

# Suraj Mal vs The Board Of Revenue, U.P., Allahabad ... on 29 November, 1952

## Equivalent citations: AIR1953ALL264

### JUDGMENT

Bind Basni Prasad, J.

1. This is an application under Article 226 of the Constitution arising out of an appeal which has been decided by the Hon'ble Board of Revenue of Uttar Pradesh (hereinafter referred to as "the Board"). The relevant facts are that a suit under Section 59, U. P. Tenancy Act, 1939, (hereinafter referred to as "the Act") was filed by the opposite party no. 2 against the applicant and opposite party NOS. 3 to 7 claiming that he was the sole tenant of the land in dispute. The applicant contended that he was a joint tenant with opposite parties NOS. 2 to 5. Opposite party NOS. 7 and 8 were the zamindars. The trial Court dismissed the suit, but on appeal the Additional Commissioner allowed the appeal and decreed the suit holding that opposite party no. 2 alone was the tenant of the land in dispute.

The applicant filed second Appeal no. 691 of 1949-50 before the Board and it came up for hearing on 15-3-1951, before Sri T. N. Srivastava, one of the Judicial Members of the Board. After hearing arguments, he delivered a judgment on the same date by which he allowed the appeal and set aside the decree of the learned Additional Commissioner restoring the decree of the trial Court. As required by Rule 170 of the Revenue Court Manual, the judgment was sent for concurrence to Sri R. N. Singh, another Judicial Member of the Board, who without hearing the parties wrote his judgment on 7-4-1951, disagreeing with Sri T. N. Srivastava and proposing the dismissal of the appeal. The judgments of both the Hon'ble Members were then sent to a third Judicial Member viz., Sri A. Eauf who by his judgment, dated 12-4-1951, concurred with the judgment of Sri T. N. Srivastava. These three judgments were then sent to Sri J. o. N. Shukla, the fourth Judicial Member who by his judgment dated 25-4-1951, disagreed with the judgment of Sri T. N. Srivastava and agreed with Sri R. N. Singh. It appears that there was a meeting of the Members on 28-4-1951, and it was agreed that the Additional Commissioner's judgment should be upheld. The appeal was accordingly dismissed.

2. The contention on behalf of the applicant is that, having regard to the provisions of Order 41, Rule 30, Civil P. C., (hereinafter referred to as "the Code") the judgments of Sarvashri R. N. Singh, A. Eauf and J. o. N. Shukla are no judgments because they were delivered without giving an opportunity to the parties to be heard. This point came up before a Bench of this Court in Ram Manohar v. Board of Revenue, U. P., Allahabad, 1951 ALL. L. J. 548, and the contention that the other member should have heard the parties was repelled. In view of this decision, the Division Bench has referred the following point for decision by a Full Bench :

"When a single member of the Hon'ble Board of Revenue has given a judgment modifying or reversing the decree under consideration and sends it to another member of the Board of Revenue, can the latter give a judgment without hearing the parties or their pleaders as required by B. 30 of Order 41, Civil P. C. ?"

3. I am conscious of the fact that the procedure which the Hon'ble Members of the Board of Revenue have followed has been long in vogue in the Board. I am reluctant to disturb such a long standing practice unless the law compels me to do so. The point involved is essentially one of procedure. I have arrived at the conclusion that such a procedure is not warranted by the law.

4. Section 243, U. P. Tenancy Act, 1939, which applied at the time when the appeal was heard by the Board provides as follows :

"243. (1) The provisions of the Code of Civil Procedure, except

(a) provisions inconsistent with anything in this Act, so far as the inconsistency extends;

(b) provisions applicable, only to special suits or proceedings outside the scope of this Act; and

(c) the provisions contained in List I of the Second Schedule, shall apply to all suits and other proceedings under this Act, subject to the modifications contained in List II of the Second Schedule.

(2) The rules mentioned in the Second Schedule of this Act shall be interpreted, in the case of Agra, as referring to rules contained in the First Schedule to the Code of Civil Procedure 1908, as altered or added to by the High Court of Judicature at Allahabad under Section 122, Civil P. C, 1908, and in the case of Oudh as referring to rules contained in the first Schedule to that Code as altered or added to by the Chief Court of Oudh, under Section 122 of that Code."

5. From List I of the Second Schedule it will be seen that no rule of Order 41 or 42 of the Code of Civil Procedure has been exempted in its application to cases under the Act. Order 41 deals with appeals from original decrees and order 42 with appeals from appellate decrees. Order 42 contains only one rule which provides as follows : "The rules of Order 41 and Order 41A shall apply, so far as can be, to appeals from appellate decrees". "For detailed provisions to be followed in second appeals, we must, therefore, turn to O. 41.

6. Now List 2 of Schedule 2 of the Act contains the modifications subject to which certain provisions of the Code apply to cases under the Act. Section 98 of the Code provides for decisions where appeal is heard by two or more Judges. Serial No. 5 of List 2 contains the following modification to Section 98:

"Nothing in this section shall require two members of the Board to sit together in the exercise of appellate or revisional jurisdiction under this Act."

7. Serial No. 14 of List 2 contains the following modification to Rules 30 and 31 of Order 41 of the Code:

"No judgment of the Board need be dated or signed, or pronounced in open Court."

Rule 30 of Order 41 of the Code provides as follows:

"The appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders."

8. The important point to note in the above rule is that it requires the parties to be heard before the appellate Court gives the judgment. This provision has not been exempted nor modified in its application to the appeals under the Act.

9. I may refer also to Rule 170 contained in the Revenue Court Manual. It provides:

"When the Board has distributed its appellate business among the members, the order of a single member is the order of the Board, but no decree or order coming under the consideration of the Board in appeal shall be modified or reversed without the concurrent judgment of two Members of the Board."

10. This exhausts all the relevant provisions of law bearing upon the point under consideration, which have been placed before us. The position is that according to Section 98 of the Code, as applied after modification to appeals under the Act, it is not necessary for two members of the Board to sit together to hear an appeal. A single member may hear an appeal. If he dismisses an appeal, then his judgment according to Rule 170 of the Revenue Court Manual will be the judgment of the Board. But if he proposes to reverse or modify a decree, then there must be the "concurrent judgment" of another member of the Board. Under Rule 30 of Order 41 of the Code, there can be no judgment by an appellate Court without 'hearing the parties.' The other member to whom the appeal is referred is a member of the 'appellate Court.' All members who participate in the decision of an appeal whether agreeing with or dissenting from the judgment of the member who originally heard the appeal, are according to Rule 30 of Order 41 of the Code bound to give an opportunity of hearing to the parties.

This rule is based upon the elementary principle of judicial procedure that no judgment should be given by a Court or a tribunal without giving an opportunity of hearing to the parties. The hearing of the parties goes a great way in the elucidation and thrashing out of the points involved in a case. It gives satisfaction to the parties. Justice should not only be done, but it should appear to be done. As

the law is at present, a member of the Board may sit, hear, and decide, an appeal or revision singly. If he proposes to dismiss it his judgment will be the judgment of the Board. But if he proposes to reverse or modify a decree or an order, he must refer it to another member and the latter cannot give his judgment without giving an opportunity of hearing to the parties. The two members may not sit together to decide the appeal or revision, but each of them must give the parties an opportunity of hearing, separately though it may be before recording the judgment. In *Ram Manohar v. Board of Revenue, U.P., Allahabad, 1951 ALL. L. J. 548*, the effect of Order 41, Rule 30, Civil P. C., was considered.

Reading it along with Rule 170 of the Revenue Court Manual, Sapru J. observed:

"It is urged that the expression 'appellate Court' here means both the Members of the Board. We are unable to read any such meaning into the words 'appellate Court' as used in this Rule. The appellate Court was, according to Rule 170, the Member hearing the parties but his judgment or order had to be concurred in by the other Member. This is the position as we see it under this rule."

With the greatest respect I find myself unable to agree with the above reasoning.

11. The expression 'appellate Court' is not defined in Rule 170 or anywhere else. On the other hand, there is intrinsic evidence in Rule 170 itself to show that a single Member who hears the appeal is not the 'appellate Court,' for it is provided in that rule that if the single Member proposes to reverse or modify the decree or order under consideration then his judgment would not be the judgment of the Board. For his judgment to be effective the 'concurrent judgment' of another member of the Board is essential. In the absence of a definition of the expression 'appellate Court' in the Revenue Court Manual or in the Code, it must be given its plain ordinary meaning. It means all the members of the Board who participate in the decision of the appeal or the revision according to the rules. The other member of the Board to whom the single Member of the Board hearing the appeal or revision sends his judgment for concurrence is as much a part of the 'appellate Court' as the single member himself. For these reasons, I would dissent from the view expressed in *Ram Manohar's case, 1951 ALL. L. J. 548*.

12. I would answer the question referred by the Division Bench as follows;

"When a single Member of the Board of Revenue has given a judgment modifying or reversing the order or decree under consideration and sends it to another Member of the Board of Revenue, the latter cannot give a judgment without giving the parties or their pleaders an opportunity of a hearing as required by Rule 30 of Order 41, Civil P. C."

Kaul, J.

13. I agree.

Sankar Saran, J.

14. I agree and have nothing to add.