

State Of U.P. and Another

Vs

Zia Khan

Civil Appeal No. 396 of 1984

(M. M. Punchhi, S. C. Sen JJ)

13.02.1996

ORDER

1. This appeal by special leave is against the judgment and order of the Allahabad High Court dated 12-9-1979 passed in Second Appeal No. 1854 of 1979.
2. The respondent, Zia Khan, was undeniably in possession of a small parcel of land admeasuring 11 bighas and 2 biswas described as "grove". He was sought to be evicted therefrom by employing the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972. When the orders went against him, he filed a civil suit for declaration of his title as becoming the Sirdar of the land in dispute. His plaint was rejected on the principles of Section 10 of the Act putting a bar for continuation of the suit. His first appeal failed. The High Court however came to his rescue in second appeal in upsetting the orders of the courts below and effecting a remand for the trial of the suit on merit. This has been questioned herein by the State.
3. It cannot be disputed that the question of title cannot be decided under the U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and the decision on the subject had either to be made by the revenue court or the civil court, as the case may be. Here, the High Court has asserted that principle in coming to the rescue of the respondent. Having gone through the judgment of the High Court carefully, we find no ground to differ from the view taken. The order of the High Court must therefore sustain. The appeal is consequentially dismissed. No costs.