

Ina Devi And 7 Others vs Board Of Revenue, U.P. At Prayagraj And 4 ... on 4 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15873

Court No. - 50

Case :- WRIT - B No. - 188 of 2025

Petitioner :- Ina Devi And 7 Others

Respondent :- Board Of Revenue, U.P. At Prayagraj And 4 Others

Counsel for Petitioner :- Dharmendra Pratap Singh

Counsel for Respondent :- Arun Kumar Pandey,C.S.C.,Digvijay Tiwari

Hon'ble Chandra Kumar Rai,J.

1.Heard Mr. Dharmendra Pratap Singh, learned counsel for the petitioners, Mr. Digvijay Tiwari, learned counsel for respondent No.5, Sri Indrasen Singh Tomar, learned Additional Chief Standing Counsel for the State-respondents and Mr. Arun Kumar Pandey, learned counsel for the Land Management Committee.

2.The instant writ petition has been filed for the following relief:

"(a). Issue writ order or direction in the nature of certiorari quashing the impugned order dated 15.11.2016 and 25.09.2024 passed by respondent No.2 &1 (Annexure Nos.2 and 5) to this Writ petition respectively."

3. On 21.01.2025 following order was passed by this Court:

"1. Heard Sri Dharmendra Pratap Singh, learned counsel for the petitioners, Sri Digvijay Tiwari, learned counsel for respondent no.5, Sri Indrasen Singh Tomar, learned Addl. C.S.C. for the state-respondents and Sri Arun Kumar Pandey, learned counsel for the respondent-gaon sabha.

2. Counsel for the petitioners submitted that suit under Section 229-B of the U.P. Z.A. & L.R. Act filed by respondent no.5 was dismissed after framing issues and giving parties to lead evidence in accordance with law. He further submitted that petitioners are claiming right on the basis of sale deed executed in their favour in the year 1988 which has not been cancelled by any court of law. He submitted that proper issue regarding the sale deed in question was framed by the trial court and the finding has been recorded, as such, the order passed in appeal, remanding the matter before the trial court to examine the issue again, relating to sale deed executed by Dungar Singh is abuse of process of law.

3. On the other hand, learned counsel for respondent no.5 submitted that remand order has been passed to examine the legality of the sale deed executed by Dungar Singh, as such, no interference is required in the matter. He further submitted that Civil Suit No.1129/2019 filed by respondent no.5, impleading the petitioners as defendants, in respect to sale deed dated 30.5.1988 is pending before the civil court.

4. Matter requires consideration as to whether the Additional Commissioner can remand the matter before the trial court to decide the suit afresh when the trial court has already conducted the trial after framing issues and giving parties to lead evidence in respect to sale deed executed by Dungar Singh.

5. Put up this matter as fresh on 4.2.2025 in order to enable learned counsel for respondent nos. 5 & 6 to obtain instruction for deciding the writ petition finally without inviting counter affidavit.

6. Till further orders of this Court, the effect and operation of the orders dated 15.11.2016 and 25.9.2024, passed by respondent nos. 2 & 1 respectively shall remain stayed."

4. In compliance of the order dated 21.01.2025, learned counsel for respondent No.5 submitted that writ petition be disposed of finally without inviting counter affidavit.

5. Learned counsel for the petitioner submitted that suit under Section 229-B of U.P.Z.A.& L.R. Act was decided by the trial court in accordance with law. He further submitted that in appeal, the Additional Commissioner has remitted back the matter before trial court for fresh trial which is abuse of process of law. He further submitted that revision filed by petitioner has been dismissed by the trial court in arbitrary manner. He placed the issues framed in the trial court as well as finding recorded by the trial court in order to demonstrate that proper trial has taken place before the trial court, as such remand order passed in appeal cannot be sustained in the eye of law.

6. On the other hand Mr. Digvijay Tiwari, learned counsel for respondent No.5 submitted that judgment and decree passed by the trial court dated 08.06.2016 was not in accordance with law, accordingly, in appeal the Additional Commissioner has rightly remanded the matter back before the trial court to decide the proceeding afresh in the light of the observation made in the body of the

8. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

10. In order to appreciate the controversy involved in the matter, perusal of issues framed in the suit will be relevant, which is as under:

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12- "???"

11. Perusal of the issue framed in the suit demonstrate that twelve proper issues were framed in the suit and trial court vide judgment and decree dated 08.06.2016 dismissed the plaintiff's suit considering each and every issues in the light of the oral as well as documentary evidences adduced by the parties. In appeal, the Additional Commissioner has set aside the judgment and decree passed by the trial court and remitted the matter back before the trial court to decide the suit proceeding afresh which is not proper exercise of appellate jurisdiction, the trial court has conducted the trial after framing the issues and giving parties to lead evidence in accordance with law, as such first appellate Court should not remit back the matter before trial court to decide the proceeding afresh, rather the first appellate court should decide the appeal in proper manner considering the finding of fact recorded by the trial court in accordance with law.

12. Hon'ble Apex Court in the case reported in 2022 (155) RD 294 Nadakerappa since deceased by L.Rs.and others versus Pillamma since deceased by L.Rs. and others has held the remand order cannot be passed as a matter of course. Paragraph No.25 of the Judgment rendered in Nadakerappa (supra) will be relevant for perusal which is as under:

"25. The Division Bench, without assigning any cogent reasons, has set aside the order of the learned Single Judge and has remanded the matter to the Land Tribunal. It is settled law that the order of remand cannot be passed as a matter of course. An order of remand cannot also be passed for the mere purpose of remanding a proceeding to the lower court or the Tribunal. An endeavour has to be made by the Appellate Court to dispose of the case on merits. Where both the sides have led oral and documentary evidence, the Appellate Court has to decide the appeal on merits instead of remanding the case to the lower court or the Tribunal. We are of the view that, in the instant case, the Division Bench has remanded the matter without any justification."

13. Considering the entire facts and circumstances of the case, impugned judgment and order dated 15.11.2016 passed by respondent No.2 and order dated 25.09.2024 passed by respondent No.1 are liable to be set aside and same be hereby set aside. The writ petition stands allowed and matter is remitted back before the respondent No.2/ Additional Commissioner to register the appeal on its original number and decide the same afresh on merit after affording opportunity of hearing to both the parties expeditiously preferably within a period of 3 months from the date of production of certified copy of this order before him in accordance with law.

Order Date :- 4.2.2025 PS*