

Atar Singh Vs. Additional Commissioner (Administration), Garhwal Mandal and anr.

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Court : Uttaranchal

Decided On : Sep-13-2005

Reported in : AIR2006Utr13

Judge : Rajesh Tandon, J.

Appeal No. : W.P. No. 559 (M/S) of 2002

Appellant : Atar Singh

Respondent : Additional Commissioner (Administration), Garhwal Mandal and anr.

Advocate for Def. : Tumul Nailwal, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Arvind Vashisth, Adv.

Judgement :

ORDER

Rajesh Tandon, J.

1. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 2nd July, 2002 passed by the respondent No. 1 in Revision No. 25/1999-2000 25/1999-2000 so far as it has made a rider for cross-

examining Sri Padam Singh i.e. respondent No. 2.

2. Briefly stated, a suit for partition of the joint bhumidhari land was filed by Sri Padam Singh respondent No. 2. The said suit was decreed on 30-5-1996 ignoring the family settlement dated 14th January, 1971.

3. The petitioner has preferred an appeal against the judgment and decree dated 30th May, 1996 passed by the Assistant Collector. The appeal was numbered as Z.A. Appeal No. 29/1995-96. The appeal was allowed by the Additional Commissioner on 14th January, 1999 and the Additional Commissioner remanded the matter back for fresh decision after framing issue No. 6 on the point of family settlement dated 14th January, 1971.

4. Issue No. 6 was framed with regard to the fact as to whether the petitioner has ever been in possession in the joint holding and further he is entitled for any relief.

5. In the operative portion, the Additional Commissioner has also observed that after framing this issue the matter can be examined in the light of the fact as to whether the document dated 14th October, 1971 may also be examined by the experts. The operative portion as well as issue No. 6 which was framed are quoted below:

**mi;qZDr foospu ds vuqlkj vk{ksfir fu.kZ;@vkns'k [kf.Mr gksdj okn bl vk'k; ls izfrizsf'ke gksus ;ksX; gS fd vfrfjDr okn la;k 6 mijksDrkuqlkj xfBr dj ,oa dfFkr ys[k fn- 14&10&71 dks fo'ks'kK ijh{k.k djks; tkus lEc/kh fu.kZ; ysdj okn dk fof/or okn fcUnqlkj fuLrkj.k fd;k tk;k

vkns'k

vih vkaf'kd :l ls Lohdkj dj vk{ksfir fu.kZ;@vkns'k fn- 30&5&96 o fMdzh fnukad 19&6&96 [kafMr fd;s tkrs gSa ,o okn i=koyh nl vk'k; ls izfrizsf'kr dh tkrh gs fd mi;qZDr fu.kZ; esa fn;s x;s funsZ'kksa ds vuqlkj fof/kor okn dk fuLrkj.k fd;k tk; A**

6. During the pendency of the case after the remand of the case before the Assistant Collector, an application was moved for summoning the plaintiff/respondent No. 2 as a witness and the application for recalling Sri Padam

Singh plaintiff/respondent No. 2 was dismissed vide order dated 6th January, 2000.

7. A revision was preferred against the said order being Revision No. 25 of 1999-2000 and has been decided on 2nd July, 2002 by allowing in part and making a rider that no question with regard to the alleged letters and signatures will be put.

8. So far as the partly allowing the revision is concerned, the Additional Commissioner has rightly permitted for recalling the plaintiff/respondent No. 2 Padam Singh for cross-examination.

9. However, no restriction can be placed on the cross-examination and the same has to be held in accordance with law on cross-examination once the order of recalling the witness has already been passed, any restrictions put up on the rights of either the petitioner or the person to whom the petitioner has to examine, will not be in the interest of justice between the parties.

10. The Assistant Collector shall take immediate steps to recall the witness and to proceed for cross-examination in accordance with law.

11. However, liberty is given to the parties to get the document of the family settlement dated 14th January, 1971 proved by the aid of the expert evidence also.

12. Subject to the right of cross-examination, writ petition is disposed of by quashing the latter part of the operative portion of the order dated 2-7-2002 and it will be open for the Additional Commissioner to proceed in accordance with law.

13. Writ petition is disposed of. No order as to costs.