

(2017) 01 AHC CK 0345
In the Allahabad High Court
Case No : 1052 of 2016

Achhe Lal (Deceased) And 15 Others	Vs	APPELLANT
Shri Krishna Gopal Agarwal And 3 Others		RESPONDENT

Date of Decision : 30-01-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 100](#), [Order 7 Rule 11](#), [Section 229B](#) - Second appeal
[Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#),
[Section 331](#)

Citation : (2017) 01 AHC CK 0345

Hon'ble Judges : Pradeep Kumar Singh Baghel

Bench : Division Bench

Advocate : K.K. Tripathi, Arun Kumar Tiwari, Devendra Kumar Upadhyay, Manish Goyal

Judgement

1. This is plaintiffs second appeal under Section 100 C.P.C.
2. The plaintiffs instituted a suit no. 760 of 2011 for cancellation of the sale deed dated 02.12.1966 which was fraudulently executed in favour of defendant no. 1. They also sought injunction restraining them, from taking forceful possession and causing interference in their possession over the suit property.
3. The plaintiffs' case was that the suit property Arazi No. 89 (7 Bigha and 9 Bishwa) recorded in the name of Prabhu and Pachuwa, sons of Tarapat in respect of four Bigha and rest three Bigha and 9 Bishwa was recorded as a barren land. After the zamindari abolition, Khatauni No. 1360 also in the name of Prabhu and Pachuwa remained was recorded. Both Prabhu and Pachuwa were real brothers and they were Sirdar of the said land. They remain owner and in possession over the suit property. After their death, their heirs and legal representatives and now the plaintiffs are in possession as a Bhumidhari with transferable rights. It was stated that the cause of action arose on 07.08.2011, when the defendant no. 1 along with his associates defendant nos. 2, 3 and 4 tried to cause interference in

the suit property, on the basis of sale deed which was executed in their favour by Prabhu. They also claimed that their names were recorded in the revenue record.

4. Thereupon, the entry got recorded on 08.08.2011 and then they came to know that their names have been recorded in the revenue papers, however, no information has been furnished to them in response to their questionair that on what basis, the names of defendants have been entered in revenue record. It was further stated that when the instruction was made in the office of the Sub Registrar on 09.08.2011, through his counsel, only then he came to know about the aforesaid sale deed alleged to be executed by Prabhu in favour of defendant no. 1. It was stated that there was no partition amongst Prabhu and Pachuwa in respect of the suit property and Pachuwa has never transferred his share to Prabhu. The defendant no. 1 in collusion with tehsil employees got Pachuwa's name struck off and entire land was recorded exclusively in the name of Prabhu as a sole owner. The plaintiffs alleged that the sale deed was alleged to be executed by Prabhu, was infact some one personating for Prabhu has executed the sale deed, hence it was void.

5. It was also stated that the defendants are in possession of the suit property. The defendants filed their written statement and contested the suit. Their stand was that they are owner of plot no. 89 comprising area 7 Bigha and 9 Bishwa along with trees standing on the suit property. It was further stated that the Prabhu was the exclusive owner and in possession of the disputed land who had transferred the suit property in favour of defendants by a registered sale deed dated 14.02.1966 and his name has been recorded in the revenue papers. It was also stated that Prabhu was doing business of dairy and he needed money for purchasing buffalo, hence, he had sold the said property for a consideration of Rs. 8,940/-. He has also stated that Puchuwa has no share in the property, whereas, Prabhu was the exclusive owner of the suit property. He had got the Bhumidhari rights and after obtaining the necessary orders from the competent authority, he had transferred the property in favour of the defendants. The defendant denied the possession of the plaintiffs.

6. The plaintiffs had filed an application for interim injunction which was rejected by the trial court.

7. Aggrieved by the said order, the plaintiff-appellants have preferred Misc. Appeal No. 140 of 2013 which was also dismissed. The suit was dismissed on the ground of limitation on 21.03.2014.

8. The trial court received the evidence and framed the necessary issues. The issue nos. 5, 6 and 7 were framed. Issue no. 5 is as to whether, the suit was barred by limitation. The issue no. 6 was as to whether the suit is barred by Section 331 of the U.P.Z.A. & L.R. Act. The issue no. 7 was in respect of maintainability of the suit under Order 7 rule 11 C.P.C. All the three issues were taken up by the trial court as preliminary and they were decided against the plaintiffs. The trial court has found that the suit was barred by Section 331 of the

U.P.Z.A. & L.R. Act and while deciding the issue no. 7 against the plaintiffs, the trial court rejected the suit under Order 7 Rule 11 C.P.C.

9. Aggrieved by the judgment and decree of the trial court, the plaintiffs filed a regular appeal before learned Additional District Judge, Kanpur Nagar.

10. One of the plea raised by the plaintiff before the first appellate court was that the trial court without providing opportunity of hearing has decided the aforesaid issued against the plaintiffs. It was urged that the issue of limitation was a mixed question of law, and fact could only be decided, if the defendants led by the parties. The issue of jurisdiction of the civil court and the scope of the Order 7 Rule 11 were also alleged.

11. Insofar as, the opportunity is concerned, the appellate court has recorded a finding that the plaintiffs were given sufficient opportunity by the trial court, hence, the said plea was not accepted by the appellate court. The appellate court while discussing the finding of the trial court on issue no. 5, found that the issue of limitation could have been decided with the trial as this is purely a question of fact and law.

12. As regards the finding of the trial court on issue nos. 6 and 7 regarding the bar of Section 331 of the U.P.Z.A. & L.R. Act and rejection of plaint under Order 7 Rule 11 is concerned, the appellate court has affirmed the finding of the trial court. The appellate court has referred the judgment of the Board of Revenue dated 29.03.1997 (paper no. 72-C2/1), whereby the Board of Revenue has recorded the finding in favour of Prabhu and he was found exclusive owner and Bhumidhar of the suit property. His name was also recorded in the revenue papers as pre and post period of the abolition of the Zamindari. It was also found that order of the Board of Revenue dated 29.03.1997 has attained finality. The appellate court has also recorded the paper no. 79-C1 which is a copy of plaint filed by the plaintiff-appellants in the revenue record seeking declaration under Section 229 B in respect of the suit property.

13. Learned counsel for the appellants submits that the finding recorded by both the courts below that the suit is barred under Section 331 of the U.P.Z.A. & L.R. Act are not correct as the plaintiffs have filed a suit for cancellation of the sale deed on the ground that fraud, hence, the suit was not maintainable in the civil court. He further submits that the courts below have misread and misinterpreted the oral and documentary evidence available on record. Next he submits that the finding recorded by appellate court about the possession of the defendant no. 1 over the suit property is not correct.

14. Learned counsel for the respondents caveator Sri K.K. Tiwari submits that both the courts below have recorded concurrent finding of fact hence, no interference is called for under Section 100 C.P.C. He further submits that the findings recorded by both the courts below regarding the maintainability of the suit in view of Section 331 of the U.P.Z.A. & L.R. Act do not warrant any interference under Section 100 C.P.C. as post findings are based on the material

on record, hence no substantial question of law arise in this appeal.

15. I have heard the learned counsel for the parties and perused the record.

16. In the present case, the plaintiff has filed a suit for cancellation of the sale deed which was executed in the year 1966. It is a common ground that the name of defendant no. 1 is recorded in the revenue record for quite long time. The order of the Board of Revenue dated 29.03.1997 and the order of Tehsildar passed in the year 1953 clearly indicates that there is cloud on the title of the plaintiffs.

17. The aforesaid two orders coupled with the fact that the plaintiffs have filed a suit under Section 229 B C.P.C. before the revenue court, goes to show that there is serious dispute with regard to the title of the suit property which is admittedly agricultural land. A part of the land is said to be recorded as barren land (Usar).

18. It is trite that a voidable document which is alleged to be obtained by fraud, misrepresentation or undue influence, its effect cannot be put to an end without its cancellation. However, a void document is not required to be cancelled but it is equally true that existence by void document for a substantial period may cause injury to the person whose rights have been effected by it as others can be misled by its existence, hence a person can approach the civil court for its cancellation.

19. It is well settled law that if there is any statutory provision which bars the jurisdiction of the civil court, the suit cannot be entertained by civil court. The Schedule 2 of the U.P. Zamindari Abolition and Land Reforms Act provides that if the main relief is one which is mention in schedule 2 then the Bar of Section 331 of the Act will be attracted.

20. It is trite that U.P.Z.A & L.R. Act is self contained Act in respect of the agricultural land. Bar of Section 331 of the U.P.Z.A & L.R. Act came to consider in a large number of cases of this Court and the Supreme Court.

21. In Ram Awalamb & Ors. vs. Jata Shankar & Ors., 1969 AIR (All) 526, the matter was also with regard to the cancellation of the sale deed in respect of the half share in the joint family property. The property sold was bhumidhari land. The Court has held as under:- "57. Where in a suit, from a perusal only of the reliefs claimed, one or more of them are ostensibly cognizable only by civil court and at least one relief is cognizable only by the revenue court, further questions which arise are whether all the reliefs are based on the same cause of action and, if so, (a) whether the main relief asked for on the basis of that cause of action is such as can be granted only by a revenue court, or (b) whether any real or substantial relief (though it may not be identical with that claimed by the plaintiff) could be granted by the revenue court. There can be no doubt that in all cases contemplated under (a) and (b) above the jurisdiction shall vest in the revenue court and not in the civil court. In all other cases of a civil nature the

jurisdiction must vest in the civil court."

22. The full Bench in the case of Ram Padarath & Ors. vs. Second Addl. District Judge, Sultanpur & Ors., 1989 (1) AWC 290, has held as under :- "8. There can be other situation also, all of which can be created by statutory provisions as the jurisdiction of civil court can be ousted only by some specific provisions of law or by necessary implication sprouting out of statutory provisions. Such a situation arises when more than one reliefs are claimed in any action pertaining to agricultural land, if the relief claimed or the real and the main relief is one which is mentioned in Schedule II to U.P. Zamindari Abolition and Land Reforms Act, the same can be granted by the revenue court only and the jurisdiction of civil court to grant such a relief or reliefs is ousted by Section 331 of the said Act.

9. The law relating to right, title and interest over the agricultural and is contained in the U.P. Zamindari Abolition and Land Reforms Act, hereinafter known as the "Act", which is a complete Code by itself and is wider than the earlier Act, i.e., U.P. Tenancy Act which too was replaced by it. The said Act more particularly the Schedule to it enumerates the suits etc., the cognizance of which is to be taken of by the revenue court specified therein. The said Act being special Act, its provisions would prevail over the general law. the jurisdiction of Civil Court is ousted if the relief can be granted by the special court conferred with jurisdiction to grant such reliefs. In Section 331 of the Act which specifically ousts the jurisdiction of other courts in respect of all suits, applications etc., enumerated in Schedule II the main emphasis is on the words cause of action and any relief.

35. Section 331 of the U.P. Zamindari Abolition and Land Reforms Act excludes the jurisdiction of civil court in respect of those matters for which relief can be had from the revenue court by means of a suit, application or proceedings mentioned in Schedule II to the "Act". Section 331 of the Act, if read without Explanation, does not create any difficulty. Dispute regarding jurisdiction arises when Explanation which is an integral part of the section is interpreted and applied to the facts of a particular case. the object of Explanation to any statutory provision is to understand the Act in the light of the Explanation which ordinarily does not enlarge scope of the original section which it explains, but only makes its meaning clear beyond dispute. the Explanation thus makes the things still more explicit and exists primarily removing doubts and dispute which may crop up in its absence. Section 331 of the "Act" along with Explanation cannot be read so as to oust the jurisdiction of civil court if the primary relief on the same cause of action can be granted by the civil court notwithstanding the fact that consequential relief or ancillary relief flowing out of the main relief the grant of which also becomes necessary can be granted by revenue court alone."

23. The judgment of the Full Bench was affirmed by the Supreme Court in the case of Shri Ram & Another vs. Ist Addl. Distt. Judge & Others, 2001 (3) SCC 24, the relevant part of the judgment is extracted herein below :- "7. On analysis of

the decisions cited above, we are of the opinion that where a recorded tenure holder having a prima facie title and in possession files suit in the civil court for cancellation of sale deed having obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the revenue court reason being that in such a case, prima facie, the title of the recorded tenure holder is not under cloud. He does not require declaration of his title to the land. The position would be different where a person not being a recorded tenure holder seeks cancellation of sale deed by filing a suit in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the revenue court, as the sale deed being void has to be ignored for giving him relief for declaration and possession."

24. The Supreme Court has followed this judgment in the case of Kamla Prasad and Others vs. Krishna Kant Pathak and others, 2007 (2) AWC 1764 (SC).

25. Applying the aforesaid principles, in the present case, I find that there is clear dispute of the share and title of the suit property. The plaintiffs name was not recorded in the revenue record and whether land of Prabhu and Pachuwa were the co-sharer of the property and to explain their share was also need to be determined.

26. In my view, the concurrent finding recorded by both the courts below do not suffers from any illegality.

27. In view of the above, I find that no substantial question of law arise in this appeal. The appeal lacks merit and is accordingly dismissed.