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Court : Allahabad

Decided On : Dec-03-2003

Reported in : 2004(1)AWC716

Judge : S.N. Srivastava, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 141 and 151 - Order 9, Rule 13; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 229B, 229D and 341

Appeal No. : C.M.W.P. No. 52283 of 2003

Appellant : Basant

Respondent : Additional Commissioner, Azamgarh Region and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : A.K. Goyal, Adv.

Disposition : Petition dismissed

Judgement :

S.N. Srivastava, J.

1. This petition has its origin in the impugned order dated 5.4.2002, passed by Deputy Collector, Belthara Road, Ballia, on, restoration application thereby staying

execution of the decree dated 9.11.2001 passed in suit instituted under Section 229B of the U.P.Z.A. and L.R. Act.

2. The dispute in the instant petition revolves round plot No. 108 admeasuring .057 situated in village Chaukia Pargana Silkanderpur Garvi Tehsil Belthara Road, District Ballia. The dispute erupted in Institution of a suit under Section 229B of the U.P. Z.A. and L.R. Act, 1950 for the relief of declaration of bhumidhari rights of the plaintiff-petitioner. Subsequently, the parties reproached the dispute and entered into a compromise on 8.11.2001 as a consequence of which, the suit aforesaid culminated into a compromise decree vide order, dated 9.11.2001. In view of subsequent developments not discernible from the facts on record a restoration application under Order IX Rule 13 read with Section 151, C.P.C. came to be filed by defendants Kanhiyalal and Om Prakash which is stated to be still pending. On an application for stay by order, dated 5.4.2002, the Sub-Divisional Officer, Belthara Road, District Ballia stayed execution of compromise decree-dated 9.11.2001 confining it till the disposal of restoration application. The revision preferred impugning the said order of stay having been dismissed, the present petition under Article 226 of the Constitution has come to be filed.

3. The main stay of the argument made across the bar by the learned counsel for the petitioner is that the order of stay made by the respondent No. 2 thereby staying execution of compromise decree dated 9.11.2001 has been passed by the trial court exceeding the bounds of his jurisdiction inasmuch as the said order was not passed in a suit and that the trial court is not invested with any such power to pass such orders like the orders passed on restoration application. To enforce his submission, he called in aid the decision rendered by the learned Single Judge in Jagdhari and Ors. v. Additional District Judge and Ors., 1992 AWC 1152. I have also heard learned standing counsel who canvassed his submissions in opposition.

4. Considering the submissions and nature of the point at issue, I would first notice Section 341 of the U.P. Z.A. and L.R. Act and Section 141, C.P.C. being germane to the controversy involved in this petition. Section 341 of the U.P.Z.A. and L.R. Act is abstracted below :

'341. Application of certain Acts to the proceeding of this Act,--Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court Fees Act, 1870 (VII of 1870), the Code of Civil Procedure, 1908 (V of 1908), and the Limitation Act, 1963 (XXXVI of 1963), (including Section 5 thereof) shall apply to the proceedings under this Act.'

Section 141 of the Code of Civil Procedure is also excerpted below.

'141. Miscellaneous proceedings. -- The procedure provided in this Code in regard to suit shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Explanation.--In this section, the expression 'proceedings' includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.'

A conjoint reading of the aforesaid provisions would crystallize that restoration application is a step in judicial process, it would thus be right to give it a comprehensive meaning so as to include within It all matters coming to in the judicial process and is thus a miscellaneous proceeding pending before trial court. In consequence, the procedure of a suit shall come into play for application to proceedings arising out of restoration application and by this reckoning, the trial court has inherent power to pass appropriate order of stay in Its discretion to protect the interest of the parties. Besides, it should be noticed here that it is settled in law that the procedure prescribed in the Code in regard to a suit shall be followed as far as it could be made applicable in all proceedings in any Court of civil jurisdiction and application to recall is included in the proceeding as misc. proceeding any application to recall an order dismissing the suit by any Court where the procedure of C.P.C. is applicable is a Misc. proceeding, and the procedure of the suit are applicable and as such the Court entertaining the application is fully competent to grant injunction. In the light of the above, the submission of the learned counsel for the petitioner has no cutting edge nor has grounding in any valid foundation. The learned counsel laid much stress on a single Judge decision of this Court in Jagdhari and others (supra) and strenuously canvassed that after a compromise decree, the suit was not in existence and as

such the restoration application preferred subsequently followed by application for stay cannot be termed to be a step in the judicial process. The decision aforesaid was rendered in the matrix of facts that the suit having been dismissed in default no temporary Injunction could be granted unless the suit is restored. It was observed by the learned single Judge that once the suit is dismissed, whether for default or otherwise, all interim orders came to an end. Since there is no suit pending at present, hence there is no question of grant of any interim injunction. A rule or authority must be evaluated in the light of the facts considered by the Court to be material. The decision under reference is embellished with very few facts and it also does not contain elaborate discussion in order to qualify to be a precedent with binding effect. It would appear that the aforesaid decision was rendered in different perspective inasmuch as provisions germane to the controversy appear not to have been argued before the learned single Judge nor the learned single Judge noticed in his judgment the afore-abstracted provisions nor assigned any reasoning for the observation that 'once the suit is dismissed, whether for default or otherwise, all interim orders came to an end.' The aforesaid decision, it is obvious, has been rendered in ignorance of the provisions of the U.P.Z.A. and L.R. Act and Section 141 of the Code of Civil Procedure and does not rationalise the holding of the view nor the learned single Judge has illustrated his reasoning by reference to any authority or law on the point. In the circumstances, it would be unwise to endow it with as much authority as a precedent with binding effect. The tenor and text of the decision is of no binding effect on the principles of sub-silentio the same having been rendered without notice of the relevant provisions of Code of Civil Procedure.

5. In the above circumstances, I would also like to expatiate on the principles of granting injunction. The principles of granting injunction in a suit under Section 229B are embodied in Section 229D of the U.P. Z.A. and L.R. Act and it would be obvious that stay is distinct from injunction. In my considered views, a stay could be granted in exercise of power under Section 151 of the C.P.C. by a trial court in Misc. proceedings to protect the interest of the parties while injunction could be granted in case conditions under Section 229D of the U.P.Z.A. and L.R. Act are satisfied. On this count also, the court below did not exceeded the bounds of his jurisdictions and rightly interfered in the matter by staying the execution of the

compromise decree.

6. As a result of foregoing discussion, the petition is dismissed in limine. In the facts and circumstances of the case, I feel called to direct the trial court to decide application for restoration/recall within a period not exceeding four months from the date of production of a certified copy of this order. The petitioner shall present certified copy of this order before the trial court within one month from today.

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