

Court No. - 68

Case :- WRIT - B No. - 44841 of 2016

Petitioner :- Ram Kumar Das Chela Raghuvar Das

Respondent :- Board Of Revenue Allahabad And 5 Others

Counsel for Petitioner :- Anand Kumar Srivastava, Dinesh Pathak, Manish Kumar Nigam, Manoj Kumar Singh, Narayan Dutt Shukla, Rakesh Pathak, Rituvendra Singh Nagvanshi

Counsel for Respondent :- Anil Kumar Yadav, C.S.C., Diwakar Singh, Manvendra Nath Singh, Nar Singh Narayan Verma, Raj Karan Yadav, V.K. Singh, Vinod Kumar Singh (Senior Adv.), Yadvendra Kumar Yadav

Hon'ble Ashutosh Srivastava, J.

1. Heard Shri R.C. Singh, learned Senior Counsel assisted by Shri Narayan Dutt Shukla and Shri Rakesh Pathak, learned counsels for the petitioner, learned Standing Counsel and Shri Raj Karan Yadav, learned counsel representing the Respondent Nos. 3 & 4.

2. The instant writ petition has been filed questioning the legality, propriety and correctness of the order dated 10.08.2016 passed by the Board of Revenue, U.P. at Allahabad in Revision No. 1498 of 2015 affirming the order dated 25.06.2015 passed by the Additional Sub Divisional Officer, Sadar, Faizabad allowing the application dated 17.2.2014, recalling the order dated 24.1.1972 and restoring the proceedings of the Suit u/s 229-B and abating the same on the ground of start of Consolidation operations.

3. The facts giving rise to the present proceedings briefly stated are that the respondent no. 4 namely Thakur Ram Janki Ji Maharaj, Virajman Mandir Sri Sita Ram through its Sarvakar Ramdas instituted a Suit u/s 229-B of the U.P.Z.A. & L.R. Act r/w section 209 of the U.P.Z.A. & L.R. Act against Raghuvar Das (predecessor in interest of the petitioner) and 6 Others registered as O.S. No. 7/571/1096 of 1968 seeking declaration of tenurial rights qua the Plot No. 525- Ka, 525-Kha, 530 and 531. The relief of declaration was sought in respect of plot no. 525-Ka and 525-Kha to the effect that plot no. 525-Ka was purchased from the defendant no. 2 & 3 while plot no. 525-Kha was purchased from defendant no. 4 & 5. The suit aforesaid was contested by the defendant no. 1 namely Raghuvar Das (predecessor in interest of the petitioner herein) by filing his written statement. The defendant no. 1 claimed his rights on the basis of lease deed executed in his favour before the abolition of Zamindari and subsequently claimed Sirdari rights over the said plots. With the intervention of

respectable persons the parties to the suit agreed to resolve the dispute amicably by arbitration and one Shri Nritya Gopal Das was appointed arbitrator with consent of parties. The suit u/s 229-B r/w 209 UPZA & LR Act was decided in terms of a compromise entered between the parties vide judgment dated 24.1.1972. The compromise is stated to have been acted upon and Raghuwar Das (predecessor in interest of the petitioner) executed a registered sale deed of Plot Nos. 530 area 0-3-0 and 531 area 0-7-5 dated 27.12.1971 in favour of Shri Thakur Ram Janki Maharaj through its Sarvakar Mahant Ram Udar Das. The revenue records were also corrected incorporating the terms of the compromise.

4. On 23.8.2012, the village was notified u/s 4 of the U.P.C.H. Act. The respondent no. 3 namely Mahant Ram Das moved application u/s 6(A) on 10.05.2013 for deleting the name of the recorded tenure holder over plot no. 525-Kha and to record his name as successor of Ram Udar Das. The proceedings u/s 6(A) of the Consolidation of Holdings Act were registered as Case No. 166 (Mahant Ram Das Vs. Ram Lakhan & Others). The said proceedings were decided in terms of a compromise recorded vide order dated 20.6.2013 passed by the Assistant Consolidation Officer and the name of the recorded tenure holder from Plot No. 525-Kha was deleted and name of Ram Udar Das was recorded.

5. Learned counsel for the petitioner contends that the petitioner was not a party to the alleged compromise and further that parties to the compromise were not alive and Ram Lakhan had already executed sale deed dated 23.1.1965 in favour of Mahant Ram Udar Das.

6. It is next contended that the order dated 20.6.2013 was assailed in Revision No. 1070 before the D.D.C. by the petitioner in which status quo order was passed on 13.01.2014 by the D.D.C. The revision is pending as on date. Meanwhile, the respondent no. 3 filed a belated restoration application on 17.2.2014 against the compromise decree dated 24.1.1972 deciding the 229-B suit. In the restoration proceedings, an order dated 07.02.2015 was passed to proceed *ex parte* against the petitioner. Application dated 2.3.2015 was filed to recall the order dated 7.2.2015. The delay condonation application was allowed vide *ex parte* order dated 9.6.2015. The restoration application of the petitioner against the order dated 9.6.2015, 6.6.2015 and 7.2.2015 was partly allowed in respect of orders dated 6.6.2015 and 7.2.2015 but was rejected against order dated 9.6.2015. The petitioner applied for copy of the restoration application and for abating the proceedings of the original suit in the wake of the intervening Consolidation proceedings. The

application was allowed and the original suit abated vide order dated 25.6.2015 passed by the Additional Sub Divisional Officer, Sadar Faizabad.

7. Learned counsel for the petitioner contends that the restoration application of the respondent no. 3 seeking recall of the order dated 24.1.1972 was not liable to be allowed behind the back of the petitioner. He however justifies the order abating the proceedings. The order dated 25.6.2015 was assailed in revision no. 1498 of 2014-15 before the Board of Revenue. The Respondent No. 3 sought abatement of the proceedings on the commencement of the consolidation operation. The Board of Revenue vide its order dated 10.08.2016 instead of deciding the abatement application decided the revision on merits and dismissed the same.

8. Per contra, the case of the contesting respondents is that Plot Nos. 525-Ka and 525-Kha total area 21 Biswa is the Bhumidhari land of respondent no. 3 and 4 and plot nos. 530 and 531 area 10 Biswa is Sirdari land of Ram Lakhan and Mata Badal the defenedant no. 4 and 5 in the suit but not impleaded in present proceedings. Plot No. 525-Ka and 526-Ka, 527 Ka, 528-Ka and 529 were purchased by respondent no. 4 through Sarvakar Ram Udar Das on 23.1.1965 from the defendant no. 2 & 3 in the suit and plot no. 525-Ka was purchased by respondent no. 4 by defendant no. 4 & 5 namely Ram Lakhan and Mata Badal. The petitioner instituted the suit u/s 229-B r/w section 209 U.P.Z.A. & L.R. Act through an imposter and got the same decreed in terms of a compromise on 24.1.1972 fraudulently. Raghuwar Das was never Sirdar of plot no. 530 and 531 and this land was never recorded in his name. In the plaint, it is admitted that plots no. 530 and 531 belong to Ram Lakhan and Mata Badal defendant nos. 4 and 5 in the suit. Raghuwar Das committed fraud executing sale deed dated 27.12.1971 stating that he had purchased the plots from Ram Lakhan and Mata Badal the recorded owners. It is for this reason that no mutation took place consequent to the forged sale deed dated 27.12.1971. The alleged compromise deed entered between the plaintiff/respondent no. 4 and the defendant no. 1 cannot be relied upon inasmuch as the defendant nos. 2 to 5 were not parties to the said compromise. On the detection of the fraud played restoration application dated 17.2.2014 was rightly filed as under such circumstances, only remedy is to seek recall of the order and no appeal, revision is maintainable. Reliance is placed upon the decisions of the Apex Court reported in ***AIR 2015 SC 706 (R. Rajanna Vs. S.R. Venkataswami), 2022 (3) A.L.J. 670 (Ramawati***

Vs. Shakuntala and 2021 (151) R.D. 300 (Om Prakash Rai Vs. Board of Revenue).

9. It is also the case of the contesting respondents that in the case of fraud and forgery, the period of limitation commences from the date of knowledge and in such circumstances, the restoration application was rightly filed before the trial court and the delay was rightly condoned vide order dated 9.6.2015. The order dated 9.6.2015 was rightly affirmed by the Board of Revenue vide order dated 10.8.2016.

10. It is further submitted that the petitioner himself filed the application before the trial court for abating the case u/s 5(2)(a) of the C.H. Act on 23.6.2015. The trial court restored the proceedings of the suit by recalling the order dated 24.1.1972 and thereafter, abated the proceedings in consonance with the view of the FB decision reported in ***1979(5) ALR 383 (Sakal Singh Vs. Smt. Devi).***

11. It is lastly the case of the respondents that the writ petition at the instance of the petitioner is not maintainable on the ground of concealment of material facts. Reliance is placed upon the following decisions:-

- 1. 2019 (14) SCC 449 (Satlaj Vidyut Nigam Vs. Raj Kumar Rajinder)***
- 2. 2022 (12) SCC 815 (K. Jairam Vs. Bangalore Development Authority)***
- 3. 2023 (161) R.D. 514 (Rohit Kumar Vs. State)***
- 4. 2022 A.C.J. 1966 (SC) (Ram Kumar Vs. State of U.P.)***
- 5. 2024 (2) J.C.L.R. 540 (M/s Genious Ortho Industries Vs. Union of India)***
- 6. 2024 (164) R.D. 165 (Santosh Kumar Vs. Board of Revenue)***

12. It is accordingly prayed that the writ petition deserves to be dismissed with costs.

13. I have heard learned counsel for the parties and have perused the records.

14. From the pleadings as set out by the petitioner in the writ petition, it is apparent that the petitioner is aggrieved by the recall of the compromise decree dated 24.01.1972 passed in the Suit under section 229-B read with Section 209 of U.P.Z.A. & L.R. Act on the restoration application filed by the respondents with

considerable delay as also the revisional order upholding the said order.

15. The recall of the compromise decree was sought on the ground that the same was obtained by playing fraud. Admittedly, the defendants no. 2 to 5 to be Suit under section 229-B read with section 209 of U.P.Z.A. & L.R. Act, which was compromised were not party to the compromise. In such view of the matter, the compromise was not lawful and binding upon the parties. The Apex Court in **AIR 2015 SC 706 (R. Rajanna Vs. S.R. Venkataswamy)** in para no. 11 has observed as under:-

"11. The upshot of the above discussion is that the High Court fell in a palpable error in directing the plaintiff to take recourse to the remedy by way of separate suit. The High Court in the process remained oblivious of the provisions of Order XXIII Rules 3 and 3A [of the CPC](#) as also orders passed by the City Civil Court rejecting the plaint in which the Trial Court had not only placed reliance upon Order XXIII Rule 3A but also the decision of the Court in Pushpa Devi's case (supra) holding that a separate suit was not maintainable and that the only remedy available to the aggrieved party was to approach the Court which had passed the compromise decree. The following passage from the decision of Pushpa Devi (supra) case is, in this regard, apposite:

"17. ..Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8- 2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code."

16. The Court on the perusal of the records further finds that the order dated 9.6.2015 condoning the delay in filing the restoration application has been brought on record. A perusal of the same discloses that the A.S.D.O. (Sadar) has exercised his discretion in condoning the delay. The Court considering the facts and circumstances as pleaded by the parties is not inclined to interfere in the discretion so exercised. Consequently, no interference is

called for in the order dated 9.6.2015 and 19.6.2015 of the A.S.D.O. (Sadar).

17. The Court further finds that the petitioner himself had moved the application to abate the proceedings u/s 5(2)(a) of the Consolidation of Holdings Act. Section 5(2)(a) of the Consolidation of Holdings Act, 1953, is being quoted below:-

Section 5(2) in U.P Consolidation of Holdings Act, 1953

" (2) [Upon the said publication of the notification under sub-section (2) of Section 4, the following further consequences shall ensue in the area to which the notification relates, namely -

(a) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stand abated:

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard :Provided further that on the issue of a notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part as the case may be, shall stand vacated;"

18. From the Scheme of the Act, it appears that suits or proceedings for declaration of rights or interest pending in any Court would be abated and parties would get fresh opportunity of getting their rights adjudicated by the consolidation authorities. Section 5(2)(a) of the Act contemplates, various kinds of proceedings pending before any Court or Authority whether of the first instance or of appeal, reference or revision to be abated. They are:-

i. proceedings for correction of records.

ii. every suit in respect of declaration of rights or interest in any land or for declaration or adjudication of any other right, and, proceedings in respect of declaration of rights or interest in any land.

19. Now coming to the question as to whether the order dated 25.06.2015 recalling the compromise decree dated 24.1.1972 and abating the proceedings on the application of the petitioner and the

Board of Revenue upholding the said order in revision was justified in the facts and circumstances, the Court finds that both the A.S.D.O. (Sadar) as also the Board of Revenue, U.P. at Allahabad were completely justified in passing the impugned orders.

20. Since the proceedings of the Suit under section 229-B read with section 209 of U.P.Z.A. & L.R. Act have been directed to be abated, no prejudice will be caused to the parties to the suit and they shall have fresh opportunity of getting their rights adjudicated.

21. In such view of the matter, the Court finds no good ground to interfere with the orders impugned. The writ petition lacks merit and is accordingly **dismissed**.

22. Parties to bear their own costs.

Order Date :- 24.1.2025

VS