

(2019) 05 UK CK 0298
In the Uttarakhand High Court
Case No : Special Appeal No. 480 Of 2019

Ajeet Singh Rathore	Vs	APPELLANT
State Of Uttarakhand & Others		RESPONDENT

Date of Decision : 29-05-2019

Acts Referred:

Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 — Section 286(2)
Constitution Of India, 1950 — Article 226

Citation : (2019) 05 UK CK 0298

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Laxman Singh, C.S. Rawat, V.K. Kohli, Rajni Supyal, Ashish Joshi

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred by the appellant against the order passed by the learned Single Judge in WPMS No. 3359 of 2018 dated 10.04.2019. The writ petition was filed by the petitioner seeking a writ of certiorari to quash the order passed by the Ziladhikari, Laksar regarding the land at Khata No. 77 situated at Village-Husainpur, Pargana, Manglor, Tehsil Laksar, District Haridwar.

2. The attachment order passed by the U.P. Ziladhikari was questioned by the appellant-writ petitioner by way of Writ Petition (M/S) No. 3359 of 2018, contending that the said property was sought to be auctioned on 12.11.2018 in an arbitrary and illegal manner. In the affidavit, filed in support of the writ petition, the appellant-writ petitioner stated that, from out of a total extent of 2.714 hectares of land, 0.6785 hectares of land came to his share, and to that of respondent nos. 4 to 6, after the death of the father, Sri Samay Singh; ever since then, the petitioner and respondent nos. 4 to 5 are cultivating their respective shares; the fifth respondent had gifted his 1/4th share of 0.6785 hectare to the petitioner, vide gift deed dated 30.10.2017, which was duly registered on

31.10.2017; and he has been cultivating both his share and that of the fifth respondent in the total extent of 1.357 hectares, ever since. The appellant-writ petitioner alleges that the fourth respondent had started threatening him that he would sell the said land to someone else; the appellant-writ petitioner was constrained to file an injunction suit against the fourth respondent in Civil Suit No. 32 of 2018 before the Senior Civil Judge, Laksar; and an order of temporary injunction was passed by the Civil Court by its order dated 23.04.2018. The appellant-writ petitioner further states that he was informed by the Halka Patwari that certain loans were due from the fourth respondent, a recovery citation had been issued against him, and he was arrested and sent to jail for a period of 14 days; he made an application to the Tehsildar Laksar informing him that there was a stay order in his favour granted by the learned Senior Civil Judge, Laksar; after a gift deed was executed in his favour on 30.10.2017, no right was left over with the fourth respondent with respect to the subject land; in terms of Section 286 (2) of the U.P. Z.A. and L.R. Act, the said land could not be attached; and, in terms of the said Act, the amount due against a person may be realized only from the property of the defaulter, and not from the property of any other person.

3. In the counter affidavit, filed by the Senior Manager, Punjab National Bank, it is stated that Sri Samay Singh (the father of the petitioner and respondent nos. 4 to 6) was a bhumidhar of agricultural land in Khata No. 77; he took an agricultural loan of Rs. 5,00,000/- from the Punjab National Bank on 11.05.2010; as security for the said loan, he had mortgaged his agricultural land, and had executed a Mortgage Deed in favour of the Bank on 11.05.2010; when Sri Samay Singh expired, the amount due in his loan account was Rs. 2,73,951/-, which included interest upto 31.03.2018; this amount was not paid to the Bank either by Samay Singh or his heirs and, consequently, a recovery certificate dated 24.10.2018 was issued by the Bank to the District Magistrate, Haridwar for recovery of the due amount; in addition thereto, the fourth respondent and his wife had taken an agricultural loan from the bank on 12.02.2010, for purchase of a Tractor, in regard to which a recovery certificate was also issued for realization of Rs. 5,31,333/-; since this amount was not paid, the Tehsil authorities were entitled in law to proceed to recover the said amount; the gift deed dated 30.10.2017 had no legal effect in law as Sri Samay Singh, the father of the petitioner, had bequeathed the property with the lien of the bank; the bank had the right to realize its dues from the property left by the father of the appellant-writ petitioner; the Suit filed by the appellant-writ petitioner was collusive, and an order of injunction was passed with the consent of the fourth respondent, as is evident from a bare reading of the order itself; and the said order would not disable the bank from recovering its dues, since the bank is not a party to the said suit.

4. In the order under appeal, the learned Single Judge observed that, on a recovery citation being issued, the appellant-writ petitioner had instituted a Civil Suit in Civil Suit No. 32 of 2018 seeking a decree of permanent injunction, as against his real brother; in paragraph-1 of the plaint he had disclosed the same

property, which was shown as mortgaged and was the subject matter of recovery; the Trial Court had passed an order of interim injunction on 23.04.2018, with the consent of the defendant, directing the parties to maintain status quo; the petitioner had, thereafter, filed the writ petition for quashing of the recovery citation; the writ petition was entertained, and an interim order of stay of recovery was granted on 02.11.2018; in its counter affidavit, the respondents had, apart from denying the writ averments, also contended that the property, which was disclosed in the recovery citation, was the same property which was mortgaged for the purpose of taking a loan which had, admittedly, been defaulted; neither was the liability to pay the loan in dispute, nor that there was a default in remittance of the loan amount; the appellant-writ petitioner had not come with clean hands before this Court, as the injunction had been obtained in relation to the same property which was mortgaged for the loan; and the suit was instituted by the appellant-writ petitioner against his real brother which was in the nature of a collusive suit. While declining to exercise the discretionary and equitable powers conferred under Article 226 of the Constitution of India, the learned Single Judge dismissed the writ petition.

5. Sri Laxman Singh, learned counsel for the appellant-writ petitioner, would submit that the appellant-writ petitioner was not given a reasonable opportunity of filing his rejoinder affidavit to the counter affidavit filed by the respondents; the fourth respondent had no authority to mortgage the property in favour of the Bank, since the property had been gifted to him and he was the owner; and the bank could not recover the amounts due either from the petitioner's father or from the fourth respondent, by putting the land owned by the appellant-writ petitioner to auction.

6. Even before us the facts, as noted in the order under appeal and in the counter affidavit filed by the Punjab National Bank, have not being disputed. It is evident, therefrom, that it is the appellant-writ petitioner's father Sri Samay Singh who was the owner of the entire extent of land; he had secured a loan from Punjab National Bank by executing a mortgage deed with respect to the entire extent of land; while the landed property of Sri Samay Singh, no doubt, devolved on all his four sons, including the appellant-writ petitioner, such devolution was subject to the mortgage created by Sri Samay Singh in favour of the respondent-bank.

7. The fourth respondent had also mortgaged his 1/4th share of the land, which devolved upon him consequent on the death of his father Sri Samay Singh, with Punjab National Bank for being sanctioned a Tractor loan. Nearly six years after such a loan was sanctioned, and after having defaulted in repayment of the dues to Punjab National Bank, the fourth respondent conveniently gifted his 1/4th share of the property in favour of the petitioner who, in turn, filed a suit for injunction against the fourth respondent restraining him from interfering with the said property. The interlocutory order of injunction, passed by the learned Single Judge, itself records that the fourth respondent had expressed his consent for an

order of injunction to be granted. The learned Single Judge was, therefore, justified in holding that the suit was collusive in nature. The Gift Deed executed by the fourth respondent, in favour of the petitioner, was only to avoid repayment of the loan due from him to the bank; and both of them had resorted to this subterfuge to avoid repayment of the loan taken by Sri Samay Singh from the bank, and to prevent the bank from enforcing the mortgage for recovery of its dues.

8. The process of this Court has, undoubtedly, been abused by the appellant-writ petitioner; and, by obtaining an interim order from this Court on 02.11.2018, the appellant-writ petitioner has disabled the Revenue Officials from putting the mortgaged property to auction, and in making payment to the bank in terms of the recovery citation issued by them. The appellant-writ petitioner did not even stop litigating after the order under appeal was passed by the learned Single Judge. He has filed the present appeal, evidently, to avoid the property being sold for recovery of the dues of the bank. As we are satisfied that the respondent-bank was disabled from recovering its dues as a result of the petitioner having misused the portals of this Court, by filing WPSS No. 3359 of 2018 and in obtaining an interim order dated 02.11.2018, we dismiss the special appeal with exemplary costs which we quantify as Rs. 25,000/- (Rupees Twenty Five Thousand Only). The appellant-writ petitioner shall pay this sum of Rs. 25,000/- to the respondent-Punjab National Bank within four weeks from today, failing which it shall be open to the said bank to recover the said amount in accordance with law.