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WAY FORWARD TO CORRECTIVE MEASURES

33. This is the opportune time to remind the Advocates about the Standard of Professional misconduct and Etiquettes as contained in Chapter II Part VI of the Bar Council of India Rules. As stated in the Preamble thereof, an Advocate shall, at all times, comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community, and a gentleman, bearing in mind that what may be lawful and moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity, may still be improper for an advocate. Though an Advocate is expected to fearlessly uphold the interests of his client, his conduct must conform to the Rules of Conduct and Etiquettes laid down in the said Chapter, both in letter and in spirit.

34. The role and the duty of the Advocates particularly Advocates-on-Record are contained in Order IV of the Supreme Court Rules, 2013. The relevant part of Rule 7 Order IV of the said Rules reads as under:

“7. (a).

(b) (i) Where the vakalatnama is executed in the presence of the Advocate-on-Record, he shall certify that it was executed in his presence.

(ii) Where the Advocate-on-Record merely accepts the vakalatnama which is already duly executed in the presence of a

Notary or an advocate, he shall make an endorsement thereon that he has satisfied himself about the due execution of the vakalatnama."

36. For all the aforesaid reasons, this Court comes to a definite conclusion that the petition suffers now gross concealment of material facts. The petition is vague, no personal cause of action of the petitioners has been made out coupled with the fact that the petition suffers from concealment of material fact and is an attempt to waste the precious time of the court by resorting to filing a frivolous petition and if the State Counsel and the Gaon Sabha would not have brought the facts to the notice of the Court, the petitioners would have had a leverage by getting away with concealment and non disclosure of material facts.

37. In light of the detailed discussions, this Court finds that it is a fit case for dismissing the petition but it also is a case where exemplary cost must be imposed. Accordingly, the petition is dismissed with the cost of Rs.50,000/- to be deposited with the District Legal Aid Services Authority, Lucknow within a period of eight weeks from today.

(2024) 9 ILRA 1397
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.09.2024

BEFORE

**THE HON'BLE DR. YOGENDRA KUMAR
SRIVASTAVA, J.**

Writ -C No. 17513 of 2024

Ved Prakash & Ors. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioners:

Akhilesh Tripathi, Anant Agarwal

Counsel for the Respondents:

C.S.C., Kailash Nath Singh, Sandeep Kumar Pathak

Civil Law - The Constitution of India, 1950-Article 226 – The Uttar Pradesh Revenue Code, 2006 - Section 207 - Uttar Pradesh Revenue Code Rules, 2006-Rule 183-

The duty of the appellate court is to review the findings of the trial court and decide whether to reverse or affirm them. The appellate court has the power to rehear the case on both the question of law and fact. It is essential for the appellate court to address all the issues and contentions raised by the parties in the appeal- The order to be passed in appeal must reflect a conscious application of mind and record findings supported by reasons on all issues arising from the contentions put forth and pressed by the parties- The appeal under Section 207 of the Revenue Code, being a regular first appeal, it would be the duty of the first appellate court to write a self-contained judgment after applying its mind to the facts of the case, recording findings and arriving at a conclusion based on reasons. **(Para 17-19)**

Petition allowed. (E-15)

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Akhilesh Tripathi, learned counsel for the petitioners, Sri Abhishek Shukla, learned Additional Chief Standing Counsel appearing for the State-respondents and Sri Kailash Nath Singh, learned counsel for the respondent no.4.

2. The present petition has been filed seeking to assail the order dated 30.01.2024 passed by respondent no.2, Additional Commissioner (Administration), Varanasi Division, Varanasi in Case No.2418 of 2023 (Computerized Case No.C202314000002481, Jay Prakash Vs. Om

Prakash), under Section 207 of the UP Revenue Code, 2006, and also the earlier order dated 14.11.2023 passed by respondent no.3, Sub-Divisional Officer, Tehsil Pindra, District Varanasi, in Case No.14091 of 2021 (Computerized Case No.T202114700214091, Om Prakash Vs. Ved Prakash), under Section 116 of the Revenue Code.

3. Briefly stated facts of the case are as follows.

4. The petitioners claim to be co-sharers of the respondent no.4 in land bearing arazi nos.466, 472, 475 and 459 situate at the village in question. A suit bearing Case No.861 of 2022 (Om Prakash Singh Vs. Ved Prakash and others), under Section 116 of the Code, was instituted, and on 16.02.2023, an order was passed for making a preliminary decree. The aforesaid order is stated to have been passed ex parte against the petitioners herein.

5. An application seeking recall of the aforesaid order, filed by the petitioners was dismissed by an order dated 14.11.2023, and in terms of the said order, the kurra report submitted by the Lekhpal, was confirmed and a direction was issued for making final decree.

6. Aggrieved by the aforesaid order, the petitioners preferred an appeal, registered as Case No.2418 of 2023, which has been dismissed by the respondent no.2 by an order dated 30.01.2024.

7. It is the aforesaid order dated 30.01.2024 passed by respondent no.2, against which the present writ petition has been preferred.

8. Contention of the counsel for the petitioners is that the order dated

16.02.2023, passed in proceedings under Section 116, of which recall had been sought, was ex parte, and that, accordingly, the said order, in terms of which the kurra report had been accepted, was legally unsustainable.

9. It has been submitted that despite the aforesaid grounds having been taken before the respondent no.2, an order has been passed without adverting to the grounds raised in the memo of appeal.

10. Section 116 of the Revenue Code relates to suits for division of holdings, and as per the provisions contained therein, a bhumidhar may sue for the division of the holding of which he is a co-sharer.

11. Section 117 of the Revenue Code refers to the duty of the court in suits for division of holding, and it provides that the Court of Assistant Collector shall follow such procedure as may be prescribed.

12. For ease of reference, the aforementioned statutory provisions contained in Sections 116 and 117 of the Revenue Code, are being extracted below:

“116. Suit for division of holding.—(1) A bhumidhar may sue for the division of the holding of which he is a co-sharer.

(2) In every such suit, the Court may also divide the trees, wells and other improvements existing on such holding but where such division is not possible, the trees, wells and other improvements aforesaid and valuation thereof shall be divided

and adjusted in the manner prescribed.

(3) One suit may be instituted for the division of more holdings than one where all the parties to the suit other than the Gram Panchayat are, jointly interested in each of the holdings.

(4) to every suit under this section, the Gram Panchayat concerned shall be made a party.

117. Duty of Court in suits for division of holding.—(1) In every suit for division of holding under section 116 the Court of Assistant Collector shall-

(a) follow such procedure as may be prescribed;

(b) apportion the land revenue payable in respect of each such division.

(2) A division of holding referred to in section 116 shall not affect the joint liability of the tenure-holders thereof in respect of the land revenue payable before the date of the final decree.”

13. The rules related to Sections 116 and 117, as aforesaid, have been provided under Rules 107, 108 and 109 of the UP Revenue Code Rules, 20162, and in terms thereof the case is to be registered as a suit to be decided according to the provisions of the Code of Civil Procedure, 1908. The court has been enjoined to determine shares of the parties, make valuation of the holdings and to pass a preliminary decree. The kurra report, is to be prepared by the Lekhpal upon which objections are to be invited, and thereafter an appropriate order is to be passed by the Sub-Divisional Officer after affording opportunity of hearing to the parties, and considering the objections filed against the

report submitted by the Lekhpal. Upon the confirmation of the report and the kurra, the final decree is to follow.

14. The relevant rules under the Revenue Code Rules, are being reproduced below:-

“107. Suit for division of holding (Section 116).—Every plaint in a suit for division of a holding (including trees, wells and other improvements) shall contain the following particulars:-

(1) Name, parentage and address of the plaintiff.

(2) Name parentage and address of other co-sharers of the holding.

(3) Share claimed by the plaintiff.

(4) Share of other co-tenure holders.

(5) Detailed particulars of the holding including plot numbers, area and land revenue.

(6) Whether the plaintiff is a recorded or unrecorded tenure holder.

Note: The plaint shall be accompanied by a certified copy of the Khatauni and other documents relied upon by the plaintiff.

108. Suit for division for several holdings (Section 116).—

Where the suit relates to the division of more than one holding, the particulars specified in rule 107 shall be mentioned in the plaint in respect of all such holdings.

109. Preliminary and Final decrees (Section 117).—(1) If the plaint referred to in rule 107 or rule 108 is in order, it shall be registered as a suit and the

defendants shall be called upon to file their written statements. The suit shall then be decided according to the provisions of the Code of Civil Procedure, 1908.

(2) Before making a division the court shall—

(a) determine separately the share of the plaintiff and each of the other co-tenure holders ;

(b) record which, if any, of the co-tenure holders wish to remain joint ; and

(c) make valuation of the holding (or holdings) in accordance with the circle rate fixed by the Collector applicable to each plot in the holding.

(3) If the suit is decreed, the Court shall pass a preliminary decree declaring the share of the plaintiff.

(4) After the preparation of preliminary decree the Sub Divisional Officer shall get the Kurra prepared through the Lekhpal.

(5) The Lekhpal shall submit the Kurra report within a period of one month from the date of receiving the order in this regard and at the time of preparation of Kurra he shall observe the following principles—

(a) the plot or plots shall be allotted to each party in proportionate to his share in the holding;

(b) the portion allotted to each party shall be as compact as possible;

(c) as far as possible no party shall be given all the inferior or all the superior classes of land;

(d) as far as possible existing fields shall not be split up;

(e) Plots which are in the separate possession of a tenure holder shall, as far as possible, be allotted to such tenure holder if they are not in access of his share;

(f) If the plot or any part thereof is of commercial value or is adjacent to road, abadi or any other land of commercial value, the same shall be allotted to each tenure holder proportionately and in the case of second condition the same shall be allotted proportionately adjacent to road, abadi or other land of commercial value; and

(g) If the co-tenure holders are in separate possession on the basis of mutual consent or family settlement, the Kurra shall, as far as possible, be fixed accordingly.

(6) When the report regarding Kurra is submitted by the Lekhpal, the objection shall be invited thereon and thereafter the appropriate order shall be passed by the Sub Divisional Officer after affording opportunity of hearing to the parties and considering the objection, if any, filed against the report submitted by the Lekhpal.

(7) If the report and Kurra is confirmed by the Sub Divisional Officer, the final decree shall follow it.

(8) At the stage of the final decree, the Court shall—

(a) Separate the share of the plaintiff from that of the defendant by metes and bounds.

(b) Place on record a map showing in different colours the properties given to plaintiff as

distinct from those given to the defendant.

(c) Apportion the land revenue payable by the parties.

(d) Direct the record of rights and map to be corrected accordingly.

(9) If, for adjusting the equities between the parties, payment of compensation regarding trees, wells or other improvements becomes necessary, the revenue Court concerned may also pass necessary orders at the stage of final decree.

(10) The Sub-Divisional Officer shall make an endeavour to decide the suit within the period of six months and if the suit is not decided within such period, the reason shall be recorded.”

15. Any party aggrieved by a final order or decree passed in a suit for division of holdings under Section 116, is entitled to the remedy of a first appeal under Section 207 of the Revenue Code. The appeal is to be preferred before the Court of Commissioner, as per the provisions contained under Section 207 read with the Third Schedule. The power of appellate court has been stated under Rule 183 of the Revenue Code Rules, whereunder it is provided that the appellate court may either admit the appeal, or after giving the appellant an opportunity of being heard, summarily reject it. Upon the appeal being admitted, a date is to be fixed for hearing of the case and a notice is to be served on the respondent or the opposite party.

16. The provisions relating to a first appeal, under Section 207 of the Revenue Code, and the corresponding Rule 183 of the Revenue Code Rules, which

describes the power of the appellate court, are being extracted below:-

“207. First appeal.—(1)

Any party aggrieved by a final order or decree passed in any suit, application or proceeding specified in Column 2 of the Third Schedule, may prefer a first appeal to the Court or officer specified against it in Column 4, where such order or decree was passed by a Court or officer specified against it in Column 3 thereof.

(2) A first appeal shall also lie against an order of nature specified—

(a) in Section 47 of the Code of Civil Procedure, 1908; or

(b) in Section 104 of the said Code; or

(c) in Order XLIII, Rule 1 of the First Schedule to the said Code.

(3) The period of limitation for filing a first appeal under this section shall be thirty days from the date of the order or decree appealed against.

183. Power of appellate and revisional Court (Sections 207, 208 and 210).—(1) The appellate or revisional Court may either admit the appeal or revision, as the case may be, or after giving the appellant or the revisionist an opportunity of being heard, summarily reject it.

(2) If the appeal or revision is admitted a date shall be fixed for hearing of the case and notice shall be served on the respondent or the opposite party.

(3) The appellate or the revisional court may, with the

consent of the parties, finally dispose of the appeal or revision at the stage of admission.

(4) The appellate or the revisional court shall, endeavor to finally decide the appeal or revision, as the case may be, within a period of six months from the date of filing the appeal or revision and if the appeal or revision is not decided within the aforesaid period, the reason for the same shall be recorded.”

17. The duty of the appellate court, as has been consistently held, is to review the findings of the trial court and decide whether to reverse or affirm them. The appellate court has the power to rehear the case on both the question of law and fact. It is essential for the appellate court to address all the issues and contentions raised by the parties in the appeal.

18. The order to be passed in appeal must reflect a conscious application of mind and record findings supported by reasons on all issues arising from the contentions put forth and pressed by the parties. The judgment of the appellate court must not only record the decision but also give reasons for the same. This is necessary as it allows the parties to understand the reasons behind the court's decision and to challenge it if necessary before a higher statutory forum. In the present case the order passed by the first appellate court under Section 207 is subject to the remedy of a further second appeal under Section 208 of the Revenue Code.

19. The appeal under Section 207 of the Revenue Code, being a regular first appeal, it would be the duty of the first appellate court to write a self-contained

judgment after applying its mind to the facts of the case, recording findings and arriving at a conclusion based on reasons.

20. It is well settled that an appeal is the continuation of the proceedings of the original court, and the appellate jurisdiction, ordinarily, involves a rehearing on law as well as on facts. The appellate court's duty to advert to the grounds stated in the memorandum of appeal and pressed by the party concerned, is a fundamental aspect of the judicial process ensuring that the decision in the appeal is well reasoned and is seen to be just to the parties.

21. The first appeal being a valuable right of the appellant, all questions of fact and law decided by the trial court are open for reconsideration. The appellate court, is therefore required to address itself to all the issues and the order of the appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions.

22. The respondent no.2 has neither adverted to the grounds raised in the appeal nor has it given any cogent reason for passing the order. The order impugned dated 30.01.2024 passed by the appellate court, apart from being cryptic, appears to have been passed without examining any of the aspects which are required to be gone into in a regular appeal.

23. Counsel for the respondent no.4 has not been able to dispute that the order passed by the appellate authority is without following the settled principles in regard to the duties of a court exercising appellate jurisdiction.

24. Counsel for the contesting parties are ad idem on the point that it

would serve the ends of justice if the case is remitted to the respondent no.2 for passing of a fresh order, after according due consideration to the grounds raised in the memo of appeal and granting opportunity to the parties concerned.

25. Having regard to the aforesaid, this Court deems it appropriate to set aside the order dated 30.01.2024 passed by the respondent no.2 in Case No.2418 of 2023 (Computerized Case No.C202314000002481, Jay Prakash Vs. Om Prakash), under Section 207 of the Revenue Code.

26. The matter is remitted to the respondent no.2 to pass a fresh order in accordance with law, after giving due opportunity to the parties concerned, and according consideration to the grounds raised in the memo of appeal.

27. A prayer is made by the counsel for the petitioner, at this stage, that the appeal be decided by the concerned respondent expeditiously and within a stipulated time period.

28. Counsel for the respondents have not opposed the aforesaid prayer.

29. It is accordingly provided that the concerned respondent would be expected to conclude the proceedings expeditiously and preferably within a period of **six months** from the date of production of certified copy of the instant order, provided there is no other legal impediment.

30. The petition stands **allowed** to the extent indicated above.
