

SA No. 143 of 2019

Hon'ble Sharad Kumar Sharma, J.

Mr. Harshit Sanwal, Advocate for the appellant.

Mr. Bhuwan Bhatt, Advocate for respondent No. 3.

It is a defendant's Second Appeal against the judgement dated 30th July 2019, as rendered by the Court of Additional District Judge, Almora in Civil Appeal No. 31 of 2011, *Bhagwant Singh v. Pan Singh & Ors.*, which was arising out of a judgement and decree dated 13th November 2017, as passed by the Civil Judge (Senior Division), Almora in a Civil Suit No. 34 of 2016, *Pan Singh & Ors. v. Bhagwant Singh & Ors.*

In the Suit in question, the plaintiff/respondent has sought a decree by way of a mandatory injunction for removal of the poly house which was existing over the property in question. The pleadings were exchanged and in the written statement a plea was taken by defendant/appellant with regards to the tenability of the proceedings as the property in dispute which was the subject matter of the proceedings in the civil itself was a land recorded in the Revenue records as an agricultural land hence a bar of Section 331 of U.P.Z.A & L.R. Act would come into play.

The learned trial Court has framed an issue number 6 based on the pleadings raised in the written statement with regards to the bar of maintainability of the Suit in view of the provisions contained under Section 331 of the U.P.Z.A. & L.R. Act.

The said issue was decided by the learned trial Court by its order dated 20th June 2013. Though, this order deciding issue No. 6, pertaining to the competence of the Court to entertain the civil proceedings was neither challenge in a Civil Revision and was not a ground set out in the appeal in view of the provisions contained under Section 105 of the Code of Civil Procedure, but the same has been raised by the defendant/appellant in the present Second Appeal as mentioned in the amended Memo of Second Appeal as filed by the defendant/appellant as referred to in substantial question of law No. 3.

He has further pleaded that the learned Appellate Court has not appropriately exercised its powers under Order 41 Rule 31 by formulating an effective and appropriate point of determination. The defendant/appellant had raised the question with regards to

the tenability of the proceedings in the suit in view of the restrictions as imposed by Article 65 of the Limitation Act.

In view of the aforesaid, since these issue pertaining to the maintainability of the proceedings, pertaining to the non adherence of the provisions contained under Order 41 Rule 31, and that of the effect of Article 65 of the Limitation Act with regards to be maintainability of the suit are the issues which apparently requires a determination in the present Second Appeal.

As a consequence thereto, the present Second Appeal is being admitted on the substantial questions of law, as framed i.e. in question Nos. vi, xv and xvi which are quoted hereunder:-

“vi. Whether the suit of the plaintiff was barred by limitation in view of Article 65 of the Limitation Act, due to the categorical admission that the only house of the Appellant was 18-20 year old?

xv. Whether the suit in the present form for the cause of action alleged and the relief prayed for would lie before the civil court in view of Section 331 of the Uttar Pradesh Zamindari Abolishment Act?

xvi. Whether the decision of the appellate court was in accordance with order 41 Rule 31 of the Civil Procedure Code as there was no full determination and only points with respect to title were framed and adjudicated upon by the appellate court?.

Summon the lower court’s records

Notice on behalf of respondent No. 3 has been accepted by Mr. Bhuwan Bhatt, Advocate.

The appellant is directed to take steps for serving all the respondents except respondent number 3 within a period of 2 weeks from today.

List after the notice is served upon the respondents.

Till the next date of listing, during the pendency of the Second Appeal, the parties to the Second Appeal are directed to maintain *status quo*, qua the nature and title of the property in dispute.

Interim Relief Application (CLMA No. 13291/2019) stands disposed of.

(Sharad Kumar Sharma, J.)

09.01.2020