



2026:AHC:65530

Reserved On 24.03.2026

Delivered On 30.03.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – B No. - 1233 of 2026

Ram AshishPetitioners(s)
Versus
State Of U.P. And 20 OthersRespondents(s)

Counsel for Petitioners(s) : Prateek Shukla
Counsel for Respondent(s) : Bhupendra Kumar Tripathi, C.S.C.

Court No. - 55

HON'BLE ARUN KUMAR, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the respondent Nos. 1 to 4. Notice on behalf of respondent no. 21 has been accepted by Sri Bhupendra Kumar Tripathi.

2. The present writ petition has been filed challenging the orders of respondent nos. 2, 3 & 4, dated 13.01.2026; 03.11.2023 & 21.08.2021, respectively, arising out of proceedings under Section 116 of the U.P. Revenue Code-2006 (hereinafter referred to as 'the Code').

3. The facts, as borne out from the writ petition, are that, a suit for division of holding was filed by respondent no. 5 under Section 116 of the Code in respect of bhumidhari land situated in Village Khemaipur, Tehsil Sadar, District Varanasi, divided among the co-tenure holders. The said suit was decreed by the order of the respondent no. 4, dated 21.08.2021. Aggrieved, the petitioner filed a first appeal before the Commissioner, Varanasi Division, Varanasi, the respondent no. 3, on 18.09.2021. However, in the cause title of the memo of appeal, the provision was incorrectly mentioned as Section 333 of the U.P. Revenue Code and was registered as Case No. 1466 of 2021, under Section 333 of

the U.P. Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as 'the Act of 1950'). The respondent no. 3, treating the matter as a revision, dismissed it by its order dated 03.11.2023.

4. Aggrieved by the orders of the respondent nos. 3 & 4, the petitioner filed Second Appeal before the Board of Revenue, the respondent no. 2, challenging the aforesaid orders and decree. The respondent no. 2 by its order dated 13.01.2026, dismissed the second appeal filed by the petitioner holding that as the order of the respondent no. 3 was passed in revision, no appeal was maintainable against it, and it cannot be considered on merits.

5. Learned counsel for the petitioner contended that since the suit was filed under Section 116 of the Code in the year 2020, the statutory remedy available against the decree was a first appeal under Section 207 of the Code, as provided in the Third Schedule. It is submitted that the incorrect mention of Section 333 in the memo of appeal was a clerical error and could not alter the nature of the proceedings. Merely due to such misdescription, the Commissioner did not acquire jurisdiction to treat the appeal as a revision.

6. It is further contended by the learned counsel for the petitioner that while filing the Second Appeal, a specific ground was taken in the memo of Second Appeal that due to wrong mentioning of the provision under which the appeal had been filed by the petitioner, it was registered and decided as a Revision, which was merely a typographical error. The order of the respondent no. 2, dated 03.11.2023, should be considered as an order having been passed in First Appeal, under Section 207 of the Code.

7. It is further contended that the Code contains only 234 sections; therefore, reference to Section 333 was ex facie erroneous and ought to have been treated as a typographical mistake.

8. Learned counsel for the petitioner referring to the prayer clause of the memo of appeal has tried to show that the entire memo of appeal was

drafted as an appeal and not as a revision. Moreover, if the proceedings were initiated under Section 116 of the Code, no revision, under the Act of 1950 was entertainable. The respondent no. 2 manifestly erred in holding that as the order dated 03.11.2023 had been passed in a revision, therefore, no second appeal is maintainable against such an order.

9. Learned counsel for the petitioner submitted that respondent no. 2 manifestly erred in not recording any finding on the ground taken by the petitioner that, Case No. 1466 of 2021, registered on the appeal of the petitioner, was under Section 207 of the Code and the reference of Section 333 in the cause title, was merely an inadvertent error. It was further contended that as the authority deciding the Appeal and Revision are the same, the order dated 03.11.2023, should have been considered as an order under Appeal, and the Second Appeal should have been decided by the Respondent no.2, on merits.

10. Learned Standing Counsel disputing the contention raised on behalf of the petitioner contended that once the appeal of the petitioner was registered under Section 333 of the Act of 1950, it was his duty to get the cause title amended before final decision, even though, the authority deciding the first appeal and revision, are the same. In view of the fact that the order of the Additional Commissioner, dated 03.11.2023 has been passed under Section 333 of the Act of 1950, the respondent no. 2 was justified in dismissing the second appeal, as not maintainable.

11. I have considered the submissions made by learned counsel for the parties and perused the record.

12. In view of the nature of order going to be passed in the present writ petition, I find it not necessary to issue notice to the respondent nos. 5 to 20.

13. It is not in dispute that upon enforcement of the Code on 11.02.2016, the Act of 1950 stood repealed. As no proceedings were pending on that date, the suit for division of holding could only have been filed under Section 116 of the Code.

Against the order dated 21.08.2021, the petitioner had a statutory remedy of first appeal under Section 207 of the Code as provided in the Third Schedule, before the Commissioner of the Division. The memo of appeal filed by the petitioner before the Commissioner, Varanasi Division, Varanasi, annexed as Annexure-3 to the writ petition, shows that in the cause title, it has been referred as an ‘Appeal under Section 333 of the U.P. Revenue Code against the order of the Deputy Collector (Revenue), Varanasi, dated 21.08.2021, passed in Case No. D202014700003939 of 2020, under Section 116 of the U.P. Revenue Code, 2006’. The relief claimed in the memo of appeal also states that, ‘the appeal should be allowed and the order dated 21.08.2021 be set aside’.

14. In view of the aforesaid, it is evident that the petitioner had preferred a first appeal under Section 207 of the Code, which was inadvertently described as under Section 333. The registration of the case under Section 333 of the Act of 1950 was, therefore, an error attributable to the office. The said error does not change the nature of the proceedings.

15. Moreover, under the U.P. Revenue Code, provisions of revision is provided, under Section 210, which reads as under:

“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 sub-ordinate 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 so 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.”

16. A bare reading of the aforesaid provision under Section 210, it transpires that a revision is maintainable only against those orders against which no appeal lies. In the case in hand the order dated 21.08.2021 passed under Section 116 of the Code was appealable under Section 207 of the Code. Thus, any revision if filed by the petitioner, was not maintainable, and could not have been registered before the respondent no. 3.

17. In view of the aforesaid discussion, as by the order dated 03.11.2023, the respondent no. 3 has decided the claim of the petitioner on merits, the said order could be accepted to have been passed within the jurisdiction of the respondent no. 3, only if it was passed in first appeal. Accordingly, the order dated 03.11.2023, though described as one passed in revision, cannot be sustained as such.

18. This Court finds that the order dated 03.11.2023 passed by respondent no. 3, though described as one passed in revision, was in substance an order passed in exercise of appellate jurisdiction. The misdescription of the provision was merely a clerical error and did not affect the jurisdiction of the authority.

19. It is a settled principle of law that a wrong mention of a statutory provision does not divest an authority of jurisdiction, if such jurisdiction otherwise exists. Thus, the order dated 03.11.2023 can only be sustained as one passed in exercise of appellate jurisdiction and not revisional jurisdiction. The respondent no. 2 erred in dismissing the second appeal as not maintainable.

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20. Consequently, the order dated **13.01.2026** passed by respondent no. 2 is set aside. The writ petition is partly allowed.

21. The matter is remitted to respondent no. 2 to restore the second appeal to its original number and decide the same on merits expeditiously, in accordance with law, after affording opportunity of hearing to all concerned parties.

(Arun Kumar,J.)

March 30, 2026

Ranjeet Sahu