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Umadatt Vs. Additional District Judge, Pipari and ors.

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Court : Allahabad

Decided On : May-03-2002

Reported in : 2002(3)AWC1813

Judge : S.N. Srivastava, J.

Acts : Indian Forest Act, 1927 - Sections 18(3); Code of Civil Procedure (CPC) , 1908 - Order 8, Rule 5(1)

Appeal No. : C.M.W.P. No. 6478 of 1993

Appellant : Umadatt

Respondent : Additional District Judge, Pipari and ors.

Advocate for Def. : V.N. Agarwal, S.C.

Advocate for Pet/Ap. : V.K.S. Chaudhary, ;Devi Prasad Misra, ;Nagendra Singh Chaudhary and ;P.C. Shukla, Advs.

Judgement :

S.N. Srivastava, J.

1. The writ petition is directed against the orders dated 18.7.1992 passed by Additional District Judge, Sonbhadra allowing Appeal No. 3200 of 1990 and setting aside the order passed by Forest Settlement Officer dated 25.8.1990 and the

order dated 19.11.1992 rejecting the restoration application.

2. The dispute in the writ petition relates to plot Nos. 440Ka, 476Ka, 475Kha, 478Ka, 482Kha, 483, 484, 485, 486, 488Ga, 546Kha, 549Kha situated in village Parasi, Pargana Singrauli, district Sonbhadra.

3. The Forest Settlement Officer/Dy. Collector, Pipari, Sonbhadra, by the judgment dated 25.8.1990 decreed Suit No. 6343 and held that the petitioner had already perfected rights/title under U.P.Z.A and L.R. Act except plot Nos. 440 and 476. An appeal preferred by Forest Department before the District Judgeregistered as Appeal No. 3200 of 1990 was allowed ex parte by judgment dated 18.7.1992 and judgment and order dated 25.8.1990 was reversed relating to all the plots except plot Nos. 546 Kha and 549. A restoration application filed by the petitioner was rejected by the order dated 19.11.1992.

4. Sri V.K.S. Chaudhary, learned Senior Advocate, assisted by Devi Prasad Misra, urged that the order passed by the appellate court is ex parte, no notice was issued or served to the petitioner before the appeal was heard and decided. He further urged that in the restoration, specific averments were made that the order was ex parte and the petitioner was entitled to get opportunity of hearing before deciding the appeal on merits. But restoration application was wrongly rejected on merit.

5. In reply to the arguments made by the learned counsel for the petitioner, Sri V.N. Agarwal learned standing counsel states that the order was already passed on merits and does not require any interference.

6. Heard learned counsel for the parties and considered the respective submissions made by them.

7. Paragraph Nos. 3 and 4 of the writ petition are quoted below :

'Para 3.--That aggrieved against the judgment of the Forest Settlement Officer, the opposite party preferred an appeal within the Forest Act and appeal was heard ex parte without any notice to the petitioner. In the appeal, the appellate court has revised the Judgments of the Forest Settlement Officer relating to Gata Nos.

475Kha, 478Kha, 482Kha, 483, 484, 486, 488 and 485.

Para 4.--That the appeal was decided ex parte, hence the petitioner moved a restoration application but the restoration application has also been rejected by the appellate authority without considering the grounds given in the restoration application. A true copy of thejudgment given in original appeal and on the restoration application are being tiled herewith as Annexures-II and III to the writ petition.'

8. Reply to paragraphs 3 and 4 are given in para 7 of the counter-affidavit, which is quoted below :

'That the contents of para 3 of the writ petition are not admitted. As the petitioner as well as the Forest Department tiled an appeal against the Forest Settlement Officer's order and the appeal was decided on the merit basis. Moreover, he has also filed a case by receiving an application, the order of appellate court dated 18.7.1992 which was rejected on 22.9.1992 and again restoration application of the said review was also tiled and it was decided on merit basis awarding sufficient time to applicant counsel on dated 19.11.1992.

Full facts and grounds for the order passed in appeal has been again described by the learned Additional District Judge, Pipari which is evident from the perusal of the order itself.

Hence it is clear that the petitioner has been given sufficient chance to submit the evidence on record as well as to be heard again and again.

Contents of para 4 of the writ petition not admitted. As the all grounds given in the restoration application of the petitioner has been examined and described in the restoration order dated 19.11.1992 which is evident from the perusal of the order itself.

Counsel of the petitioner has been given chance, his all points are also noted and examined in the order.'

9. There is no specific denial by the State that the notices were not issued in appeal and order is ex parte. From the perusal of the para 7 of the counter-affidavit, it is clear that the appellate court passed order ex parte without issuing notice to the present petitioner in whose favourForest Settlement Officer had already passed the order.

10. Respondent simply stated in paragraph 7 of the counter-affidavit that it is not admitted. There is no denial in counter-affidavit to the fact that no notice was issued or served to the petitioner.

11. In view of the law relating to the pleading mentioned below, it is clear that the averments made in paragraph Nos. 3 and 4 of the writ petition shall be taken as admitted. Relevant rule of C.P.C. is being referred.

12. Order VIII, Rule 5(1) of the C.P.C. Is being quoted below :

'5. Specific denial--(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.'

13. The law relating to pleading in writ petition is further laid down by Supreme Court in Bharat Singh and Ors. v. State of Haryana and Ors., AIR 1988 SC 2181.

14. Relevant para 13 of the said judgment is quoted below :

'While in a pleading that is a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.'

15. In view of the fact stated above, there is no denial of the fact that appeal was heard ex parte without issuing notice to petitioner in whose favour an order was passed by the Forest Settlement Officer.

16. The restoration applicationwas rightly tiled by the petitioner before the District Judge but theDistrict Judge did not apply his mind so far specific pleading made in the restoration that no notice was issued to the petitioner and the decree was passed ex parte. The only scope of enquiry in restoration application was whether any notice was issued or served to the petitioner in appeal and whether petitioner was given opportunity of hearing before setting aside the order passed by Forest Settlement Officer.

17. In restoration application, the Additional District Judge was Incompetent to decide the case on merit. In case an ex parte order was passed in violation of principles of natural justice, ex parte order was liable to be set aside and appeal was liable to be restored to its original number. Parties were required to give opportunity of hearing after restoration of appeal to its original number. An order on merit in appeal cannot be passed against a party without issuing notice or giving opportunity of hearing. In view of the fact the impugned orders passed by respondent No. 2 cannot be sustained in law.

18. In the present case, on the fact and circumstances where it is not disputed that notice was not issued or served to the petitioner and an ex parte order was passed in the appeal. The same is liable to be quashed.

19. Section 18(3) of the Forest Act is also very clear. It says that Court shall fix a date, shall give notice thereof to the parties and shall hear such appeal accordingly. Section 18(3) is quoted below :

'If the appeal to be the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal and shall give notice thereof to the' parties and shall hear such appeal accordingly.'

20. The service of notice as well as opportunity of hearing is mandatory under Section 18(3) of the Forest Act so far appeal is concerned.

21. In view of the fact stated above, the writ petition succeeds and is allowed. Ex parte order dated 18.7.1992, passed by appellate authority and the order dated 19.11.1992, passed on restoration application are quashed.

22. Learned counsel for the petitioner states that the petitioner is an old person and wants that the case be decided during his lifetime.

23. Both the parties agree that the appeal be decided at an early date. Sri V.N. Agarwal, learned standing counsel has no objection if the case is fixed before appellate court in the month of July, 2002.

24. As agreed by the parties they will appear on 16.7.2002 before the appellate court who will hear and decide the appeal in accordance with law after giving opportunity of hearing to the parties within two months thereafter.

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