Smt. Lekhpata and Others Vs. Iind Additional District Judge, Faizabad and Others

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Court : Allahabad

Decided On : Nov-25-1998

Reported in : 1998(4)AWC696

Judge : S.H.A. Raza, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 9, 47, 100 (3) and 104 - Order 43, Rule 1; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Sections 143, 229, 229 (3), (B) (C) and (D), 330 and 331

Appeal No. : Writ Petition No. 4381 of 1984

Appellant : Smt. Lekhpata and Others

Respondent : iind Additional District Judge, Faizabad and Others

Advocate for Def. : C.S.C. and ;Ram Surat Pandey, Adv.

Advocate for Pet/Ap. : H.S. Sahai, Adv.

Judgement :

S.H.A. Raza, J.

1. The petitioner filed a suit in the nature of permanent Injunction restraining the opposite parties from Interfering into the house, 'sahan'. 'ghera', 'saria', well and the trees situated on plot No. 306. The case of the petitioner appears to be is that the respondents by setting up an impostor got a compromise filed in the proceedings for correction of papers and succeeded in getting the name of Ori expunged from the revenue records. The suit was filed by Smt. Panchi who is widow of Ori. After the death of Smt. Panchi, the petitioners were substituted as heirs and legal representatives of Smt. Panchi. During the trial of the case, a preliminary issue was framed as to whether the suit is cognizable by the civil court? The issue was answered in negative. A revision was filed which was also dismissed. Thereafter, the doors of this Court were knocked by the petitioners by filing the present writ petition.

2. Relying upon seven cardinal principles enunciated by a Constitution Bench of Apex Court in Dhulabhai etc. a. State of Madhya Pradesh and another, AIR 1969 SC 78, it was urged by the learned counsel for the petitioner that the suit is cognizable by the civil court. The principles which have been laid down in the said case are reproduced below :

1. Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normallydo in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of Judicial procedure.

2. Where there is an express bar of the Jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the Jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions

about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

3. Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

4. When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

5. Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

6. Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

7. An exclusion of jurisdiction of the civil court is not readily to be Inferred unless the conditions above set down apply.-

3. According to principle 7, exclusion of the Jurisdiction of the civil court was not readily to be inferred unless the conditions above set down apply. In this case, we have to find out as to whether under the provisions of Section 330 of the U.P.Z.A. and L.R. Act, there is any specified exclusion of the Jurisdiction of the civil court to try a suit for injunction or not, as laid down in the second principle. In this regard, a reference to Sections 330 and 331 of the U.P.Z.A. and L.R. Act becomes relevant which are being reproduced below :

'330. Bar to jurisdiction of civil courts in certain matters :

Save as otherwise provided by or under this Act, no suit or other proceeding shall lie in any civil court in respect of-

(a) any entry in or omission from a Compensation Assessment Roll ; or

(b) any order passed under Part I of this Act ; or

(c) the assessment or collection of land revenue under Chapter X or the recovery of any sum of money recoverable as arrears of land revenue.'

'331. Cognizance of suits, etc., under this Act :

(1) 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 mentioned in column 3 thereof or of a suit, application or proceedings based on a cause of action in fespect of which any relief could be obtained by means of any such suit or application :

Provided that where a declaration has been made under Section 143 in respect of any holding or part thereof, the provisions of Schedule II Insofar as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.

Explanation.--if the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted.

(1A) Notwithstanding anything in sub-section (i) an objection that aCourt mentioned in column 4 of Schedule II, or, as the case maybe, a civil court, which had no jurisdiction with respect to the suit,application or, proceedings, exercised jurisdiction with respectthereto shall not be entertained by any appellate or revisionalcourt unless the objection was taken in the Court of first instanceat the earliest possible opportunity and in all cases where issuesare settled, at or before such settlement, and unless there hasbeen a consequent failure of justice.

(2) Except as hereinafter provided no appeal shall lie from an order or decree passed under any of the proceedings mentioned in column 3 of the Schedule III aforesaid.

(3) An appeal shall lie from any decree or from an order passed under Section 47 or an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908) or in Order XLII. Rule 1 of the First Schedule to that Code passed by a Court mentioned in column No. 4 of Schedule II to this Act in proceedings mentioned in column No. 3 thereof to the Court or authority mentioned in column No. 5 thereof.

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed in an appeal under sub-section (3) to the authority, if any, mentioned against it in column 4 of the Schedule aforesaid.'

4. These provisions were considered at length by a Full Bench of this Court in Ram Padarath v. IInd Additional District Judge, Sultanpur, 1988 (6) LCD 565. In that case, it has been observed in para 19 of the report that :

'It is the alleged injury or apprehended injury or cloud on the right and title of a person by some action on the part of any other person, or Interference or attempt to interfere or encroach upon the right and title of a person over a particular property by any positive or negative act or declaration etc. which give a suit or cause of action to approach a Court of law for relief or reliefs against the same. The dispute as to jurisdiction arises when more than one reliefs are claimed in an action on the same cause of action one of which can be granted by a civil court. If the principal or real relief can be granted by the revenue court, then the ancillary relief or the relief which flows out from the principal relief can also be granted by the revenue court notwithstanding that such ancillary relief can be granted bythe civil court and if things are in reverse direction then all the relief can be granted by the civil court, but if the so called main relief is redundant or mere surplus-age then it is the real relief Involved in the matter which may or may not have been claimed as ancillary relief will determine the jurisdiction of the Court which is to entertain a particular action. Even if a plaint or application is couched in such a language so as to oust jurisdiction of a particular Court then it is the, cause of action and relief flowing out of such cause of action which would determine the forum for entertaining the said action and not the so-called relief claimed.'

In para 21 of the report it was further observed that :

'If more than one relief are claimed by a particular person, no relief can be granted to that person unless declaration of his tenancy rights is made and in that situation the suit will be cognizable by the revenue court as declaration can be granted by the revenue court. Similarly, if a person claims relief of Injunction and in the alternative for possession, if he is found to be out of possession and his name is not on the record, then without declaration that in fact he is the tenant or he is in possession of the tenancy rights no further relief can be granted and the suit is cognizable by the revenue court. In case the suit is for injunction and/or possession if he is out of possession then the suit will be 'cognizable by the revenue court notwithstanding that the relief for Injunction is to be granted by the civil court. In this connection reference may be made to the case of Chandrika Misir v. Bhaiya Lal. AIR 1973 SC 2391. The said case arose out of suit for injunction and in the alternative for possession in respect of agricultural Hand. It was held that in view of Schedule II to the Act. the relief for possession could be granted by the revenue court only and Section 331 of U. P. Zamindari Abolition and Land Reforms Act ousted the jurisdiction of civil court. In the said case though no observation in respect of relief for injunction has been specifically made out, but from the Judgment the picture is very clear. The finding of the subordinate court was that the plaintiff was out of possession. On the basis of allegations which were not true and which he failed to establish, merely because relief for injunction was claimed, the civil court would have no jurisdiction as the case first involved declaration of right as tenure-holder which could be granted by the revenue court only and thereafter relief could have been granted only if he was held to be tenure-holder by succession.'

5. The same question again cropped up before a Single Judge of this Court in Smt. Chhanga v. Ist Additional District Judge, Jaunpur, 1998 (89) RD 647. While dealing with the provisions of Section 331 of the U.P.Z.A. and L.R. Act in respect

of the matters prescribed in Schedule II, the Court observed :

'Thus, the basis of the said provision is that the first condition would be that the relief must be a relief which can be had within the purview of the said Act or the reliefs which find mention in column 3 of Schedule II available before the Court mentioned in column 4 thereof. Unless these tests are satisfied Section 331 cannot be attracted. Thus Section 331 specifically includes the suit, the nature and character whereof is specified in the said section. From the very language used in the said section it appears that the same is conclusive and exhaustive, therefore, all suits which do not conform to the character as specified in Section 331 can very well be maintained in a civil court.'

Dealing with serial 34 of Schedule II pertaining to the suit for declaration of right under Sections 229, 229B and 229C, the Court further observed :

'Therefore, if the present suit is a suit for declaration within the meaning of Sections 229, 229B and 229C and in that event the suit before the civil court cannot be entertained. Section 229 deals with declaration that might be sought for by the Gaon Sabha against any person claimingto be entitled to any right in any land for the declaration of the right of such person in such land.'

As far as the disputes contemplated under sub-section (3) of Section 229 is concerned, the Court observed :

'Sub-section (3) of Section 229B, is between the Bhumldhar and the State Government or the Gaon Sabha, as the case may be. It does not contemplate a dispute between two Bhumidhars. Neither the Gaon Sabha nor the State Government is disputing the right of these Bhumidhars to the extent that either of them may be Bhumidhars. Whether the plaintiff is the Bhumidhar or the defendant is the Bhumldhar it may be a dispute between two Bhumidhars but it is not a dispute between either of them and the State Government or the Gaon Sabha. In the present case plaintiff has claimed cancellation of deed on the ground mentioned in the suit. In the suit she has not claimed any declaration of right nor she has asked for any consequential relief in the suit. Thus, the plaintiff has also not claimed any right in respect whereof any proceedings can be had before the revenue authority nor she is claiming any right which can be had before any of the authority mentioned in column 4 in respect of any relief mentioned in column 3. The suit is a suit for cancellation of sale deed. No declaration of right either as Bhumidhar or otherwise is being asked for in the suit and that too not against the State Government or the Gaon Sabha. Thus, the suit does not fall within the purview of Section 229B as well.'

6. It was vehemently contended by Sri R. S. Pandey, learned counsel for the respondent, that the petitioner filed a suit under Section 229B in the revenue court which was pending at the time of filing of the writ petition. hence he cannot agitate his matter in two Courts. He further emphasised that in pursuance of the deletion of the name of Ori from the revenue record, names of the respondents were mutated in the records and the respondents have been enjoying possession over the land in question. Hence, in view of the decision of the Full Bench of this Court in Ram Padarath, the petitioners cannot be permitted to file a suit in the civil court and hence, the order passed by the trial court as well as the revisional court do not suffer from any Infirmity.

7. On the other side, Sri H. S. Sahai, learned counsel for the petitioner, submitted that the suit which was filed by the petitioners before the revenue court was with respect to agricultural plots only while in the present suit, the petitioners wanted a decree in the nature of permanent Injunction restraining the defendants from interfering Into his house, 'sahan', 'ghera', 'saria', well and trees on plot No. 306 and that relief cannot be granted by the revenue court and that relief can only be granted by the civil court. Sri Sahai further emphasised that in Schedule II to Section 331 of the Act, exclusion of suit for permanent injunction has not been indicated anywhere although under Section 229D of the U.P.Z.A. and L.R. Act a suitor may get temporary injunction but relief of permanent injunction cannot be granted. Hence suit in the nature of permanent injunction cannot be filed in civil court. In reply to the contention of Sri Pandey, learned counsel for the respondent, that petitioner having been ousted from possession cannot maintain a civil suit in the nature of permanent Injunction, it was submitted that the stage has not come, where the Court after recording evidence of the parties indicated that the petitioners were not in possession. If the Court may determine that question at a

subsequent stage then that plea can be raised by the respondents before the civil court.

8. After considering the averments of the parties made in the writ petition and in the counter-affidavit and hearing arguments of the learned counsel for the parties, I am of the view that the suit filed by the petitioner with respect to khata No. 306 measuring 10 Biswas which also included the house, 'sahan', 'ghera' and 'saria', well and trees of the petitioners as wellcannot be thrown out by the civil court, as the revenue court, cannot grant the relief in respect of house 'sahan', 'ghera', 'saria', well and trees and such a relief can only be granted by the civil court. The fate of the case filed by the petitioner under Section 229B of U.P.Z.A. and L.R. Act before the revenue court is not known. The consolidation operations must have taken place during all these years and the counsel for the parties could not state as to whether in respect of properties in question, revenue court or the consolidation courts have passed any order or not. This aspect of the matter may be looked Into by the civil court where the matter will be heard and tried again, in view of the orders which are being passed by this Court.

9. There is another aspect of the matter which requires consideration. Ori was undoubtedly recorded as tenureholder. His name was expunged from the revenue court. The petitioners have asserted that an imposter was set up, who filed a compromise and on the basis of that compromise, the name of Ori was expunged. The petitioners, by leading evidence on that question, can prove that fact. That exercise can only be done by the civil court and not by the revenue court.

10. In view of what has been indicated heretnabove, I am of the viewthat the civil court had the jurisdiction to try the suit. The trial court as well asthe revisional court have committed manifest error of law in returning theplaint for presentation to the revenue court. Accordingly, the writ petitionsucceeds and in view of the aforesaid observations, a writ in the nature ofcertiorari quashing the impugned orders dated 6.10.1982 and 5.5.1984(constained in Annexures-2 and 3 to the writ petition) passed by oppositeparty Nos. 1 and 2 respectively, is issued. The trial court will register the caseand decide the same on merits in accordance with law and the directionscontained in this order.