

Court No. - 49

Case :- WRIT - B No. - 25053 of 2007

Petitioner :- Dharm Pal Singh

Respondent :- Narendra Singh And Others

Counsel for Petitioner :- Amit Kumar Chaudhary, Ajay Kumar Singh, Ashish Kumar Singh, K.R. Sirohi

Counsel for Respondent :- C.S.C., Akhilesh Singh, Ambuj Pandey, Anand Srivastava, Chandra Bhan Gupta, Rajesh Gupta, Rakesh Kumar Mishra, Sandeep Saxena, Sunil Kumar Srivastava, V.K. Singh, Yogesh Kumar Singh

Hon'ble J.J. Munir, J.

1. This is the defendant's writ petition arising out of a suit for partition of land instituted by Kavar Singh and Sukh Pal. It is common ground between parties that there is no dispute about their respective shares and parties are *ad idem* about the preliminary decree passed by the Sub Divisional Officer, Meerut, in Suit No. 218 of 1998. The preliminary decree was passed on 10.03.2000. One of the two plaintiffs and a co-sharer Kavar Singh, who had a 1/4 share, transferred it by way of a sale-deed in favour of Smt. Hasnawati. Smt. Hasnawati's name was mutated in place of Kavar Singh. At this stage, it appears that the parties applied for preparation of a final decree. A final decree was passed on 28.09.2002, confirming the lots proposed by the Lekhpal after rejecting all objections.

2. The Sub Divisional Officer's decree was appealed to the Commissioner of the Division by Sukh Pal and Smt. Hasnawati, the purchaser from Kavar Singh. The Appeal bearing No. 10/2002-03 came up before the Additional Commissioner (Administration), Meerut for determination on 30.01.2006. It was dismissed and the final decree passed by the Trial Court affirmed.

3. Aggrieved by the Appellate decree dated 30.01.2006, Sukh Pal and Smt. Hasnawati carried a second appeal to the Board of Revenue. This appeal was admitted, heard and decided by the impugned judgment and

order dated 14.05.2007, setting-aside the final decree passed by the Additional Commissioner as well as the Sub Divisional Officer with a remand to the Trial Court to decide the allotment of shares afresh after permitting parties to adduce evidence about their existing possession.

4. This writ petition instituted by Dharm Pal Singh, raises the point that the Board of Revenue have decided the second appeal without formulating any substantial question of law and deciding it in accordance with the provisions of sub-Section (4) of Section 331 U.P.Z.A. & L.R. Act, 1950 (for short, 'the Act of 1950').

5. We have heard Mr. Ashish Kumar Singh along with Mr. Amit Kumar Chaudhary, learned Counsel for the petitioner, Mr. Chandra Bhan Gupta, learned Counsel appearing on behalf of respondent nos. 5 and 7 and Mr. Yogesh Kumar Singh, learned Counsel appearing on behalf of respondent no.1.

6. Section 331 of U.P.Z.A. & L.R. Act, 1950 reads:

"331. Cognizance of suits, etc. under this Act.

Except as provided by or under this Act no court other 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 [,] [Substituted for the colon by U.P. Act No. 28 of 1961.] [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 :] [Added by U.P. Act No. 28 of 1961.][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.] [Added by U.P. Act No. 37 of 1958.][Explanation. - If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the

revenue court would have granted.] [Added by U.P. Act No. 28 of 1961.][(1-A) Notwithstanding anything in sub-section (i), an objection, that a court mentioned in Column 4 of Schedule II, or, as the case may be, a civil court, which had no jurisdiction with respect to the suit, application or, proceeding, exercised jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.] [Inserted by U.P. Act No. 4 of 1969.]

(2) Except as hereinafter provided no appeal shall lie from an order or [decree] passed under any of the proceedings mentioned in Column 3 of the Schedule aforesaid:

(3) [An appeal shall lie from any decree or from an order passed under Section 47 or an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908) or in Order 43, Rule 1 of the First Schedule to that Code passed by a court mentioned in Column No. 4 of Schedule II to this Act in proceedings mentioned in Column 3 thereof to the court or authority mentioned in Column No. 5 thereof.

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under sub-section (3), to the authority, if any, mentioned against it in Column 6 of the Schedule aforesaid.] [Substituted by U.P. Act No. 30 of 1975.]"

(emphasis by Court)

7. A bare perusal of sub-Section (4) of Section 331 of the Act of 1950 shows that a second appeal shall lie to the Authority mentioned in Column 6 of Schedule II to the Act of 1951 on grounds specified in Section 100 of the Code of Civil Procedure from a final order or decree passed in appeal under sub-Section (3) of Section 331 of the Act of 1950. A second appeal lies to the Board from a decree passed in appeal by the Commissioner

arising out of a suit for partition under Section 176 of the Act of 1950. This is apparent from a perusal of Serial No. 16 of Schedule II, appended to the Act of 1950. The grounds on which a second appeal lies are the same as those in Section 100 of the Code of Civil Procedure. Section 100 of the Code permits an appeal to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involved a substantial question of law, to borrow the phraseology of the Statute. Sub-Section (3) of Section 100 of the Code mandates that the memorandum of appeal shall precisely state the substantial question of law involved in the appeal. Sub-Section (4) of Section 100 of the Code requires the High Court, where satisfied, that a substantial question of law is involved to formulate that question. Sub-Section (5) further mandates that a second appeal shall be heard on the question of law formulated and it would be open to the respondent, at the hearing of the appeal, to argue that it does not involve the questions formulated. Other questions too can be formulated by the High Court by virtue of the Proviso to sub-Section (5) of Section 100 of the Code of Civil Procedure. Sub-Section (4) of Section 331 of the Act of 1950 adopts the entire gamut of provisions under Section 100 of the Code, limiting the Authority of the Board to hear a second appeal upon a substantial question of law alone. A second appeal to the Board is not an open appeal where all questions of law and fact are available to parties in assail of the decree.

8. The question involved here fell for Consideration in **Gandhi Nagar Sahkari Awas Samiti Limited through Secretary Rajendra Prasad v. Board of Revenue, Uttar Pradesh, Allahabad and others, 2016 (117) ALR 114**. In **Gandhi Nagar Sahkari Awas Samit Limited** (*supra*), it has been held:

"8. The High Court cannot proceed to hear a second appeal without formulating the substantial question of law involved in the appeal and if it does so it acts illegally and in abnegation or abdication of the duty

cast on Court. The existence of substantial question of law is the sine qua non for the exercise of the jurisdiction under the amended Section 100 of the Code.

9. In the case of (Miss) Louiza D''souza v. John Claudis Andrews and others, 2001 (92) R.D. 64, Hon''ble the Supreme Court held that deciding the second appeal without framing substantial question of law by a court is contrary to the provisions as provided under Section 100 C.P.C. and on the said ground set aside the order under challenge passed in second appeal and remanded the matter to decide afresh."

9. A perusal of the judgment passed by the Board of Revenue impugned shows that no substantial question of law has been formulated much less decided while passing the impugned order setting-aside the two decrees with an order of remand to the Court of first instance. A judgment by the Board in a second appeal, which proceeds to decide the appeal without reference to any substantial question of law formulated, is absolutely without jurisdiction and in teeth of the Provision of sub-Section (4) of Section 331 of the Act of 1950. We are, therefore, of opinion that the impugned order dated 14.05.2007, passed by the Board of Revenue in Second Appeal No. 36 of 2005-06, Sukh Pal and others v. Dharm Pal and others, cannot be sustained. This matter must go back to the Board for decision of the appeal afresh.

10. In the result, this petition **succeeds** and is **allowed**. The impugned judgment and order dated 14.05.2007 passed by the Board of Revenue, U.P. at Prayagraj in Second Appeal No. 36 of 2005-06, Sukh Pal and others v. Dharm Pal and others, is hereby **quashed**. The appeal is restored to the file of the Board of Revenue. The Board shall now proceed to formulate substantial questions of law, if any involved, and if they find such questions to be involved, will proceed to hear parties on those questions and pass fresh judgment in accordance with law, which they will do expeditiously.

11. The order passed on 04.07.2007 by this Court while entertaining this writ petition directing parties to maintain *status quo* with regard to nature and possession over the land in dispute, shall continue to remain in operation until such time that the Board, on an application made and after hearing parties, chooses to vary or modify it.

12. Let this order be communicated to the Registrar, Board of Revenue, U.P. at Prayagraj by the Registrar (Compliance).

Order Date :- 20.8.2025

Vijay