

Court No. - 19

Case :- WRIT - B No. - 965 of 2024

Petitioner :- Ashadevi

Respondent :- Board Of Revenue,U.P. At Lucknow Thru. Its Secy. And 4 Others

Counsel for Petitioner :- Pradeep Kumar Tiwari

Counsel for Respondent :- C.S.C.,Anant Ram Chaurasiya,Pankaj Gupta

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Pradeep Kumar Tiwari, learned counsel for the petitioner, Sri Puneet Kumar Gupta, learned Advocate appearing on behalf of respondent no.3, Sri Pankaj Gupta, learned counsel for the respondent no.4, Gaon Sabha and Sri Dev Prakash Mishra, learned Additional Chief Standing Counsel for respondents no. 2 to 5.

2. The brief facts of the case are that the petitioner as well as the respondent no.3 are the siblings. Their father had purchased the agricultural plot of land bearing gata no.21 total area 2.0510 hectare situated in Village Pikaura Sani, Pargana-Nagar Paschim, Tehsil Harraiya, District Basti. The father of the petitioner and respondent no.3 had died on 20.12.1995. After the death of the father, the petitioner claiming her right on the half portion of the said land on the basis of an unregistered will, moved a mutation application on 18.07.1994 approximately after 09 years of the death of her father. Vide order dated 23.09.1994, the Naib Tehsildar, Harraiya had allowed the said mutation application in favour of the petitioner herein. Against the aforesaid order dated 23.09.1994, the respondent no.3 herein moved a recall application dated 17.10.1996 and the said recall application was rejected on 03.03.2000 by the Naib Tehsildar, Gaur (Harraiya), District Basti. Being aggrieved by the order dated 03.03.2000, the respondent no.3 Awadhesh Singh preferred an appeal being Appeal No. 38 of 2001 (Awadhesh Singh vs. Asha Singh) under Section 210 of the U.P. Land Revenue Act, 1901 before the Sub-Divisional Officer, Harraiya. The said appeal was dismissed vide order dated 21.08.2001. Thereafter the petitioner filed a revision under Section 219 of the U.P. Land Revenue Act, 1901, which was dismissed vide order dated 20.01.2005 passed by the Additional Commissioner (Administration), Basti. Subsequent thereto, the respondent no.3 filed a Writ Petition No. 13751 of 2005 assailing the aforesaid orders passed by the Revenue Courts. This Court vide judgment and order dated 04.08.2017 declined to exercise its writ jurisdiction to interfere with the orders passed by the Revenue Courts in summary proceedings. However, while dismissing the said writ petition vide order dated 04.08.2017, the Co-ordinate Bench of this Court had left it open to the parties to get their rights determined before the Competent Court of Law in regular proceedings. Pursuant to the aforesaid order dated 04.08.2017, respondent no.3 herein had filed a suit under Section 144 of the U.P. Revenue Code, 2006 registered as Case No. 91 of 2017 and later on numbered as Case No. 4481 of 2017 (Computerized No. T- 2017171453014481) before the Sub-Divisional Officer, Harraiya, District Basti. In the aforesaid suit,

the respondent no.3 has claimed himself to be the only son and the male descendant of Late Ram Komal Singh who was the owner of the land in question. The said suit was dismissed vide order dated 08.10.2021, against which an appeal was preferred by the respondent no.3, which was allowed vide order dated 10.06.2022 and the matter was remanded back to the Sub-Divisional Officer, Harraiya, District Basti for a fresh disposal of the same .

3. Against the said order dated 10.06.2022, the petitioner herein preferred the second appeal being Second Appeal under Section 208 of the U.P. Revenue Code, 2006 before the Board of Revenue, which was registered as Second Appeal No. SA/1509/2022/Basti (Asha Devi vs. Awadhesh Singh), which was allowed vide order dated 31.07.2023 passed by the Board of Revenue. The respondent no.3 herein has filed a writ Petition being Writ-B No. 3357 of 2023 (Awadhesh Singh vs. State of U.p. and 5 others), which was allowed vide order dated 09.10.2023 and the matter was remanded back to the Board of Revenue to pass a fresh order after framing the substantial question of law, which was required to be framed in the second appeal. Subsequent thereto, by impugned order dated 20.08.2024 the Board of Revenue rejected the second appeal filed by the petitioner herein holding that the second appeal is not maintainable in view of the specific statutory provisions of Section 209 of the U.P. Revenue Code wherein the second appeal is barred against an order whereby the matter has been remanded back to the court below for adjudication, against which the instant petition has been filed by the petitioner.

4. Sections 207, 208 and 209 of the U.P. Revenue Code, 2006 read as under:

"207. First appeal.

(1)Any party aggrieved by a final order or decree passed in any suit, application or proceeding specified in Column 3 of the Third Schedule, may prefer a first appeal to the Court or officer specified against it in Column 5, where such order or decree was passed by a Court or officer specified against it in Column 4 thereof.

(2)A first appeal shall also lie against an order of the nature specified -

(a)in Section 47 of the Code of Civil Procedure, 1908; or

(b)in Section 104 of the said Code; or

(c)in Order XLIII Rule 1 of the First Schedule to the said Code.

(3)The period of limitation for filing a first appeal under this section shall be thirty days from the date of the order or decree appealed against.

208. Second appeal.

(1)Wherein any suit, application or proceeding specified in Column 3 of the Third Schedule, any final order or decree is passed in any first appeal filed under Section 207, and any party to such appeal is aggrieved by it, such party may prefer a second appeal to the Court specified against it in Column 6.

(2)The appellate Court shall not entertain a second appeal unless it is satisfied that the case involves a substantial question of law.

(3)The period of limitation for filing a second appeal under this section shall be ninety days from the date of the order or decree appeal against.

209. Bar against certain appeals.

- Notwithstanding anything contained in Sections 207 and 208, no appeal shall lie against any order or decree -

(a)made under Chapter V of this Code;

(b)granting or rejecting an application for condonation of delay under Section 5 of the Limitation Act, 1963;

(c)rejecting an application for review;

(d)granting or rejecting an application for stay;

(e)remanding the case to any subordinate Court; or

(f)where such order or decree is of an interim nature."

5. In view of the categorical provisions of Section 209(e) of U.P. Revenue Code, when the matter is remanded back to any subordinate court, the second appeal is not maintainable.

6. Therefore, this Court does not find any illegality in the impugned order passed by the Board of Revenue rejecting the second appeal filed by the petitioner, which is not maintainable and the provisions of Section 209 of the U.P. Revenue Code, 2006.

7. In view of the aforesaid, the instant writ petition lacks merit and is accordingly, **dismissed**.

Order Date :- 17.10.2024
Ashish Pd.

(Anish Kumar Gupta, J.)