

A.F.R.

Neutral Citation No. - 2023:AHC:166655

Court No. - 7**Case :-** WRIT - C No. - 10192 of 2023**Petitioner :-** Paltoo Ram Yadav**Respondent :-** State Of U.P. And 6 Others**Counsel for Petitioner :-** Hemant Kumar Rai, Arvind Kumar Rai**Counsel for Respondent :-** C.S.C., Mayank Krishna S Chandel, Ram Niwas Singh, Rameshwar Prasad Shukla, Vinod Kumar Chandel**Hon'ble Dr. Yogendra Kumar Srivastava, J.**

1. Heard Sri S.B. Singh, along with Sri Hemant Kumar Rai, learned counsel for the petitioner, Sri Kunal Ravi Singh, learned Chief Standing Counsel along with Sri Abhishek Shukla, learned Additional Chief Standing Counsel appearing for the State-respondents and also Sri Vinod Kumar Chandel, learned counsel appearing for the respondent Nos. 4 and 5.

2. The present petition seeks to raise an issue with regard to availability of the statutory remedy of a revision under Section 210 of the U.P. Revenue Code, 2006 against an order of remand passed in an appeal.

3. The admitted facts between the parties are that land bearing plot no. 89 measuring an area of 0.150 hectares situate at Village Harakhpur, Pargana and Tehsil Sagri, District Azamgarh was jointly held by two real brothers

namely Rajdeo and Hardeo having equal share. One half of the undivided share of the aforestated plot was purchased by the respondent no.6 and the predecessor-in-interest of the respondent nos. 4 and 5 by means of a registered sale deed dated 20.05.2003 executed by one of the co-owners namely, Hardeo. The remaining half of the share was purchased by the petitioner on 01.10.2004 through a registered sale deed from the other co-owner namely Rajdeo. The names of the petitioners as well as contesting respondents were mutated in the revenue records as co-sharers of the plot in question.

4. The petitioner filed a suit under Section 116 of the Uttar Pradesh Revenue Code, 2006¹ for division of the holding in the Court of Sub-Divisional Officer, Sagri, Azamgarh.

5. The private respondents, though parties in the suit, did not file their written statements, and a preliminary decree was passed on 23.01.2019.

6. Thereafter, a *Kurra* report and map showing the proportionate shares of the parties were prepared by the concerned Lekhpal, which were consequently affirmed and an order dated 26.10.2019 was passed for making the final decree.

7. The respondent no. 6, at this stage, filed a restoration application dated 13.12.2019 seeking recall of the order dated 26.10.2019. It was contended that the concerned

¹ the Revenue Code

respondent got no notice with regard to passing of the order in the suit for the division of holdings.

8. The restoration application filed by respondent no. 6 was rejected by the Sub-Divisional Magistrate in terms of an order dated 27.12.2021. The Court concerned, while rejecting the restoration application, also made certain observations on merits to the effect that in a joint holding in the absence of any partition, the sale deed could not be held valid and no claim for division of holding could be made on the basis thereof.

9. Assailing the aforestated final order dated 26.10.2019 passed in the suit under Section 116, respondent no. 6 preferred an appeal under Section 207 of the Revenue Code. The respondent no. 5 also preferred an appeal against the said order.

10. The respondent no. 6 further raised a challenge to the order dated 27.12.2021, whereby the restoration application filed by the said respondent had been rejected, in an appeal under Section 207 of the U.P. Revenue Code, 2006.

11. The aforestated three appeals were heard and decided by a common order dated 18.11.2022, passed by respondent no.2/Commissioner Azamgarh Region, Azamgarh. The respondent no.2 while exercising its appellate powers took notice of the fact that the Court below had rejected the

restoration application filed by respondent no. 6 by making an observation on merits. In this regard, the appellate Court took notice of the fact that the registered sale deed which was available on the record of the case was indicative of the fact that the plot in question was not the ancestral property of the parties but the same had been purchased by both the parties from the original tenure holder on the basis of registered sale deeds executed in the years 2003 and 2004, respectively, showing separate boundaries. It was also noticed that on the basis of aforesaid sale deeds the parties concerned had got their names mutated in the revenue records and were in possession of their respective portions.

12. The appellate Court also noticed that the suit for division of holding was instituted after about 14 years from the date of execution of the sale deed. Taking into consideration the fact that it was only on the basis of the boundaries described in the registered sale deed that the vendee could claim a right of possession and it was not a case where the parties were claiming division on the basis of their respective shares in an ancestral property, it was held that the observations made by the Court below in so far as merits of the case were concerned, were legally untenable. In addition, since the Court below had decreed the suit ex-parte without granting opportunity of hearing and of adducing evidence to the appellant (respondent no. 6 herein), and thereafter rejected the restoration application cursorily in terms of the order dated 27.12.2021, it had committed a manifest error.

13. The appellate Court, having come to the aforestated conclusion, held that it would be appropriate for the Court below to pass a fresh order after giving due opportunity to the parties concerned to adduce evidence and to present their case on merits. Accordingly, the orders dated 26.10.2019 and 27.12.2019 have been set aside and the case has been remanded to the Court below for grant of an opportunity of hearing and for adducing evidence and for deciding the case afresh on the basis of merits.

14. An objection has been raised by the counsel appearing for the State-respondents and also the counsel appearing for the private respondents with regard to the entertainability of the present writ petition, which seeks to assail the order dated 18.11.2022 passed in the appeals by the respondent no. 2, by pointing out that the petitioner would have an efficacious statutory remedy of filing a revision against the said order, before the Board of Revenue.

15. Counsel for the petitioner has sought to refute the aforestated preliminary objection raised on behalf of the respondents by submitting that since the appellate Court had remanded the matter to the Court below without any observation on merits of the case and without setting aside the findings recorded by the Court below, it was a case of a 'remand simpliciter' and, therefore, the remedy of the revision would not be available. In this regard, reliance was placed on a decision of this Court in **Ram Bhajan and Others vs.**

Deputy Director of Consolidation, Allahabad and another¹ to submit that an order of a 'remand simpliciter' would be of an interlocutory nature, and a revision against the said order would not be maintainable.

16. Counsel appearing for the private respondents has controverted the aforestated submissions by drawing attention of the Court to the observations made by the appellate Court on merits of the case, to point out that the Court while deciding the appeal has considered the reasoning assigned by the Court below and remanded the matter with observations on merits; therefore, the order cannot be said to be a 'remand simpliciter', which can be held to be of an interlocutory nature and not amenable to the remedy of statutory revision. Learned counsel has referred to the decisions of this Court rendered in **Mahendra Singh and Others Vs. Board of Revenue U.P. and Others**² and **Jhinka Devi Vs. State of U.P. and others**³, on the scope of the revisional powers under the Revenue Code.

17. Learned Chief Standing Counsel appearing for the State-respondents has also referred to the order passed by the respondent no. 2 while deciding the appeal, to point out that the appellate order contains a detailed consideration of the case on its merits and the remand having been made with specific directions, the said order can in no manner to held to

1 2001 (92) RD 330

2 2022(8) ADJ 105

3 2022 (7) ADJ 31

be a 'remand simpliciter' and therefore not amenable to the remedy of a revision. It is submitted that the appellate court has recorded a categorical finding that the land is not ancestral in nature and that the parties were in possession according to the boundaries described in their respective sale deeds and would continue in possession in accordance with the same.

18. It is further pointed out that the decision in the case of **Ram Bhajan (supra)**, which is sought to be relied upon on behalf of the petitioner, cannot be held to be good law in the light of a subsequent Division Bench decision of this Court in **Deena Nath and Ors. vs. Deputy Director of Consolidation²**, wherein while deciding a reference, on the point, it was held that the order of the Settlement Officer of Consolidation, which had finally decided the appeal by setting aside the order of the Consolidation Officer and remanding the matter to the Consolidation Officer, was an order finally deciding the appeal and thus could not be termed to be an interlocutory order.

19. Learned State Counsel submits that the remand having been made with findings regarding rights of the parties, the order would be appealable as per Schedule III and the writ petition would not be maintainable. Alternatively, it is submitted that even in case the remedy of appeal is held to be

² 2010 (6) AWC 6099 All (DB)

not available, the remedy of revision under Section 210 of the Code can be availed of.

20. In order to appreciate the rival contentions, the relevant statutory provisions would be required to be adverted to, which are as follows:

“Section 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.

Section 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 the 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.

Section 209. Bar against certain appeals.-Notwithstanding anything contained in Sections 207 and 208, no appeal shall lie against any order or decree-

- (a) made under Chapter XI of this Code;
- (b) granting or rejecting an application for condonation of delay under Section 5 of the Limitation Act, 1963;
- (c) rejecting an application for revision;
- (d) granting or rejection an application for stay;
- (e) remanding the case to any subordinate Court;
- (f) where such order or decree is of an interim nature;
- (g) passed by Court or officer with the consent of parties; or
- (h) where order has been passed *ex-parte* or by default:

Provided that any party aggrieved by order passed *ex-parte* or by default, may move application for setting aside such order within a period of thirty days from the date of the order:

Provided further that no such order shall be reversed or altered without previously summoning the party in whose favour order has been passed to appear and be heard in support of it.

Section 210. Power to call for the records.-(1) The Board or the Commissioner may call for the record of any suit or proceeding decided by any subordinate Revenue Court in which no appeal lies, for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding; and if such subordinate court appears to have-

- (a) exercised a jurisdiction not vested in it by law; or
- (b) failed to exercise a jurisdiction of vested; or
- (c) acted in the exercise of such jurisdiction illegally or with material irregularity;

the Board, or the Commissioner, as the case may be may pass such order in the case as it or he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner, no further application by the same person shall be entertained by the other of them.

Explanation.—For the removal of doubt it is, hereby, declared that when an application under this section has been moved either to the Board or to the Commissioner, the application shall not be permitted to be withdrawn for the purpose of filing the application against the same order to the other of them.

(3) No application under this section shall be entertained after the expiry of a period of sixty days from the date of the order sought to be revised or from the date of commencement of this Code, whichever is later.”

21. For ease of reference, the relevant rules under the U.P. Revenue Code Rules 2016, corresponding to the statutory provisions relating to division of holdings, are also being extracted below:

“Rule 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.

Rule 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.”

22. The facts of the case regarding which there appears to be no dispute between the contesting parties is that one-half of the undivided share of a plot of land jointly held by two brothers, was purchased by respondent no. 6 by means of a registered sale-deed executed by one of the co-owners. The remaining half of the share was purchased by the petitioner through another sale deed by the other co-sharer. The petitioners as well as the contesting respondents got their names mutated in the revenue records as co-sharers of the plot in question.

23. Thereafter, the petitioner preferred a suit under Section 116 of the Revenue Code for division of the holding in the Court of the Sub-Divisional Officer. The private respondents, though parties in the suit did not file their written statements, and a preliminary decree was made in terms of the order dated 23.01.2019, and thereafter, the suit was finally decreed by an order dated 26.10.2019. A restoration application dated 13.12.2019, filed by respondent no. 6 seeking recall of the aforesaid order, was rejected by the Sub-Divisional Magistrate by an order dated 27.12.2021. The Court while

rejecting the restoration application, also made certain observations on merits.

24. The aforestated final order dated 26.10.2019, in terms of which the suit had been decreed, was subjected to an appeal filed by respondent no. 6 under Section 207 of the Revenue Code. An appeal against the said order was also filed by respondent no. 5. The respondent no. 6 also preferred an appeal under Section 207 of the Revenue Code against the order dated 27.12.2021 in terms of which the restoration application filed by the said respondent had been rejected.

25. The three appeals were heard and decided by a common order dated 18.11.2022 passed by the Commissioner, Azamgarh. The orders dated 26.10.2019 and 27.12.2019 were set aside and the case was remanded to the Court below to grant an opportunity of hearing to the parties concerned to decide the case afresh on merits.

26. It is against the aforestated order dated 18.11.2022 passed by the Commissioner that the present petition has been filed, wherein an objection has been raised on behalf of the private respondents with regard to entertainability of the petition by pointing out that against the order passed in appeal, the petitioner would have an efficacious statutory remedy of filing a revision.

27. The argument sought to be raised on behalf of the petitioner to refute the aforesaid preliminary objection is that the remand order is without any observation on merits, and therefore, the same is a 'remand simpliciter', and the order being of an interlocutory nature, a revision thereagainst would not be maintainable.

28. In order to test the aforesaid argument the order passed in appeal would be required to be examined. The order passed by the Commissioner while exercising appellate powers takes notice of the fact that the court below has rejected the restoration application filed by respondent no. 6 by making observations on merits. The appellate court has also taken notice of the fact that the registered sale deed which was available on the record of the case was indicative of the fact that the land in question was not the ancestral property of the parties, but the same had been purchased by both the parties from the original tenure holder by means of registered sale deeds, showing separate boundaries. The appellate court, after discussing the findings returned by the court below, has held the same to be legally unsustainable. Further, since the court below had decreed the suit *ex parte* without granting opportunity of hearing and adducing evidence to the parties, the case has been remanded with a direction to the court below to pass a fresh order after giving due opportunity of hearing to the parties concerned. The remand order passed by the Commissioner, thus, containing a detailed consideration on merits of the case and thereafter

recording a conclusion that the findings returned by the court below, were legally unsustainable, cannot be held to be 'remand simpliciter'.

29. The decision in the case of **Ram Bhajan and Others (supra)**, which is sought to be relied upon on behalf of the petitioner, thus, would not be applicable in the facts of the case. Moreover, the said judgment cannot be held to be good law in light of the subsequent Division Bench decision of this Court in **Deena Nath and Ors. (supra)**, wherein while deciding the reference on the point, it was held that an order passed in appeal under Section 11 of the U.P. Consolidation of Holdings Act, 1953, by the Settlement Officer (Consolidation) deciding the appeal finally by setting aside the order of the Consolidation Officer and remanding the matter would not be an interlocutory order and the revision against the said order would not be barred.

30. The order of remand, in the present case, in terms of which the case has been remanded after making certain observations on the merits of the case, and issuing directions to the court below to grant the parties opportunity of hearing and of adducing evidence, cannot be held to be a 'remand simpliciter' or an order of an 'interlocutory nature'. This is more so since the order passed by the Commissioner has a finality attached to it in the sense that it has the effect of disposing of the appeal.

31. The order passed by the Commissioner while exercising powers of the first Appellate Court under Section 207 of the Revenue Code, having resulted in a remand, the bar contained under Clause (e) of Section 209 would be attracted and the remedy of a further statutory appeal would not be available.

32. The bar under Section 209 against filing of an appeal, having been attracted, it would be required to be seen as to whether the revisional jurisdiction under Section 210, can be invoked against the order passed by the Commissioner in appeal. The language of Section 210 indicates that the powers of revision may be exercised in respect of any order passed in a suit or 'proceeding decided'.

33. The word 'proceeding' though not defined under the Revenue Code, when applied to a suit, is generally used, to express the separate steps taken in the course of a suit.

34. The word 'proceeding' has been defined in the **Webster's Third International Dictionary**³ as meaning a particular step or series of steps adopted for doing or accomplishing something.

35. **Black's Law Dictionary**⁴ defines 'proceedings' as the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment.

3 Webster's Third International Dictionary at page 1807

4 Black's Law Dictionary, 11th Edition

36. Shorter Oxford English Dictionary⁵ defines the word 'proceeding' as 'the fact or manner of taking legal action; a legal action; an act done by authority of a court of law; a step taken by a party in a case'.

37. The Law of Pleading Under the Codes of Civil Procedure⁶ describes 'proceeding' in the following terms:

“Proceeding' is a word much used to express the business done in Courts. A proceeding in court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word 'action,' but it may include in its general sense all the steps taken or measures adopted in the prosecution or defence of an action, including the pleadings and judgment. As applied to actions, the term 'proceeding' may include- (1) the institution of the action; (2) the appearance of the defendant; (3) all ancillary or provisional steps, such as arrest, attachment of property, garnishment, injunction, writ of *ne exeat*; (4) the pleadings; (5) the taking of testimony before trial; (6) all motions made in direction; (7) the trial; (8) the judgment; (9) the execution; (10) proceedings supplementary to execution, in court practice; (11) the taking of the appeal or writ of error; (12) the *remittitur*, or sending back of the record to the lower Court from the appellate or reviewing Court; (13) the enforcement of the judgment, or a new trial, as may be directed by the Court of last resort.”

38. The word 'proceeding' has been described in **Words and Phrases, Permanent Edition**⁷, as a comprehensive term meaning a prescribed course of action for enforcing a legal right and hence embracing the requisite steps by which a judicial action is invoked.

5 Shorter Oxford English Dictionary, Sixth Edition - 2007, Oxford University Press

6 Edwin E. Bryant, The Law of Pleading Under the Codes of Civil Procedure 3-4 (2nd Edition 1899)

7 Words and Phrases, Permanent Edition Vol.34

39. The foregoing discussion is indicative that the word 'proceeding' ordinarily relates to the modes in which judicial transactions are conducted. The word has to be understood as a comprehensive term and would generally mean a prescribed course of action for enforcing a legal right. It would also be held to embrace the requisite steps by which a judicial action is invoked and would include the form and the manner of conducting judicial business before a Court of law. The word 'proceeding' would thus be seen to be wider than the word 'case'.

40. Section 210 of the Revenue Code which provides the remedy of a revision empowers the Board or the Commissioner to call for the record of 'any suit or proceeding decided' by any subordinate Revenue Court in which no appeal lies for the purpose of satisfying itself as to the legality or propriety of any order passed in suit or proceeding.

41. A plain reading of Section 210 of the Revenue Code indicates that a revision would be entertainable on the cumulative satisfaction of the following circumstances:

- I. (i) impugned order amounts to a 'suit or proceeding decided';
(ii) such an order must have been passed by any Revenue Court subordinate to the Board of Revenue or Commissioner;
(iii) such an order must not be appealable.
- II. there must be an assertion with regard to jurisdictional error by the subordinate revenue court, i.e. to say:

- (i) exercise of jurisdiction not vested in it by law, or
- (ii) failure to exercise a jurisdiction so vested, or
- (iii) acting in the exercise of such jurisdiction illegally or with material irregularity.

42. The section comprises **two parts**, the **first** prescribes the condition under which jurisdiction of the Board or the Commissioner arises, i.e. there is a 'suit or proceeding decided' by a subordinate Revenue Court in which no appeal lies, the **second** sets out the circumstances in which the jurisdiction may be exercised.

43. The question regarding maintainability of the revision by the Board or the Commissioner would be distinct and independent of the question as to when the Board or the Commissioner would, in exercise of revisional jurisdiction, interfere with the orders passed by the courts subordinate thereto. The former concerns the power to call for records of courts subordinate to it by the Board or the Commissioner and relates to existence of condition precedent on the basis of which such exercise of jurisdiction under Section 210 depends. The latter relates to spelling out the circumstances under which the jurisdiction under Section 210 may be exercised.

44. The **maintainability of a revision** would therefore depend on **two conditions**; **first**, that it must relate to a suit or proceeding decided by any Revenue Court subordinate to the Board or Commissioner and **second**, it must be in

connection with any 'suit or proceeding decided', against which no appeal lies. Once these twin conditions are satisfied, it cannot be said that the revision would not be maintainable. The question, whether in a given case, the Court chooses to exercise the jurisdiction to interfere with the orders passed by the subordinate Revenue Court in a suit or proceeding decided would depend upon the facts and circumstances indicative of jurisdictional error in a particular case.

45. It is well settled that an appeal is a continuation of the suit. Whenever an appeal lies against any decree and when an appeal is filed, the finality of the decree of the trial court ceases. Thereafter, it is the judgment and decree of the appellate court which would replace the decree and judgment of the trial court.

46. It can therefore be said that the word 'proceeding' would also include the 'proceedings' at the appellate stage. This would be more so for the reason that the pursuit of a legal remedy, suit, appeal or second appeal are steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

47. The meaning to be attributed to the word 'proceeding' thus would depend upon the scope of the enactment wherein the expression is used and with reference to the particular context wherein it occurs. In general sense, the word 'proceeding' is to be held to mean the form and manner

of conducting judicial business before a court. It can be seen as a stage in the journey of a litigation – a step in the ladder of the judicial process.

48. The word 'proceeding', in the expression 'proceeding decided' occurring in Section 210 of the Revenue Code would therefore have to be construed as being wide enough to comprehend within its ambit a proceeding initiated pursuant to an appellate order also. It would, in fact, include any suit, appeal or application. The expression 'proceeding' with reference to a party vis-a-vis a court of law would have to be held to include each and every step or action taken before or during the course of the progress of the suit, including the appellate stage.

49. The condition precedent in order to invoke the revisional jurisdiction under Section 210 has been seen to include within its ambit 'proceeding decided' other than a 'suit decided'. It cannot be restricted to the entirety of proceedings in the journey of a suit. To interpret 'proceeding decided' as entire proceedings and not a part of a proceeding would amount to restricting the exercise of revisional jurisdiction which is not as contemplated under Section 210.

50. The revisional court has the power to rectify an order of a subordinate revenue court at any stage of the suit or proceedings, even if, the order does not finally dispose of the suit or the proceeding. The expression 'proceeding decided'

would include a part of a proceeding and an interlocutory order directly affecting the rights and obligation of parties would also have to be held to be included within its scope.

51. The order passed by the Commissioner having decided the appeal finally, the same would have to be held to be within the ambit of the expression 'proceeding decided', occurring in Section 210 of the U.P. Revenue Code, and therefore the remedy of a revision thereagainst cannot be said to be excluded.

52. The order dated 18.11.2022 passed by the Commissioner while deciding the appeals having been held to be amenable to the statutory remedy of revision under Section 210 of the U.P. Revenue Code, this Court would not be inclined to entertain the writ petition in view of the availability of an efficacious statutory legal remedy.

53. The writ petition stands accordingly **dismissed**.

Order Date:- 18.8.2023

Mohini/Arun K. Singh

[Dr. Y.K. Srivastava, J.]