

Kamla Shanker and Others Vs. liird Additional District Judge, Mirzapur and Others

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Court : Allahabad

Decided On : Apr-10-1998

Reported in : 1998(3)AWC1708

Judge : D.K. Seth, J.

Acts : [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 208, 209 and 331; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 796 of 1991

Appellant : Kamla Shanker and Others

Respondent : iird Additional District Judge, Mirzapur and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Shiv Shankar Pandey, Adv.

Judgement :

D. K. Seth, J.

1. The petitioners had filed a suit for injunction against the defendant restraining the defendants from dispossessing the plaintiff-petitioners or from interfering with title and not to transfer the property to some one else.

2. Shri S. S. Pandey, learned counsel for the petitioner submits that this is a suit under Section 209 of the U. P. Zamindari Abolition and Land Reforms Act. 1950 (hereinafter referred to as the U.P.Z.A. and L.R. Act) but there is no prayer for ejectment as is contemplated under Section 209 of the said Act on person occupying the land without title. On the other hand. It appears to be under Section 208 of the said Act wherein without suing for ejectment, the landholder may sue for injunction with or without compensation ; or for the repair of the waste or damage, caused to the holding.

3. Learned trial court and revisional court had found that the names of defendants have been recorded in the revenue record while that the petitioners do not find any place in the revenue record and, therefore, the suit is not maintainable before the civil court and is cognizable by revenue court. This was so found while deciding the preliminary objection as to its Jurisdiction framed as issue No. 2. These orders have been assailed in the present writ petition on the ground that the learned courts below have failed to exercise their Jurisdiction in not entertaining the suit.

4. Section 331 of the said Act prescribes that no Court other than a Court mentioned in Column 4 of Schedule II shall take cognizance of any suit in respect whereof provisions have been made in the said Act providing procedure and forum for obtaining such relief. The exclusion is clear and un-ambiguous. While expression '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 based on a cause of action in respect of which any relief could be obtained by means of any such suit or application'.

5. Now Schedule II in Sl. No. 23 provides in column No. 3 that suit for injunction or for repair of the waste or damage prescribing the forum as Assistant Collector 1st Class in column 4 and provisions for first appeal and second appeal before Commissioner and Board respectively in column Nos. 5 and 6. Thus, it appears

that suit under Section 208 of U. P. Zamindari Abolition and Land Reforms Act is provided in Schedule II prescribing the forum within the meaning of Section 331 of the said Act. By reason of exclusion of civil court provided under Section 331 expressly and the suit having been a suit under Section 208 of the U. P. Zamindari Abolition and Land Reforms Act fall within Sl. No. 23 of Schedule II providing for relief in respect of the cause of action provided in column 3 before the revenue court. The Jurisdiction of civil court is barred.

6. Thus, both the learned courts below appears to have come to a correct finding. There is no illegality or failure of jurisdiction as has been contended by Shri Pandey so far as the said two orders are concerned. Therefore, I am not Inclined to interfere with the orders impugned. Then again in view of the decision in the case of Ganga Saran v. District Judge, Hapur and others, AIR 1991 All 114, a suit for injunction between two private individuals on whom there is no statutory obligation can be maintained under Article 226 of the Constitution. Therefore, the writ petition falls and is accordingly dismissed. However, there will be no order as to cost. Interim order if any stand discharged.

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