

Court No. - 49

Case :- WRIT - B No. - 1721 of 2025

Petitioner :- Shashank Shekhar Singh

Respondent :- State Of Uttar Pradesh And 9 Others

Counsel for Petitioner :- Pramod Kumar Sinha

Counsel for Respondent :- Bhupendra Kumar Tripathi, C.S.C., Virendra Singh

Hon'ble J.J. Munir, J.

It is seriously arguable if the law laid down by this Court in **Amarjeet vs. State of U.P., 2021(3) All WC 2443**, is trite that against a preliminary decree in a suit for division of holdings, which is nothing but a partition suit under the U.P. Revenue Code, 2006, no appeal is maintainable. *Prima facie* a preliminary decree passed in a suit for division of holdings is final in the sense that it finally determines the shares of parties. It is only called a preliminary decree because it does not dispose of the suit. The final decree is the next chapter in a suit for partition which is always a two tiered proceedings. In the first lap of proceedings, the shares of parties are finally determined. That is called a preliminary decree. Once shares are finally determined, the parties move for allotment of specific lots over which they may be put in specific possession or as it is called in vernacular *Khas* possession. The final decree, therefore, effects, according to the shares of parties, a partition by metes and bounds. Both decrees are independently final and, therefore, independently challengeable. In fact, if the preliminary decree is not challenged, the issue of determination of shares or shares of parties attains finality. It cannot be afterwards challenged in proceedings for preparation of the final decree. Proceedings for preparation of the final decree are about how, according to share of parties, the lots are to be drawn and equities adjusted. An appeal from a final decree is limited to those questions and not the shares of parties. A contrary view to **Amarjeet** (*Supra*) has been taken by another learned Single Judge of this Court in **Manoj and others vs. State of U.P. and others, 2024 (9) ADJ 605**.

Prima facie, I am inclined to agree with Saral Srivastava, J. in **Manoj** (*Supra*). I

would think that the provisions of Section 209(f), which bar an appeal against an order or decree which is of an interim nature, does not at all apply to a preliminary decree passed in a suit for division of holdings. The following remarks in **Manoj** appear to be trite:

"33. Now so far as the judgment relied upon by the learned counsel for the petitioners is concerned, in the said case, the Court has not considered the object of incorporating the expression "if the suit is decreed" by the legislature in Rule 109(2) of the U.P. Revenue Code Rules, 2016 which mandates that the court is empowered to pass a preliminary decree only on the contingency that if the Suit is decreed. In such view of the fact, the judgment of this Court in the case of Amarjeet (supra) is distinguishable and does not apply to the facts of the present case."

However, I think that the decision in **Amarjeet**, though distinguished in **Manoj**, may require reconsideration by a larger Bench. The issue would have to be examined after hearing the matter further.

The Board of Revenue in this case has dismissed the petitioner's second appeal on the ground that it is not maintainable against a preliminary decree in a suit for division of holdings under Section 116 of the U.P. Revenue Code, 2006 in view of the holding of this Court in **Amarjeet**. To our mind, the question is very arguable and needs serious consideration.

Admit.

Issue notice.

Notice on behalf of respondent nos. 1 to 4 is accepted by Mr. Sanjay Kumar Ray, learned Standing Counsel. Mr. Virendra Singh, Advocate accepts notice on behalf of respondent nos. 5,6 and 7. Both the learned counsel for the respondents are granted two weeks time to file a counter affidavit.

Steps to serve respondent nos. 8,9 and 10 shall be taken by RPAD within three days.

List for **orders** on **20.05.2025** along with a report regarding service and the postal track attached. The office shall also put in a report regarding status of pleadings.

Order on Civil Misc. Stay Application no. 1 of 2025

Issue notice.

Until further orders of this Court, execution of the decree dated 02.04.2025 passed in Second Appeal No. 1803 of 2023 shall remain **stayed** and in consequence all further proceedings for preparation of the final decree. It is further ordered that parties shall maintain status quo regarding possession, nature and character of the suit property and none of them shall alienate or encumber it, also until further orders.

Let this order be communicated to the Sub Divisional Officer, Tehsil Sakaldeeha, District Chandauli through the Chief Judicial Magistrate, Chandauli by the Registrar (compliance) within **24 hours**.

Order Date :- 6.5.2025

Brijesh Maurya