

A.F.R.

Court No. - 4

Case :- WRIT - C No. - 1003005 of 2002

Petitioner :- Smt.Amina

Respondent :- Up Zila Adhikari Patti Pratapgarh And Others 5

Counsel for Petitioner :- R.P.Pandey,G.P.Pandey,Mohammad Aslam Khan,Mohd. Arif Khan

Counsel for Respondent :- C.S.C.,Mohammad Ehtesham Khan,Pankaj Gupta,R.N.Gupta,Sharad Nandan Ojha,Yogendra Nath Yadav

Hon'ble Irshad Ali,J.

1. Heard Sri Mohd. Arif Khan, learned Senior Advocate assisted by Sri Mohd. Aslam Khan and Sri Shadab Khan, learned counsel for the petitioner, Sri Sharad Nandan Ojha, learned counsel for respondent No.2, learned Additional CSC for respondent Nos.1, 4 and 6 and Sri Pankaj Gupta, learned counsel for respondent No.5.

2. In compliance of earlier order of this Court dated 07.07.2025, S.D.M. Patti, Pratapgarh and C.R.O. Pratapgarh are present before this Court in person.

3. The affidavit filed by learned Additional CSC today in Court may be taken on record.

4. The petitioner has died and there are two substitution applications which are allowed but due to some inadvertent mistake, the incorporation could not be made, therefore, learned counsel for the petitioner is permitted to carry out necessary incorporation during course of the day.

5. By means of present writ petition, the petitioner is challenging the orders dated 17.03.1999 passed by respondent No.1 contained as annexure 1 to the writ petition and order dated 19.06.2002 passed by respondent No.4 contained as annexure 2 to the writ petition.

6. Factual matrix of the case is that a suit was filed by respondent Nos.2 & 3 under Section 229 B of U.P. Z.A.& L.R. Act before respondent No.1. Respondent Nos.2 & 3 stated that the land in dispute is their bhumidhari land and they are in possession of the land in dispute from the time of their father

and their father died and respondent Nos.2 and 3 are waris of their father.

7. It is stated that the petitioner has no touch with the land and with the connivance of officials of revenue department, they have got their name entered in the revenue record, which deserves to be cancelled and respondent Nos.2 and 3 have also requested that it would be declared as bhumidhar of the land in dispute.

8. The S.D.M. has heard the parties and it has been found in the compromise that name of the petitioner is entered as widow of Noor Mohammad and father of respondent Nos.2 and 3 died and they are real brothers and they are actual share holders of respondent Nos.2 and 3.

9. The compromise shown is fake and the petitioner challenged the so called compromise. The S.D.O. passed an order in favour of respondent Nos.2 and 3 and revision under Section 333 U.P. ZA& LR Act was filed before respondent No.4 by the petitioner that the order of court below is against the provisions of law and the order has been passed without perusal of evidence on record and it also involved question of jurisdiction, hence, the order of court below deserves to be set aside in the interest of justice.

10. In assailing the impugned orders, submission of learned Senior Counsel for the petitioner is that the suit is barred under Section 49 of Consolidation of Holdings Act. The signature of the petitioner is forged and fabricated and therefore, the compromise is not sustainable in the eyes of law.

11. He submitted that while dismissing the revision, the revisional court directed the parties to file regular suit in regard to controversy involved in the present case. He submitted that the revisional court should have decided the matter on merit in spite of remanding the matter to the regular civil suit.

12. His last submission is that no counter affidavit has been filed till date, therefore, the averment made in the writ petition are correct as it has not been denied by filing counter affidavit.

13. In spite of repeated orders passed in the matter, record of the case could not be produced by the SDM, Patti, Pratapgarh and C.R.O. Pratapgarh, which also shows that the compromise taken place is forged one.

14. On the other hand, Sri Sharad Nandan Ojha, learned counsel for respondent No.2 submitted that the impugned orders do not

suffer from any infirmity or illegality and are just and valid.

15. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

16. In regard to first submission of learned Senior Counsel for the petitioner that the suit is barred under Section 49 of Consolidation of Holdings Act, to decide the controversy, it is relevant to quote the same:

"49. Bar to civil Courts jurisdiction:

- Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of right of tenure-holder in respect of land lying in an area, for which a [notification] [Substituted by U.P. Act No. 8 of 1963.] has been issued [under sub-section (2) of Section 4] [Substituted by U.P. Act No. 12 of 1965 (w.e.f 08.03.1963).] or adjudication of any other right arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act :

[Provided that nothing in this section shall preclude the Assistant Collector from initiating proceedings under Section 122-B of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 in respect of any land, possession over which has been delivered or deemed to be delivered to a Gaon Sabha under or in accordance with the provisions of this Act.] [Inserted by U.P. Act No. 20 of 1982 (w.e.f. 10.11.1980).] "

17. On bare perusal of provisions contained under Section 49 of the Act, it is evident that once name of the person has been incorporated in the revenue record under consolidation proceedings and it has finalized, then the suit under Section 229 B is not maintainable before the S.D.M.

18. The S.D.M., in spite of deciding the suit on merit, has proceeded to decide the case in terms of compromise. The SDM has committed manifest error of law in deciding the suit. The suit was barred by Section 49 of the Act, therefore, the order passed by the SDM is wholly without jurisdiction.

19. In regard to submission advanced by learned Senior Counsel that the signature is forged on the compromise but the same was not taken into consideration by the SDM while passing the impugned order. The SDM has committed illegality in proceeding to decide the suit in terms of compromise, therefore, the order is liable to be set aside by this Court.

20. The revisional Court has also committed manifest error of law in spite of deciding the issue on merit and directing the

petitioner to file regular suit against the order passed in terms of compromise by the SDM. The revisional court would have decided the case on merit in spite of directing to file regular suit, therefore, the impugned order suffers from apparent illegality and is liable to be set aside.

21. The submissions advanced by learned counsel for the opposite party are misplaced and not tenable in the eyes of law.

22. On over all consideration of facts and circumstances of the case, it is evident that the impugned orders have been passed in utter disregard of law settled by this court as well as by Hon'ble Apex Court, therefore, the impugned orders dated 17.03.1999 passed by respondent No.1 contained as annexure 1 to the writ petition and order dated 19.06.2002 passed by respondent No.4 contained as annexure 2 to the writ petition are hereby quashed.

23. The writ petition succeeds and is **allowed**.

24. The matter is remanded back to the revisional court to decide the matter afresh on merit within a period of six months from the date of production of a certified copy of this order.

Order Date :- 22.7.2025

Adarsh K Singh