

Mt. Sukhwanti Mata Ghulam vs Hon'ble Board Of Revenue, U.P. Through ... on 3 November, 1950

Equivalent citations: AIR1953ALL608, AIR 1953 ALLAHABAD 608

ORDER

1. This is an application under Article 226 of the Constitution praying for the issue of a writ of 'certiorari'. The application is supported by an affidavit in which the facts are set out.

2. It appears that the applicant instituted a suit for division of certain holdings under Section 49, U. P. Tenancy Act, and claimed one third share therein. The suit was dismissed by the He-venue Officer and on appeal, the order of dismissal was confirmed by the Additional Commissioner. Thereafter a second appeal was filed before the Board of Revenue. In due course, the appeal came on for hearing under Order 41, Rule 11, Civil P. C., and it was dismissed summarily on 22-11-1949. Consequent upon the dismissal of the appeal, an application for the review of judgment was filed which was also dismissed on 15-6-1950. It appears from the affidavit in support of the application that the appellant had engaged a lawyer to argue her appeal before the Board of Revenue but no opportunity was given to the pleader to argue the appeal and it was dismissed under Order 41, Rule 11, Civil P. C.

3. Learned counsel for the applicant contended that the Board of Revenue was bound to give the appellant, or her pleader, an opportunity to be heard before it dismissed the appeal on 22-11-1949. In this connection, reference has been made to the second schedule, appended to the U. P. Tenancy Act 1939. In list II of the second schedule certain sections and orders of the Code of Civil Procedure are specified and it is provided that they would apply to suits or proceedings under the Tenancy Act with the modifications stated against each. Serial No, 13 in list II relates to Order 41, Rule 11, Civil P. C. The modification contained in the third column reads as follows:

"Nothing in this rule shall require the Board to hear any "party" before rejecting an appeal summarily."

4. Learned counsel has had to concede that, by reason of this modification, the Board of Revenue was not bound to hear the "party" i.e., the appellant in support of her appeal. His contention, however, is that there is a sharp distinction between three classes of persons dealt with by Order 3 of schedule 1, Civil P. C. His argument is that Rule 1 of Order 3 draws a distinction between the "party", his "recognised agent" and "a pleader on party's behalf" and therefore the modification of Order 41, Rule 11, Civil P. C. introduced in List II of the second Schedule of the Tenancy Act, where it speaks of a "party", must be interpreted in the sense that the word "party", is used as distinguished from the "pleader acting on behalf a party". Learned counsel, therefore, argues that the Board of Revenue was bound to hear the 'pleader' for the party in support of the appeal before it could, summarily dispose of it under Order 41, Rule 11, Civil P. C. In our opinion, there is no substance in this argument. If a party has no right to be "heard", a pleader representing such a party has no locus standi and can have no right to be "heard". When the modification of Rule 11 was made by the U. P.

Tenancy Act, it seems to us, the legislature deliberately introduced the modification in regard to the question of hearing arguments in support of an appeal, before rejecting it summarily. A modification in the same term was also made by the Agra Tenancy Act of 1926 (Vide the second schedule, list II, serial No. 15 of that Act). It has been a long standing practice in the Board of Revenue to dispose of an appeal summarily under Order 41, Rule 11 without hearing either the counsel or the party in a particular case. We have no doubt in our minds that the legislature by introducing the modification of Order 41, Rule 11 of the Civil P. C. into Schedule 11 of the Tenancy Act clearly intended to give statutory recognition to the practice recognized by the Board of Revenue for a long number of years. We think that it was clearly intended by the legislature that it was not at all necessary to hear either a party or his pleader before disposing of an appeal under Order 41, Rule 11, Civil P. C. We accordingly overrule this contention. No other point has been pressed before us. The application fails and we accordingly dismiss it.