

Yogendra Singh vs State Of Up And 9 Others on 3 March, 2025

Author: Ashutosh Srivastava

Bench: Ashutosh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29840

Judgment reserved on: 27.09.2024

Judgment delivered on: 03.03.2025

Court No. - 68

Case :- WRIT - B No. - 3118 of 2024

Petitioner :- Yogendra Singh

Respondent :- State Of Up And 9 Others

Counsel for Petitioner :- Rahul Kumar Tyagi

Counsel for Respondent :- Akash Sharma,C.S.C.,Sunil Kumar Singh,Vijay Prakash Mishra

Hon'ble Ashutosh Srivastava,J.

1. Heard Sri Rahul Kumar Tyagi, learned counsel for the petitioner, learned Standing Counsel and Sri Vijay Prakash Mishra, learned counsel appearing on behalf of the contesting respondent no. 6. Sri Sunil Kumar Singh, learned counsel has accepted notices on behalf of the respondent no. 5, the Gram Sabha concerned.

2. During the course of submissions, learned counsels appearing for the parties jointly submit that respondents no. 7, 8, 9 and 10 have no interest in the subject matter of the writ petition and they

need not be heard.

3. The instant writ petition has been filed questioning the judgment and order dated 14.05.2024 passed by the Board of Revenue, U.P. Circuit Court No. 1, Meerut in Second Appeal No. 01164 of 2019, judgment and order dated 13.05.2019 passed by the Additional Commissioner (Administration), court no. 3, Meerut Division, Meerut in Appeal No. 02078 of 2018 as also the judgment and order dated 30.08.2018 passed by the Sub Divisional Magistrate/Assistant Collector, 1st class, District-Hapur in Suit No. RST/3475 of 2015 arising out of the proceedings under Section 176 of the U.P. Z.A.&L.R. Act.

4. It is the case of the writ petitioner that the dispute relates to partition of khasra no. 711 Minjumla having an area of 1.1160 hectares contained in khata no. 286 situate in village Hafizpur-Ubarpur Pargana, Tehsil and District-Hapur. The plot in question is the joint property of the petitioner and the private respondents and they are the co-sharers. No partition has taken place and the status of the parties is that of co-sharers. A suit no. 3475 of 2015 under Section 176 of the U.P. Z.A. & L.R. Act was filed by Maya Devi/respondent no. 6 seeking partition of her share. In the plaint, it was alleged that an area of 3-2-0 Bighas was purchased by the plaintiff/ respondent no. 6 vide sale deed. Like wise, the petitioner/defendant no. 1 in the suit had purchased 1-6-10 Bighas also vide sale deed. The plaintiff and the defendant no. 1 (petitioner herein) were in possession of the respective portions purchased and was depicted in the plaint map by letters J, K, C, G, H, I having area 3-2-0 Bighas and letters A, B, K, J having area 1-6-10 Bighas. The Railways acquired part of the land of khasra no. 711. According to the respondent no. 6, the acquired land by railways fell in the share purchased by her as shown in the plaint map and the compensation for the land acquired was liable to be paid to her, while the petitioner alleged that the land was recorded jointly in the name of the co-sharers, he too was entitled to the compensation. It is also the case of the writ petitioner that the acquisition had been done prior to the institution of the partition suit and in such view of the matter, the revenue courts as also the civil court lacked the jurisdiction to deal with the partition suit. The partition suit was initially registered as partition suit no. 76 of 2015 was dismissed vide judgment and decree on 05.08.2016. The Appeal filed against the order dated 05.08.2016 was allowed by the Commissioner vide order dated 18.03.2017 passed in Appeal No. 61 of 2015-2016 and the matter was remitted to the trial court for decision afresh. The trial court thereafter vide judgment and decree dated 30.08.2018 decree the suit declaring the shares of the parties. The petitioner aggrieved by the judgment and order dated 30.08.2018 filed an appeal before the Commissioner, Meerut Division, Meerut which was dismissed vide judgment and order dated 13.05.2019. Thereafter, the petitioner preferred a Second Appeal before the Board of Revenue which too has been dismissed by the Board of Revenue vide its order dated 14.05.2024.

5. Learned counsel for the petitioner has vehemently submitted that the impugned orders of the revenue authorities are patently illegal inasmuch as the land in dispute had already been acquired by the Railways and its proceedings before the Revenue Court were not maintainable. The Railways who had acquired part of the land was necessary party but was not impleaded in the proceedings. The impugned judgment and orders are not legally sustainable and are liable to be set aside.

6. Per contra, learned Standing Counsel as also learned counsel for the contesting respondent no. 6 submit that the impugned orders are just and proper and no fault can be found. The Authorities have merely decided the share of the parties. Only preliminary decree was drawn determining the shares. There is no error warranting any interference by this Court and the writ petition as framed deserves to be dismissed.

7. I have heard the learned counsels for the parties and have perused the records. From the records, I find that the petitioner and the contesting respondents purchased parts of the khasra no. 711M area 1.1160 hectares contained in khata no. 286 of the village concerned vide a common sale deed dated 15.12.1989 from one Tej Pal Singh. The petitioner purchased an area of 1-6-10 (1 Bigha, 6 Biswa, 10 Biswansi) while the respondent no. 6 purchased an area (3-2-0) (3 Bighas and 2 Biswa). The names of the petitioner and contesting respondent no. 6 was recorded in the revenue records as joint owners. The Indian Railways vide Notification dated 11.09.2015 published in the official Gazette of India on 16.09.2015 acquired an area of 0.2640 hectares of the gata no. 711 aforesaid which stood recorded in the names of Mayawati (respondent no. 6), Yogendra Singh (petitioner), Mahipal Singh and Bhagwat. The Notification has been brought on record by the petitioner by way of supplementary affidavit. The suit for partition and determination of the shares was filed on 22.12.2015. Admittedly, the suit for partition and determination of the respective shares has been instituted after the Notification dated 16.09.2015 acquiring part of the joint property for the purposes of the Dedicated Freight Corridor of the Railways. In the opinion of the Court, a partition suit must include all joint family properties and if a portion is excluded due to acquisition the suit may not be maintainable. All the co-sharers are liable to be included. Since the portion of land acquired is to be excluded from the joint property pool, the partition suit must account for the acquired land. The details of the acquired land is required to be mentioned in the partition suit as also in what manner the compensation received or to be received for the acquired land shall be distributed amongst the co-sharers must necessarily be stated. Further, in the opinion of the Court, the co-ownership rights to the acquired land shall stand extinguished and consequently the suit for partition would be barred. The compensation distribution amongst the co-owners would be according to the respective ownership interest in the acquired land.

8. A perusal of the plaint of the partition suit filed as Annexure-6 to the writ petition in para 5 of the plaint reveals that the petitioner had purchased an area of 1-6-10 Bighas areas of the land in dispute while the respondent no. 6 purchased an area of 3-2-0 Bighas of the said land vide a common sale deed. In para 6 of the plaint, it has been averred that the plaintiff and defendant no. 1 i.e. the respondent no. 6 and petitioner had mutually partitioned the land purchased and were in cultivatory possession over the same. The factum of mutual partition has been denied in the written statement filed by the petitioner to the partition suit. The land in dispute is admittedly joint as is evident from the khatauni extract brought on record as Annexure-4 to the writ petition. In para 7 of the plaint an averment has been made that there is a proposal to acquire part of the land for laying of Railway line which is stated to fall in the share of the respondent no. 6 (plaintiff) and the payment of compensation is also proposed. In the opinion of the Court, the averment in the plaint appears to be incorrect as the land for laying down the Railway Line had already been acquired prior to institution of the partition suit, though compensation was yet to be paid.

9. A perusal of the judgment and order of the Sub Divisional Magistrate, Hapur dated 30.08.2018 reveals that the Sub Divisional Magistrate taking note of the fact that the plaintiff (respondent no. 6 herein) and the defendant no. 1 (petitioner herein) were not at variance to the respective shares in the land in dispute declared the shares and directed for preparation of the preliminary decree. The suit however was kept pending. The order has been upheld in Appeal by the Commissioner vide order dated 13.05.2019 as also by the Board of Revenue vide order dated 14.05.2014. None of the revenue authorities has addressed the core issue as to maintainability of the partition suit after issuance of the Notification acquiring part of the suit land. In the opinion of the Court, the impugned orders suffer from patent illegality for not addressing the core issue. For the reasons recorded herein above the Court finds that the impugned orders are not sustainable and are accordingly set aside.

10. The writ petition stands allowed.

11. Parties to bear their own cost.

Order date: 03.03.2025 Anjali