

the respondents including the State respondents but no respondent ventured to file the objection/ reply to the said suit and in these circumstances the suit was decreed on 31.8.1988 by the respondent No.5 declaring the petitioners as Bhumidhars of the land bearing plot No.775 measuring 8 bigha, 7 biswan and 15 biswansi situated in village Bhishampur Kumhrawan, Tehsil Malihabad, District Lucknow. The decree of the suit is annexed as Annexure-1 to the writ petition.

6. In the aforesaid suit, the State was a party who kept silent for almost a year and on 12.8.1989, respondent Nos.1 to 3, through D.G.C. (Revenue) moved an application under Order IX Rule 13 C.P.C. read with Section 151 C.P.C. for setting aside the judgment and decree dated 31.8.1988 on the ground that the said suit has been decided ex-parte.

7. The aforesaid recall application was not supported by any affidavit nor any application under Section 5 of the Limitation Act was filed and even no prayer to condone the delay in filing the recall application was made. The application for setting aside the judgment and decree dated 31.8.1988 was strongly contested by the petitioner and respondent Nos.1 to 3 failed to show any Rule or Law which could facilitate the court to set aside the judgment and order dated 31.8.1988 and consequently, the court rejected the application vide order dated 8.4.1994.

8. After passing of the order dated 8.4.1994, the remedy open to the respondent Nos.1 to 3 was to prefer an appeal under Section 331 (4) of the U.P. Zamindari Abolition and Land Reforms Act, but the respondents chose to file an application under Section 151 C.P.C. on

29.4.1994 with the prayer that the order dated 8.4.1994 may be reviewed and the ex-parte judgment and order dated 31.8.1988 may be set aside and the suit may be decided on its respective merits.

9. In the above said application, no affidavit was appended and the same ground as was taken earlier in the application so preferred under Order 9 Rule 13 C.P.C., which had been decided and rejected on 8.4.1994. The land in question came under consolidation operation and notification under Section 4 of the U.P. Consolidation of Holdings Act was issued and published in the U.P. Gazette on 9.4.1994.

10. The application preferred by the respondent Nos.1 to 3 on 20.4.1994 was decided on 20.7.1994 and the decree and order dated 31.8.1988 was set aside.

11. The petitioners have filed the present writ petition challenging the order dated 20.7.1994 (Annexure-7 to the writ petition), passed by the respondent No.5 as also last line of the order dated 20.7.1994 (Annexure-6 to the writ petition), after summoning the record.

12. Assailing the order dated 20.7.1994, submission of learned counsel for the petitioners is that since village Bhishampur Kumhrawan, Tehsil Malihabad, District Lucknow has been brought under consolidation operations and notification to that effect was published on 9.4.1994 and thus, even if the proceedings had been pending, they would have abated but in the instant matter on 8.4.1994, the application so preferred by respondent Nos.1 to 3 for setting aside the order dated 31.8.1988 was rejected and thus on 9.4.1994 nothing was pending.

13. Second submission is that village has been brought under consolidation operations vide notification dated 9.4.1994, the respondent No.5 lost all control over the proceedings and thus, he acted illegally and without authority of law in entertaining the application and then setting aside the judgment and decree dated 31.8.1988 vide judgment and order dated 20.7.1994.

14. Third submission is that the petitioners are in continuous and uninterrupted possession over the land in question since before 1356 fasli and have become Bhumidhars by operation of law. It is further submitted that the respondent Nos.1 to 3 could not have invoked the jurisdiction under Section 151 C.P.C. for the same relief for which they had earlier moved an application under Order IX Rule 13 C.P.C. read with Section 151 C.P.C. which had been rejected and thus, the second application for same cause was barred by res-judicata.

15. Next submission is that inherent powers so provided under Section 151 C.P.C. can only be invoked where there is no other alternative remedy before the aggrieved party but in the instant case, remedy open to the respondents was prefer an appeal under Section 331 (4) of the U.P. Zamindari Abolition and Land Reforms Act.

16. On the other hand, learned Standing Counsel states that the respondent has not committed any mistake in passing the impugned order dated 20.7.1994. The same is just and valid and does not suffer from any infirmity or illegality.

17. After having heard the rival contention of learned counsel for the parties, I perused the material on record.

18. It is reflected that at earlier point of time, the respondent Nos.1 to 3 moved an application under Order 9 Rule 13 C.P.C. read with Section 151 C.P.C. before the authority concerned, which was rejected vide order dated 8.4.1994 and the remedy available to the respondent Nos.1 to 3 was that they would have filed an appeal under Section 331 (4) of the U.P. Zamindari Abolition and Land Reforms Act, but they chose to file an application under Section 151 C.P.C., which is barred by res-judicata. In the opinion of the Court, the argument advanced by the learned counsel for the petitioner has substance. The respondent Nos.1 to 3 having no jurisdiction to move an application under Section 151 C.P.C. before the revenue authority for setting aside the order passed on 20.7.1994.

19. On perusal of the record, it is also reflected that a notification under Section 4 of Consolidation of Holdings Act was issued by the State Government on 9.4.1994, therefore, the power to entertain the application by other modes were not available to respondent Nos.1 to 3 due to abating of the proceedings, thus, the respondent acted illegally and without authority of law in entertaining the application and setting aside the judgment and decree dated 31.8.1988 vide judgment and order dated 20.7.1994. this action of the respondent is illegal and suffers from vices of rule of law.

20. The inherent power so provided under Section 151 C.P.C. can only be invoked where there is no alternative remedy before the aggrieved party, but in the instant case, the remedy was to file an appeal under Section 331 (4) of the U.P. Zamindari Abolition and Land Reforms Act, therefore, the order passed on the

application filed under Section 151 C.P.C. is wholly without jurisdiction and is liable to be set aside.

21. The otherwise argument advanced by learned counsel for the respondent has no force of law, therefore, it is hereby rejected.

22. In view of the above, in the considered opinion of the Court, the order impugned being wholly without jurisdiction, suffers from vices of res-judicata, therefore, is not sustainable in law and is hereby set aside. The writ petition succeeds and is **allowed**.

23. No order as to cost.

24. Connected writ petition(s) may be de-linked.

(2024) 11 ILRA 96
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.11.2024

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Income Tax Appeal No. 85 of 2024

Pr. CIT, Bareilly, U.P. ...Appellant
Versus
Dharam Singh ...Respondent

Counsel for the Appellant:
 Sri Manu Ghildyal, Advocate

Counsel for the Respondent:
 Sri Ambleshwar Pandey & Sri Ramesh Kumar, Advocates

Tax Law - Income Tax Act, 1961 - Sections 143(3) & 263 - Assessment Years 2017-18 - Appeal against order of Appellate

Tribunal by Commissioner - Assessment order completed by Assessing Officer - Subsequently, PCIT by exercising his jurisdiction revised order on ground that assessment was prejudicial to interest of revenue, set aside assessment order, directed for de novo assessment - Order was challenged before Tribunal and held that inquiries by Assessing Officer in respect of cash deposit of Rs.91 lakhs was proper and thereafter assessment order was passed. (Para 3)

Held, Tribunal has gone into details of questionnaire issued by Assessing Officer, examined inquiry carried out by Assessing Officer in detail and thereafter, held in favour of assessee, examined replies given by assessee - Tribunal concluded that it was not possible under any circumstances to conclude that Assessing Officer misstated fact or recorded false order sheet entries and further held that only conclusion was that allegation made by PCIT that Assessing Officer not recorded any finding with regard to cash deposit during demonetization period, was not based on material on record - Twin conditions of assessment order being erroneous and prejudicial to interest of revenue in order to invoke power by PCIT u/s 263 of Act was not fulfilled as Assessing Officer made all inquiries and verifications as per law. (Para 7)

Thus, no perversity in impugned order as no substantial question of law involved, accordingly appeal dismissed. (Para 16)

Appeal Dismissed. (E-13)

List of Cases cited:

1. Chunilal Vs Mehta and Sons Ltd. Vs Century Spg. & Mfg. Co. Ltd. reported in 1962 SCC OnLine SC 57, (Para 6)
2. Pr. CIT Vs Bhadani Financiers Pvt. Ltd. reported in (2022) 447 ITR 305, (Para 7)
3. Arulvelu Vs St. reported in (2009) 10 SCC 206, (Para 24 to 27)