(2016) 08 AHC CK 0079

In the Allahabad High Court

Case No : Writ B No. 33385 of 2016

Amarjeet APPELLANT

Vs

Board of Revenue Alld. RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Citation : (2016) 133 RD 8

Hon'ble Judges : Ram Surat Ram(Maurya), J.

Bench : Single Bench

Advocate : Rajesh Yadav and Ruchi Mishra Advocates, for the Petitioner; C.S.C. and SC Verma and Shivanand Mishra, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Rajesh Yadav for the petitioners and Sri S.C. Verma for the respondent.

2. The writ petition has been filed against the order of Board of Revenue, UP dated 9.6.2016 allowing the second appeal and setting aside the order of Additional Commissioner 4.2.2015 and reinstating the order of trial court passed in the suit under Section 229 B of UP Act No. 1 of 1951 (hereinafter referred to as the ''Act'').

3. Ragghu, father of the petitioners-1 to 3 filed a suit for declaring him as bhumidhar with transferable right of the land in dispute. It has been stated by Ragghu that he was need of money of Rs. 900. Lalmani, respondent-3 (hereinafter referred to as the ''respondent'') being his relation agreed to pay money in advance to Ragghu and for securing the money he wants some deed to be executed in terms of loan document. Ragghu went to Sub Registrar office where the respondent got the sale deed dated 21.5.1969 executed on payment of Rs. 900/- in his favour. When substantially the loan was re-payed then Ragghu asked the respondent to settle the account and take entire money of the loan, then respondent begun to avoid. Thereafter Ragghu made inquiry and came to

know that in place of loan document, the respondent has obtained sale deed dated 21.5.1969, although no permission has been taken from Settlement Officer Consolidation under Section 5 (1) (c) of UP Consolidation of Holdings Act, 1953 for selling the property in dispute as at that time the consolidation operation in the village was going on. Name of Banguri, sister of Ragghu was also got to be recorded over the land in dispute. When Ragghu asked Banguri to get her name set aside then she executed a sale deed dated 12.4.1979 in respect of her share of the land in dispute. On these allegations the suit was filed for declaration that Ragghu was bhumidhar of the land in dispute and in case it is found that Ragghu is not possession over any part of it then decree for ejectment of defendant-1 be also passed. Earlier round of litigation came up before this Court in Writ B No. 30763 of 1994 and Writ B No. 23682 of 1994. In the aforesaid writ petitions, the remand order of Board of Revenue, UP was challenged by Lalmani. Both the writ petitions were dismissed by this Court and thereafter the matter was heard by the Sub Divisional Officer afresh. The Sub Divisional Officer by order dated 9.6.2011 held that registered sale deed dated 21.5.1969 in respect of the land in dispute in favour of Lalman to the extent of 9/10 share and in favour of Smt. Banguri to the extent of 1/10 share was executed. Since entire holding of the petitioners was sold as such there was no necessity for obtaining permission of Settlement Officer Consolidation under Section 5 (1) (c) of UP Consolidation of Holdings Act, 1953 and the sale dated 21.5.1969 was not void. In the sale deed itself, it has been mentioned that the bhumidhari holding of the petitioners has been sold. On the basis of sale deed names of transferees were also mutated in CH Form 45. Thus the sale deed was given effect to and the plea raised that at the time of sale deed, the land in dispute was sirdari land was not liable to be accepted. On these findings the suit of the petitioners has been dismissed. The petitioners challenged the aforesaid order in appeal before Additional Commissioner. The Additional Commissioner by judgement dated 4.2.2015 held that as the land in dispute was alleged to be sirdari land as such it was not transferable and the sale deed is affected by the provisions of Section 166 of the Act but this issue has not been examined by the trail court. Accordingly, he allowed the appeal and set aside the order of trial court dated 9.6.2011 and remanded the matter to the trial court to decide the issue as to whether the sale deed dated 21.5.1969 was affected by Section 166 of the Act. Against the remand order of Additional Commissioner, the respondent filed a Second Appeal No. 342 of 2015 before Board of Revenue, UP. The Board of Revenue, UP after hearing the parties by judgement dated 9.6.2016 found that in the sale deed, the land in dispute was mentioned as bhumidhar holding, therefore, there could be no reason to say that the sale deed was in respect of sirdari land. In sale deed dated 21.5.1969, 1/10 share was sold to Smt. Banguri. Admitting the title of Banguri, the petitioners obtained sale deed dated 12.4.1979 from Banguri of her 1/10 share. Even the land in dispute was sirdri land in 1979, it shall be assumed that bhumdhari certificate was obtained before execution of the sale deed. So far as prior permission of Settlement Officer Consolidation is concerned, there was no need for prior permission of Settlement Officer Consolidation. On these findings Board of Revenue, UP allowed the Second Appeal and set aside the order of Additional Commissioner. Hence this writ petition has been filed.

4. I have considered the arguments of the counsel for the parties and examined the records.

5. On the basis of the pleadings of the parties, the Sub Divisional Officer has framed eight issues. A perusal of the issues framed by the trial court shows that there was no issue framed as to whether the land in dispute was sirdari land on the date of sale deed dated 21.5.1969 or it was not a transferable land. In the plaint also there is no pleading in this respect. The Board of Revenue found that the suit was filed in the year 1984 and plea that land in dispute was sirdari land was raised for the first time in the year 2004. There was no documentary evidence in support of the plea that the land in dispute was sirdari land. On the other hand, it is admitted that on the basis of sale deed dated 21.5.1969, name of the transferees were mutated in the revenue record. In case the land in dispute had been sirdari land then there could be no reason for mutating the name of transferees on the basis of sale deed dated 21.5.1969. Thus in the absence of any pleading as well as any material in respect of it, Board of Revenue has not committed any illegality in holding that sale deed dated 21.5.1969 was in respect of bhumidhari holding as mentioned in the sale deed dated 21.5.1969.

6. So far as the argument that prior permission of Settlement Officer Consolidation, under Section 5 (1) (c) was not obtained before execution of sale deed dated 21.5.1969 is concerned, in this respect it may be mentioned that prior to amendment of UP Consolidation of Holdings Act, 1953, in the year 1971, if the entire holding was sold then permission was not required as held by Full Bench of this Court. The sale deed dated 21.5.1969 was in respect of entire holding of the petitioner as such at that time prior permission was not necessary.

7. So far as the allegation that the Ragghu, father of the petitioners- 1 to 3 had went to execute a loan agreement and in the garb of loan document the sale deed dated 21.5.1969 was got executed. According to own allegation of the petitioners, the term of loan agreement had expired in the year 1979 while the suit was filed in the year 1984. The aforesaid plea has not been accepted by the court below as in case there had been loan then the petitioners could have taken appropriate remedy immediately after expiring the loan agreement period. Otherwise also there being a registered document of sale deed and its nature is being challenged by the petitioners as such the burden of proof was upon the petitioners to show that the sale deed was got executed in the garb of loan agreement. The petitioners could not show that they had been in continuous possession of the land in dispute. On the other hand they by admitting the title of Banguri, they had obtained a sale deed from her. Thus the finding regarding the sale deed being a valid sale deed does not suffer from any illegality. This Court in exercise of writ jurisdiction cannot take a contrary view in the matter.

8. So far as the argument that sale deed is affected by Section 166 of the Act, is concerned, it has been found that sale deed was in respect of bhumidhari holding, therefore, Section 166 is not attracted. Otherwise also on the basis of plea of Section 166 of the Act, the petitioners will not get any benefit of land as the land will vest in State of UP. Therefore this Court is not inclined to interfere in the matter.

9. The writ petition has no merit. It is dismissed.

