cannot be ignored. The particulars of the cases are as follows:

i. 1976 RD 237 (Vishwa Vijay Bharati Vs. Fakhrul Hassan and Others).

ii. 2019 (142) RD 649 (Dharam Singh (D) thr. L.Rs. and Others Vs. Prem Singh (D) Thr. L.Rs.).

iii. 1983 RD 279 (Hashmat Khan Vs. Imams).

iv. 1974 Allahabad Civil Nirnaya 70 (Ram Saran and Another Vs. Drigraj and Others).

v. 1979 RD 78 (Kamla Shanker and Others Vs. Dy. Dir. of Consolidation and Others).

vi. 2004 A.L.J. 1498 (Ram Prasad Vs. Deputy Director of Consolidation Pratapgarh).

4. On the other hand, Mr. Krishna Mohan, learned counsel appearing on behalf of plaintiff-respondent no.2 submitted that in C.H. Form 45 and in the Khatauni plot no.1096 is not recorded as abadi. He placed the certified copy of the khatauni before the Court on the date of argument in which plot no.1096 area 0.1010 hectare is recorded in the name of petitioner nos.1 & 2 and respondent no.2 as Class 1 (Ka) (Sankarmai bhumidhar). He further submitted that even in the khatauni plot no.1096 area 0.1010 hectare is recorded in the name of both parties as Class 1 (Ka) (Sankarmai bhumidhar), as such, the objection taken by the petitioners that land is abadi cannot be entertained. He further submitted that the C.H. Form 45 is the final document of the consolidation operation, as such, the suit filed for partition of plot no.1096 cannot be dismissed on the ground that plot is abadi. He further submitted that petitioner no.1 has filed his written statement in the suit but petitioner no.2 never filed his written statement in support of the allegation of the petitioner no.1. He further submitted that the petitioner intentionally did not file the recent khatauni as well as the C.H. Form 45 in respect to the plot no.1096, as such, the writ petition filed by the petitioners is liable to be dismissed. He further placed the khatauni of 1429-1434 fasli (1.7.2021-30.6.2027) in respect to plot no.1096 area 0.1010 hectare, which has been annexed as Annexure No.2 to the counter affidavit in

order to demonstrate that the plot in dispute is recorded as bhumidhari plot in the name of both parties. He further submitted that the Additional Commissioner while dismissing the appeal filed by the petitioners has mentioned that Khatauni of 1429-1434 fasli in respect to the plot no.1096 is on the record of the trial Court which demonstrate that the disputed plot is agricultural plot. He further submitted that the petitioners along with respondent no.2 was recorded in C.H. Form 45 as well as in the Khatauni, as such, it cannot be said that the petitioners were not aware about the entry of the plot in dispute. He also submitted that the case law cited by learned counsel for the petitioners will not be applicable in the facts and circumstances of the case as in the final revenue records the plot in dispute is recorded as bhumidhari plot of the petitioners as well as contesting respondent no.2. He further submitted there is no order under Section 80 of U.P. Revenue Code, 2006 to declare the plot in dispute as non-agricultural. He lastly submitted that no interference is required in the matter and the writ petition is liable to be dismissed.

5. Mr. Abhishek Shukla, learned Additional Chief Standing Counsel for the State-respondents also placed the reliance upon the judgment of this Court reported in **2019 (145) RD 195 (Dr. Prem Narain & Others vs. Board of Revenue & Others)** in order to demonstrate that the question relating to the jurisdiction in respect to the suit for partition was entertained by this Court in exercise of jurisdiction under Article 226 of the Constitution of India and matter was remanded back to the trial Court to examine the issue relating to the jurisdiction afresh after setting aside the earlier orders passed by the Court concerned. He placed reliance upon the paragraph nos.25, 26 & 27 of the aforementioned judgment.

6. I have considered the argument advanced by learned counsel for the parties and perused the records.

7. There is no dispute about the fact that respondent no.2 filed a suit under Section 116 of U.P. Revenue Code, 2006 for partition impleading the petitioners as defendants in respect to plot no.1096 area 0.1010

hectare of Khata no.221. There is also no dispute about the fact that petitioner no.1 (Dayaram Singh) has filed his written statement taking ground that suit is not maintainable in respect to plot no.1906 as the same is abadi. There is also no dispute about the fact that respondent no.4 / Sub-Divisional Officer has passed the preliminary decree dated 13.12.2022, which was maintained in appeal by the Commissioner vide order dated 10.7.2023.

8. In order to appreciate the controversy involved in the matter, perusal of Sections 116 & 117 of U.P. Revenue Code, 2006 will be relevant, which are as under:

"116. Suit for division of holding.—(1) A bhumidhar may sue for the division of the holding of which he is a co-sharer.

[(2) In every such suit, the Court may also divide the trees, wells and other improvements existing on such holding but where such division is not possible, the trees, wells and other improvements aforesaid and valuation thereof shall be divided and adjusted in the manner prescribed.]

(3) One suit may be instituted for the division of more holdings than one where all the parties to the suit other than the [Gram Panchayat] are, jointly interested in each of the holdings.

(4) To every suit under this section, the [Gram Panchayat] concerned shall be made a party.

117. Duty of Court in suits for division of holding.—(1) In every suit for division of holding under Section 116 the Court of Assistant Collector shall

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(a) follow such procedure as may be prescribed;

(b) apportion the land revenue payable in respect of each such division.

(2) A division of holding referred to in Section 116 shall not affect the joint liability of the tenure-holders there of in respect of the land revenue payable before the date of the final decree."

9. Perusal of revenue records cited by learned counsel for the parties demonstrate that in C.H. Form 2A, 18 and C.H. Form 41, the plot no.1096 (old plot no.714 /2) is mentioned as abadi but in the final C.H. Form 45, the plot no.1096 area 0.1010 hectare is recorded as bhumidari plot of the tenure holders (petitioners as well as respondent no.2). C.H.

Form 45 is final document prepared under the U.P. Consolidation of Holdings Act, as such, the same cannot be ignored in the subsequent proceeding. In the Khatauni also the plot no.1096 area 0.1010 hectare is mentioned as bhumidhari land of the petitioners as well as respondent no.2. Consolidation operation has already been concluded in the village in question, as such, the entry made in the C.H. Form 45 and the Khatauni prepared accordingly, in respect to the plot in question cannot be ignored. C.H. Form 45 although has not been annexed by the petitioners as well as respondent no.5 but Mr. Krishna Mohan, learned counsel for respondent no.2 has placed the certified copy of the C.H. Form 45 before the Court, which is taken on record. Copy of the Khatauni of 1429-1434 fasli has been annexed as Annexure No.2 to the counter affidavit although the petitioners have not annexed the copy of the khatauni along with the writ petition, which also demonstrates that plot no.1096 area 0.1010 hectare is recorded as bhumidhari plot of both parties.

10. I have considered the case law cited by learned counsel for the petitioners as well as learned Additional Chief Standing Counsel for the State-respondents and after thorough consideration, Court is of the view that plot in dispute is recorded as bhumidhari plot in C.H. Form 45 as well as Khatauni prepared by the authorities, as such, no further investigation is required by the Court to determine whether the plot is agricultural plot or abadi. If the entry of C.H. Form 45 as well as Khatauni are not correct then the petitioners should avail the proper remedy for correcting the revenue entry in accordance with law.

11. Considering the entire facts and circumstances of the case, no useful purpose will be achieved by remanding the matter to the trial Court to re-examine the issue of maintainability of suit on the ground of abadi land/bhumidhari land as final revenue entry fully demonstrate that plot in dispute is recorded as bhumidhari of petitioners as well as respondents.

12. Considering the entire facts and circumstances, no interference is

required in the matter.

13. The writ petition is ***dismissed accordingly***. However, trial Court is directed to conclude the proceeding of the pending suit in accordance with law.

Order Date :- 30.10.2023/ Rameez