Sukhu and Others Vs. Ram Deo and Others

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Court : Allahabad

Decided On : Sep-16-1998

Reported in : 1998(4)AWC49

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Sections 229B; Code of Civil Procedure (CPC), 1908 - Sections 100 and 103

Appeal No. : C.M.W.P. No. 16413 of 1984

Appellant : Sukhu and Others

Respondent : Ram Deo and Others

Advocate for Def. : Triveni Shankar, Adv. and ;S.C.

Advocate for Pet/Ap. : D.S.P. Singh, ;W.H. Khan, ;Sankatha Rai and ;H.S.N. Tripathi, Advs.

Judgement :

Sudhir Narain, J.

1. This writ petition Is directed against the order of the Board of Revenue dated 7.5.1984, allowing the appeal filed by the defendant-respondents and dismissing the suit filed by the plaintiff-petitioners.

2. The facts in brief are that the petitioners filed Suit No. 1053 of 1970 for declaration under Section 229B of U.P.Z.A. and L.R. Act that they are bhumidhars of the land in dispute. They relied upon the following pedigree :

Durga|____
|Munni Lal Chunni Lal|____| | |Jhagaru Khannu Sukhu-widow- |Smt. Shanti Devi Chhedilal

Their case was that Munni Lal was sole tenure-holder of plot No 534 area 1.03 acre situate in village Sarai Nandan, Pargana Dehat Amanat, district Varanasi. The petitioners are related to Munnilal as given in the pedigree. Munni Lal had executed a gift deed duly registered on 8.9.1965 in favour of the petitioners. Munni Lal died on 1.1.1968. Mangroo, father of respondent Nos. 1 to 5, got his name mutated over the revenue records. The petitioners also filed an application for mutation but that was rejected on 25.4.1970. This has given the cause of action for filing the suit.

3. Mangroo, father of respondent Nos. 1 to 5, who was impteaded as defendant No. 1 in the suit, filed written statement. His case was that Munnilal had died in the year 1902. His widow Smt. Jhuna, after the death of Munnilal started living with Chunni Lal who was brother of Munni Lal. Mangroo was son of Munni Lal. After death of Munnilal, his widow Smt. Jhuna along with her son Mangroo who was then minor went in Sagai (second marriage). Khannu and Sudhadhu were bom out of the wedlock of Chunnilal. Chunni Lal executed gift deed in the year 1965 alleging himself to be Munni Lal. The plaintiffs have no right on the basis of the gift deed. It was further stated that Durga, father of Munni Lal and Chunni Lal had two wives. He gave the following pedigree :--

Durga

|

____

| |

From First Wife From Second Wife

| |

____

____

| | | | | |

Munni Lal Chunni Lal Khelawan Mangali Mithu Gaji

Mst. Jhuna (wife) | |

| | Sudhdhu

| |

_________________________ |

| | |

Mangroo Mst. Vipati |

|

Mst. Jhuna

(remarried Chunni Lal)

|

____

| | | | |

Jhagru Sudhdhu Mst. Khannu Mst.

| | Champa | Vachiya

Sukh Chhedi Mst.

Shanti

4. The trial court held that Munni Lal died in the year 1968. The pedigree given by the plaintiffs was correct and they have proved their relationship as alleged by them. The gift deed was executed by Munni Lal in their favour and they were in its possession. The suit was decreed by the trial court on 29.10.1974. Mangroo filed Appeal No. 34 of 1974 before the Additional Commissioner. Varanasi. The appeal was dismissed on 10.11.1976. Mangroo had died and thereafter respondent Nos. 1 to 5 were substituted in his place. They filed Second Appeal No. 32 of 1975-76 before the Board of Revenue. The second appeal was allowed on 8.3.1979 and the case was remanded to the trial court to record a finding as to whether Mangroo was son of Munni Lal. The petitioners filed Writ Petition No. 3230 of 1979. It was held that the trial court had already recorded a finding that Mangroo was not son of Munni Lal and the Board of Revenue was wrong in taking the view that there was no finding recorded by the trial court on this issue. The judgment of the Board of Revenue was quashed and this Court directed the Board of Revenue the decide the second appeal. It was, however, observed that the Board of Revenue should exercise the power under Section 103 of the Code of Civil Procedure and record necessary findings and determine the claims of theparties in accordance with law. The Board of Revenue by the impugned order dated 7.5.1984 has allowed the second appeal and dismissed the suit filed by the petitioners on the finding that Munni Lal had died in the year 1902 and not in the year 1968, as alleged by them.

5. I have heard Sri Sankatha Rai, learned counsel for the petitioners and Sri Triveni Shankar, learned counsel for the contesting respondents and also perused the written submissions filed by them.

6. The Board of Revenue has reversed the finding recorded by the trial court as affirmed by the Additional Commissioner in appeal on the question as to when Munni Lal died. The trial court and the Additional Commissioner both have recorded a finding that Munni Lal died in the year 1968. The Board of Revenue has reversed this finding and has held that Munni Lal died in the year 1902 and not in the year 1968. This is a question of fact. The Board of Revenue could reverse the finding of the Courts below within the permissible limits as envisaged

by Section 100 of the Code of Civil Procedure e.g., when the material evidence was ignored, documentary and oral evidence was misread, inadmissible evidence was accepted, certain document was rejected as inadmissible when in fact it was admissible or when the admissions made by the parties have been Ignored by the trial court.

7. Learned counsel for the respondents submitted that the Board of Revenue could itself record a finding in second appeal under Section 103 of the Code of Civil Procedure which provides that if the Courts below did not record any finding on the issue and the evidence is sufficient to record that finding or when the finding recorded by the trial court is vitiated in law and from the material evidence on the record a finding can be recorded in the second appeal by Court itself. Section 103 reads as under :

'103. Power of High Court to determine issues of fact.--In any second appeal, the High Court may. If the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal :

(a) which has not been determined by the lower appellate court or both by the Court of first instance and the lower appellate court, or

(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in Section 100.'

8. The Court in second appeal can record its own finding when any issue of fact necessary for disposal of the appeal has not been determined by the lower appellate court or both by the Court of first instance and the lower appellate court or when the finding recorded by the Courts below suffers from any error of law as contemplated under Section 100 of the Code of Civil Procedure. The Court has no power to record a finding under clause (b) of Section 103. C.P.C. if the finding recorded by the lower appellate court does not suffer from any error of law. The Court is first to determine as to what Is the error of law, on account of which the judgment of the appellate court is unsustainable in law and in absence of any such error, the Court in second appeal will not be justified in substituting its own finding in the judgment of the trial court or the lower appellate court on assessment of

evidence.

9. The trial court and appellate court both have recorded concurrent finding of fact regarding the date of death of Munni Lal. It was not a case covered by clause (a) of Section 100, C.P.C. Only this has to be examined as to whether Board of Revenue was justified in recording its own finding on the ground that the findings recorded by the Courts subordinate to it have recorded findings which were vitiated under law as contemplated under Section 100 of the Code of Civil Procedure.

10. Learned counsel for both the parties have cited large number of decisions as to when the finding recorded by the Board can be held to beillegal either it is contrary to law or there was some defect in the procedure. In the light of the various decisions. It has to be examined that the finding recorded by the Board of Revenue is justified under law. The Board of Revenue has referred to various evidence and reassessed the evidence. This was not permissible under Section 100, C.P.C. The documentary and oral evidence which have been referred to by the Board of Revenue in its judgment, have been taken into consideration by the trial court. It is not a case where the evidence has been ignored. I was taken through the judgments of all the Courts and the evidence adduced on behalf of the parties in the case. 1 am referring to the evidence referred to by the Board of Revenue for reversing the findings of the Courts subordinate to it :

(i) The Death Register of 1902 in which one Munni Lal is alleged to have died in the year 1902. This document was considered by the trial court. In this document a reference was made that one Munni Lal resident of Raja Tala, Thana Mirja Murad died in the year 1902. Munni Lal was son of Durga resident of Sarai Nandan. It was held that this document does not relate to the death of Munni Lal who was son of Durga. The plaintiffs have filed Death Register showing that Munni Lal died on 1.1.1968 in which it was mentioned that funeral rites were performed, by Jhagru son of Munni Lal. Considering both the documents it was held that the entry in subsequent Death Register relates to death of Munni Lal and not the extract of the Death Register filed by the defendants. One of the most important facts taken into consideration by the trial court was that the name of Munni Lal continued in the revenue record till he died in the year 1968. This was proved from the Khataui of 1375-F. in which Munni Lal was recorded as tenure-holder. The evidence of Mangroo was that he was four years when his father died in the year 1902 and if his statement is taken as correct, he could have been major some times in the year 1918 and there was no cogent explanation as to why the name of Munni Lal continued in the revenue record. It is after death of Munni Lal in the year 1968 Mangroo father of the respondents filed application for mutation on the allegation that he is son of Munni Lal. If Munni Lal died in the year 1902 he could have filed application for mutation when he became major in the year 1918. The Board of Revenue did not consider this aspect of the matter which was considered by the trial court.

(ii) The Board of Revenue has taken the averments made in paragraph 4 of the plaint by the plaintiffs as admission that Mangroo was son of Munni Lal. It is complete misreading of the plaint. A copy of the plaint has been annexed as Annexure-C.A. 1. Paragraph 4 of the plaint states that defendant No. 1 (Mangroo) is not son of Munni Lal but he is son of some other Munni Lal resident of village Bateri. Munni Lal was resident of village Sarai Nandan and the land in dispute is also situate in village Sarai Nandan. Paragraph 4 of the plaint reads as under :

^^;g fd eqn~nkysg ua-1 u rkseqUuh yky e'kdwj dk yM+dk gS vkSj u mlls vkjkth futkbZ ls fdlh fdle dk dksbZokLrk [okg ljksdkj gh gS vkSj rFkk og dHkh Hkh vkjkth futkbZ ij u rks dkfct on[khy gks jgk gS] cfYd og eqUuh yky fuoklh xzke crsjh dk yM+dk g SA**

(iii) The Board of Revenue referred to some compromise alleged to have entered into in a case. The trial court also referred to this compromise but it has not been accepted because the petitioners were not parties to such compromise. Secondly, only a copy of the compromise register was produced. The Additional Commissioner also considered about this compromise deed. The petitioners haddenied execution of any such compromise and further they were not made parties to it.

(iv) Munni Lal had filed Suit No. 114 of 1936 in respect of village Sarai Nandan decided on 7th July, 1945 which clearly indicated that Munni Lal was alive in the year 1945 and had he died in the year 1902, he could not have filed suit in the year 1936. The Board of Revenue has not given any cogent reason to reject this document.

(v) The Birth Registers indicating two daughters having been born to Chunni Lal on 30.12.1928 and one in the year 1915. There was no issue relating to the birth of daughters of Munni Lal. The respondents have also not given any pedigree showing that Munni Lal had two daughters. These documents were, therefore, not relevant. The trial court had taken into consideration the extract of these Birth Registers. It is not a case where the document was not considered. In case the daughters were born to Chunni Lal, that fact was hardly relevant.

(vi) The statement of plaintiff Jhagroo, a copy of which has been annexed as Annexure-2 to the writ petition. The Board of Revenue has observed that his statement was not considered either by the trial court or by the Additional Commissioner in appeal. This observation is incorrect. The trial court considered the statement of P.W. 2 Ramdeo and P.W. 3 Jhagaroo. The Board of Revenue has observed as follows :

'In this respect the statement of Jhagroo. father of one of the plaintiffs as P.W. 3 is very material which was not considered by both the Courts below. He denied knowledge about Chunni Lal to be son of Durga and stated that he does not know that Munni Lal and Chunni Lal were brothers or not although he admits that plaint was got drafted by him and plaintiffs. This suppression of truth by him ieads to support the defendants' case that Munni Lal who died in the year 1902, was son of Durga who had died there but had acquired land at Sarai Nandan.'

This is an appreciaiion of evidence and drawing inference from the statements. The Board of Revenue has not considered the entire statement made by him. The suggestion was made to him in cross-examination. He made statement that he is not aware that Mangaroo son of Munni Lal resident of Sarai Nandan is living on the land in dispute. The statement was to be read as a whole. There was nothing to show that any admission was made by Jhagroo P.W. 3 that Mangroo was son of Munni Lal.

(vii) The statement of Jagan, P.W. 1 and the statement of P.W, 2 Ramdeo. The Board of Revenue has appreciated their evidence. The statements were as to whether Mangroo was living on the land in dispute. The statements were made by D.W. 1, and D.W. 2. The statements of D.W. 1, D.W. 2 and D.W. 3 were considered in relation to residence of Mangroo. This is an appreciation of the evidence by the Board of Revenue.

These statements were also taken into account by the trial court. Learned counsel for the respondents contended that mere . statement of defendants was not sufficient and that should have been appreciated. The basic question was as to when Munni Lal died and from the documentary evidence the trial court recorded a finding that Munni Lal died in the year 1968. Their statements regarding the residence of Mangaroo was not relevant only for appreciation of evidence.

11. I have referred to various evidence which were taken into account by the Board of Revenue to set aside the concurrent finding of fact recorded by the Courts below and dismissing the suit, it is not a case where any material evidence was ignored which justified the Board of Revenue to set aside the finding recorded by the Courts below. The Board of Revenue has patently erred in reversing the finding of fact recorded by the Courts below without any justifiable ground.

12. The next submission of learned counsel for the respondents is that the gift deed was not proved. The petitioners had filed the original gift deed and the gift deed was duly registered. They produced Ramdeo P.W. 2 who was a marginal witness of the gift deed, Jhagroo P.W. 3 appeared and stated that the donees came into possession after the gift deed was executed. The trial court believed their statements. Learned counsel for the respondents contended that the mere execution of the gift deed was not sufficient unless it was further proved that the possession was also given to the donees. As stated above, the trial court has accepted their case that the gift deed was executed by Munni Lal and the petitioners are in possession and only on that basis the suit was decreed. There is no legal infirmity in the findings recorded by the Courts below.

13. The third submission of learned counsel for the respondents is that Mangroo is son of Munni Lal. The trial court had recorded a finding that Mangroo is not son of

Munni Lal. This finding was affirmed by the Additional Commissioner. The Board of Revenue has taken the view that Munni Lal died in the year 1902. Mangroo set up entirely a different pedigree. He did not admit that Jhagaroo, Khannu and Sukhkhu were sons of Munni Lal. The version as given by Mangroo was not accepted. It is the assessment of the evidence on record. Even assuming that Mangroo was son of Munni Lal, on the finding that Munni Lal had executed a gift deed in favour of the petitioners. Mangroo will not get any right over the land in suit.

14. In view of the above the writ petition is allowed with costs and the judgment and order passed by the Board of Revenue dated 7.5.1984 is hereby quashed. The judgments of the trial court and lower appellate court are maintained.