

(2012) 09 AHC CK 0123

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 11258 of 2004

Babu Ram (Dead) Through Lrs.

APPELLANT

Vs

District Judge, Varanasi and Others

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Citation : (2012) 09 AHC CK 0123

Hon'ble Judges : Sunita Agarwal, J

Final Decision : Allowed

Judgement

Sunita Agarwal, J.—Heard Shri Ram Dhani Singh, learned counsel for the petitioner and Shri M.K. Srivastava, learned counsel appearing for the respondents.

2. The writ petition has been filed challenging the judgement and order dated 12.9.2003 passed by the Additional Civil Judge(J.D.), Haveli, Varanasi and also the order dated 4.12.2003 passed by the District Judge, Varanasi.

3. By means of aforesaid orders, issue no.3 framed in original suit no. 1180 of 1998 (Ravi Shanker Prasad Singh Vs. Babu Ram and others) was decided against the petitionerdefendant and it was held that suit is maintainable before the Civil Court.

4. Brief facts giving rise to the present writ petition are that the land in dispute belong to Raja Ram son of Ram Sumer resident of village Adampur, Pargana Shivpur, District Varanasi. Raja Ram died on 4.1.1987. Petitioner Babu Ram(now deceased) and respondents no. 5 and 6 claimed their right in the disputed land as heirs of Raja Ram, (deceased). The plaintiffrespondents no. 3 and 4 claimed their right in the disputed land on the basis of sale deed dated 27.6.1989 alleged to have been executed by Mohan son of Bali Ram Prasad, Nirmala Devi wife of Sohan and Rita Devi wife of Raj Kumar residents of village Imaliya, Pargana Katehar, District Varanasi.

5. Mohan, Nirmala Devi and Rita Devi mentioned above claimed their right in the disputed land on the basis of sale deed dated 19.4.1985 alleged to have been executed by Raja Ram(deceased). Mohan and others claimed their right in the disputed land after the death of Raja Ram, original tenure holder of the disputed land. The petitioner, Babu Ram filed an application under section 34 of the Land Revenue Act for mutation of his name before Naib Teshildar, Varanasi on 12.1.1987. The said application was rejected on 23.5.1988 on the ground that Mohan and others got their name mutated by ex parte order dated 30.4.1988 on the basis of sale deed dated 19.4.1985 over the disputed land. The petitioner filed appeal under section 210 of Land Revenue Act challenging order dated 30.4.1988. The said appeal was allowed and the order dated 30.4.1988 passed in favour of Mohan and others was set aside. The case was remanded back to the Naib Tehsildar, Varanasi for deciding afresh. The revision filed by Mohan and others was dismissed on 24.7.1989.

6. Petitioner further filed appeal against the order dated 23.5.1988 by which his application for mutation was rejected. The revisional court by order dated 20.8.1992 set aside the order dated 23.5.1988 and remanded back the matter to the Naib Tehsildar, Varanasi for deciding afresh.

7. Both the cases filed by the petitioner and Mohan and others were decided by Naib Tehsildar, Varanasi, on 7.10.1998 in terms of compromise arrived between the parties. The name of the petitioner was mutated over the disputed land on the basis of decree dated 18.9.1998 passed by the Civil Court in the suit for cancellation of the sale deed dated 19.4.1985 filed by the petitioner Babu Ram. It may be noted that the petitioner Babu Ram filed original suit no. 285 of 1987 on 18.3.1987 for cancellation of the sale deed dated 19.4.1985 alleged to have been executed by Rajaram(deceased) in favour of Mohan and others. During the pendency of the suit, compromise dated 27.8.1997 was arrived between the parties and the same was filed before the court on 26.8.1998. The suit was decreed on the basis of compromise on 18.9.1998.

8. In so far as petitioner and respondent no.3 are concerned, respondent no.3 filed original suit no. 1180 of 1998(Ravi Shanker Prasad SinghVs. Babu Ram) with the prayer for permanent prohibitory injunction restraining the petitioner and respondents no. 5 and 6 from interfering in peaceful possession of the plaintiffdefendant(II Set). In original suit no. 1180 of 98 out of which the present writ petition arose an interim injunction order dated 19.11.98 was passed.

9. By the order dated 19.11.1998 notices were issued to the petitioner and while issuing notice the court below has directed the petitioner defendant(IIInd set) namely respondents no.5 and 6 not to interfere in the possession of the respondent no.3 over the disputed land. A misc. Civil Appeal no. 303 of 1998 was filed by the petitioner and respondents no. 5 and 6 against the order dated 19.11.98 passed by Civil Judge(J.D.) Havali, Varanasi granting exparte interim injunction. The appeal was allowed and interim injunction was modified to the extent that till 7.1.1999 parties shall maintain status quo over plot in suit.

10. In the meantime respondent no.3 (Ravi Shanker Prasad Singh) filed restoration application dated 2.12.1998 for recall of the order dated 7.10.1998 passed by Tehsildar (Sadar) Varanasi, which was allowed on 6.12.1999. The petitioner filed an appeal against the judgement and order dated 6.12.1999 which was allowed on 31.1.2000 and the order dated 7.10.98 passed by Tehsildar (Sadar) Varanasi was affirmed . Revision filed by the respondent no.3 against the order dated 31.1.2000 was dismissed on 17.7.2000 on the ground that sale deed in favour of vendors Mohan, Nirmala Devi and others dated 19.4.1985 alleged to have been executed by Raja Ram (deceased) was cancelled by the civil court by judgement and decree dated 18.9.1998. Ravi Shanker Prasad Singh having claimed their right, on the basis of sale deed alleged to have been executed by Mohan and Nirmala Devi, had no right in the disputed land, therefore, restoration application filed by them was held not maintainable.

11. It has further been brought on record that interim injunction application 6 Ga filed by the respondent no.3 was rejected by the court below vide order dated 11.3.1999 passed by the Civil Judge (J.D.) Haveli, Varanasi and it was observed that name of the petitionerdefendant no.1 has been recorded as Bhumidhar over the land in suit, and he was found to be Bhumidhar in possession of the land in suit. No prima facie case or balance of convenience was found in favour of the respondent no.3 for granting interim injunction order. The order dated 11.3.1999 passed in interim injunction application has become final between the parties. The trial court had proceeded with original suit no. 1180 of 1998 filed by the respondent no.3 and framed six issues out of which issue no. 3 is as follows;

"Whether the suit of the plaintiff is not maintainable"

The order dated 16.3.2002 framing issues in original suit no. 1180 of 1998 is on record.

12. Counsel for the petitioner Shri Ram Dhani Singh while assailing the orders dated 12.9.2003 and 4.12.2003 passed by the court below submits that the courts below have committed illegality in holding that suit is maintainable and ignoring the fact that petitioner is recorded Bhumidar in possession over the disputed land . The name of the petitioner was recorded in mutation proceedings after litigation between him and other persons namely Mohan and others claiming their right on the basis of sale deed which came to its logical end by decree of the civil court dated 18.9.1998.

13. He further submits that plaintiffrespondent no.3 claimed his right over the disputed land on the basis of alleged sale deed dated 27.6.1989 executed by Mohan and others, who have no right, title or possession over the disputed land. The courts below have failed to consider that sale deed dated 19.4.1985 on the basis of which Mohan and others were claiming title over the disputed land was cancelled by the civil court and decree dated 18.9.1988 was passed in the suit for cancellation of the sale deed filed by the petitioner. Mohan and others, being vendor in the sale deed dated 27.6.1989 could have no better title than the

ownership of the plaintiff respondent over the disputed land.

14. The suit filed by Ravi Shanker Prasad Singh, respondent no.3 is barred by section 331 of U.P. Z.A. & L.R. Act as he has no right, title and interest over the disputed land. Admittedly he is neither a recorded tenure holder nor is in possession of the disputed land. In view of the said fact, civil court had no jurisdiction to maintain the suit for permanent prohibitory injunction filed by him without any declaration of his right, title and interest over the disputed land. At the best respondent no.3 could have filed declaratory suit under section 229B of U.P. Z.A.& L.R. Act for declaration of his right title and interest over the disputed land and same is triable in the revenue court only. No injunction could have been granted by the civil court without being satisfied about the possession of the plaintiff/respondent no.3 over the disputed land.

15. The court below has wrongly concluded that main dispute is regarding sale deed and relief of injunction and cancellation of sale deed sought is only within the jurisdiction of the civil court.

16. He further submits that suit filed by the respondent no.3 for permanent prohibitory injunction could not be maintained in the civil court for the reason that declaration of right and status of plaintiff respondent no.3 is necessarily needed. The plaintiff/respondent no.3 is neither recorded tenure holder nor has prima facie title in his favour. He further submits that this is not a case of the undisputed title of the plaintiff, therefore, suit for injunction is barred by section 331 of U.P. Z.A. & L.R. Act. Sale deed in favour of the vendor Mohan and others having been cancelled, the sale deed executed by Mohan and others in favour of plaintiff/respondent no.3 automatically lost its efficacy and is sheer waste piece of paper.

17. In order to substantiate his argument he relied upon paragraph 7 of the judgement in Shri Ram and another Vs. Ist Additional District Judge & others reported in J.T. 2001 (2) SC, 573 wherein it was observed that in case 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 declaration of his title and, therefore, he may be directed to approach Revenue Court.

18. Counsel for the petitioner further relied upon the judgement of this court in Kishori Prasad Vs. IIIrd Additional District Judge, Varanasi reported in 2003, (94) RD. 36 to submit that plaintiff/respondent no.3 happens to be a third party, the name of the defendant no.1 having been recorded in the revenue record being heirs of original tenure holder unless plaintiff file suit for declaration of his Bhumidhar right on the basis of alleged sale deed executed by Mohan and others, who themselves lost their title over the disputed land, no relief can be granted to the plaintiff. The cause of action emerging from the allegation made in the plaint is to seek declaration of his rights as Bhumidhar on the basis of alleged sale deed dated 16.7.89 and unless such a declaration is made, the suit for

permanent prohibitory injunction cannot be entertained by the civil court.

19. He vehemently argued that declaration of right as Bhumidhar over the disputed land can only be granted by the Revenue Court and suit is barred by section 331 of the U.P. Z.A. and L.R. Act. The court below has committed illegality in deciding the issue no.3 and holding that suit is maintainable before the civil court.

20. Repelling the submissions of learned counsel for the petitioner, learned counsel for the respondent Shri M.K. Srivastava, submits that the relief for permanent prohibitory injunction could be granted only by the civil court and the revenue court has no jurisdiction to grant relief claimed in the original suit no. 1180 of 1988 filed by the plaintiff/respondent no.3.

21. In support of his argument, learned counsel for the respondent no.3 relied upon Full Bench judgement of this court in Ram Padarath and others Vs. Second Additional District Judge, Sultanpur and others reported in 1989 AWC page 290. Taking reference of the Full Bench Judgement of this court, he submits that petitioner/defendant has taken frivolous and technical plea of jurisdiction before the civil court with a view to delay and defeat the ends of justice. The plaintiff could not be asked to go to the revenue court for declaration of his right, title and interest for the reason that sale deed dated 27.6.89 has not been cancelled by any court of law. No suit for cancellation of sale deed has been filed by the defendant no.1 and as such in view of the existence of sale deed, the relief of permanent prohibitory injunction can only be granted by the civil court.

22. He relied upon the judgement of this court in Rameshwar and Brajesh Vs. VIIth Additional District and Sessions Judge, Deoria and others reported in 2002 (2) AWC 1137, along with Chhabi Lal and others Vs. Rajveer Singh and others reported in 2009(6) ADJ 67, Amir Alam Khan Vs. Lucknow Development Authority reported in 2011 (112) R.D. 125, Kulwant Kaur Sidhu Vs. Smt. Rahiman Bai Guddi @ R.B. Guddi Chaudhary reported in 2006 (100) R.D. 626.

23. Learned counsel for the respondent no.3 further drawn the attention of the court to the plaint of original suit no. 1180 of 1988 annexed as C.A.1 to the counter affidavit filed on behalf of respondent no.3 and submits that plaintiff/respondent no.3 is not a party to any proceedings of the suit mentioned by the petitioner wherein the sale deed executed in favour of Mohan and others was cancelled. The respondent no.3 being bonafide purchaser of the plot in dispute has right to maintain the suit for permanent prohibitory injunction before the civil court. He further submits that actual and physical possession of the land in dispute is not with the petitioner nor he has filed any evidence of proof of his possession.

24. In view of the aforesaid, court below committed no illegality in deciding the issue regarding maintainability of the suit and holding that it has jurisdiction to try the suit. The point for consideration is the legality of the sale deed executed in favour of plaintiff respondent no.3 and further no suit in respect of the

disputed property is pending in the civil court.

25. He vehemently submitted that petitioner/defendant no.1 has not denied the existence of sale deed executed in favour of the plaintiff/respondent of the disputed plot in suit. In fact the defendant no.1 had challenged the validity of the sale deed and denied the possession of the plaintiff over the land in dispute and, therefore, the civil court alone has jurisdiction to consider the legality of the sale deed executed in favour of the plaintiff.

26. From supplementary affidavit learned counsel for the petitioner drawn attention of the court to the order dated 17.7.2000 passed by the Additional Commissioner (Administration) Varanasi Division, Varanasi in revision no. 89 of 2000 filed under section 219 of the Land Revenue Act by the plaintiff/respondent no.3 and others Vs. Babu Ram and others. He submitted that by order dated 17.7.2000 restoration application filed by the plaintiff/respondent no.3 was rejected on the ground that sale deed in favour of Nirmala Devi, Mohan and others is not in existence and after the cancellation of the sale deed, rights of vendors of the sale deed dated 27.6.89 came to an end as such plaintiff/respondent being vendee could not have got better right than of Nirmala and Mohan. The judgement and order dated 17.7.2000 passed in the revision under section 219 of Land Revenue Act has been brought on record as annexure S.A.I of the supplementary affidavit filed by the petitioner.

27. Heard learned counsel for the parties and perused the record.

28. From the perusal of the record it is evident that the suit no. 285 of 1987 was filed by Babu Ram, petitioner and respondent no.6 Jawahir against Mohan, Nirmala Devi, Rita Devi and others for the cancellation of the sale deed dated 19.4.1985 executed by Rajaram, original tenure holder of the disputed land. The said suit was decreed in terms of the compromise arrived between the parties wherein it was agreed that over the Arazi number 125 Area 39.50 Decimal which is subject matter of sale deed dated 19.4.1985, name of Babu Ram petitioner alone shall be recorded. The compromise arrived between the parties dated 27.8.1997 has been filed as annexure 4 to the writ petition and paragraphs 8, 11 and 12 of the said compromise relevant for the purpose of controversy involved in the present writ petition reads as follows:

29. In paragraph 11 of the compromise, it has been mentioned that the sale deed dated 19.4.1985 executed by Rajaram in favour of Nirmal Devi wife of Mohan, Mohan and Rita Devi wife of Rajkumar and Will dated 24.8.1984 executed by Rajaram in favour of Samarthi Devi regarding Arazi no. 125 area 39.50 decimal and Arazi number 120 area 17 decimal; respectively will remain ineffective with respect to the aforesaid plots.

30. Further perusal of paragraph 12 of the said compromise shows that for the remaining numbers and plots of the suit property it was agreed that defendant no. 3 Mohan, defendant no.7 Nirmala Devi and defendant no.8 Rita Devi would remain owner in possession on the basis of sale deed dated 19.4.1985.

31. The compromise agreed between the parties further is that plaintiff and defendant would get their name mutated in the revenue record in terms of compromise in the pending proceedings before the concerned authorities.

32. Perusal of the decree dated 18.9.1998 annexed as annexure 5 to the writ petition in original suit no. 285 of 1987 shows that the suit was decided in terms of compromise. The paper no. 171 ka the compromise filed before the court of Ist Additional Civil Judge(J.D.) Varanasi was made part of the decree. Thus, perusal of the compromise as also the decree passed in the original suit no. 285 of 1987, it is evident that sale deed dated 19.4.1985 has not been cancelled as alleged by the petitioner/defendant no.1 in original suit no. 1180 of 1988.

33. Further perusal of the plaint of the original suit no. 1180 of 1988 shows that suit property described at foot of plaint is Arazi no. 125 area 28 decimal.

34. Admittedly plaintiff /respondent no.3 and defendant (II set) claimed their right over the suit property namely area 125 arazi no. 28 decimal on the basis of sale deed dated 27.6.1989 executed by Mohan husband of Nirmala Devi, Rita Devi and Nirmala Devi wife of Sohan. After the death of Nirmala Devi wife of Mohan, her share was inherited by her husband Mohan.

35. From careful perusal of the pleadings on the record it is apparent that plaintiff and respondent no.3 are not recorded tenure holder of the said suit namely arazi no. 125 area 28 decimal nor in possession of the same. The plaintiff/respondent no.3 and (defendant II set) claimed their right on the basis of sale deed dated 27.6.1989 executed by Mohan and others prior to the compromise dated 27.8.1997 and during the pendency of the original suit no. 285 of 1987 filed by the petitioner for cancellation of the sale deed in favour of Mohan and other. The result being plaintiff/respondent no.3 and defendant (II set) can have no better right, title and interest over the disputed land namely arazi no 125 area 28 decimal, than that of Mohan & others the vendors. In the compromise dated 27.8.1997 arrived between the petitioner and the vendees of the sale deed dated 27.6.89, it was agreed that over the arazi no. 125 area 39.50 decimal name of deceased Babu Ram, petitioner alone shall be recorded and the sale deed dated 19.4.85 executed by Rajaram in favour of vendees namely Nirmala Devi, Mohan & another would remain ineffective to that extent.

36. The law laid down by the Full Bench in Ram Padrath Vs. Second Additional District Judge, Sultanpur reported in 1989(AWC) 290 is that the recorded tenure holder having prima faice title in his favour can not be directed to approach the revenue court in respect of seeking relief for declaration of void document . The suit in the said case was filed for cancellation of sale deed and permanent prohibitory injunction. It was held that plaintiff can also seek the ancillary relief even though same can be granted by the Revenue Court. The court while considering the section 331 of U.P. Z.A. & L.R. Act has observed in paragraphs 11 and 12 that it is the real "cause of action" which determines the jurisdiction of the court to entertain particular action notwithstanding the language used in the

plaint or relief claimed. The expression "any relief" used in section 331 of Act is of too wide import and would not only mean the relief claimed but would also include any relief arising out of the "cause of action" which led the plaintiff to invoke the jurisdiction of a court of law. The relevant paragraphs 11 and 12 of the said judgment are as follows :

"11. It is the real "cause of action" which determines the jurisdiction of the court to entertain particular action notwithstanding the language used in the plaint or the relief claimed. The strength on which the plaintiff comes to the court does not depend upon the defence or relief claimed which could determine the forum for the entertainment of claim and grant of relief. it is the pith and substance which is to be seen and not the language used which may even have been so used to oust the jurisdiction of a particular court."

"12. The expression "any relief" used in Section 331 of the "Act" is of too wide import and would not only mean the relief claimed but would also include any relief arising out of the cause of action which led the plaintiff to invoke the jurisdiction of a court of law. The word "relief" is not part of cause of action nor the same is related to the defence set up in the case. The relief is a remedy which the court grants from the facts asserted and proved in an action."

In paragraph 36 of the said judgement it was further observed that :

"36..... If in fact no decree for cancellation was needed and real and effective relief could be granted by the revenue court only, the civil court decree would even then be valid and not void if no objection to the same was taken before the trial court. If such an objection was taken before the trial court before framing of issues and objection continued to be taken before appellate and revisional court and there has been failure of justice because of change of forum then the civil court decree could be said to be without jurisdiction."

37. Further the Apex court in Shri Ram and another (supra) has held in paragraph 7 which reads as under :

"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."

38. Judgement of Full Bench in Ram Padarth Vs. Second Additional District

Judge, Sultanpur and others reported in 1989(AWC) 290 was considered by the Apex court in Shri Ram and another (supra).

39. Further, in Kishori Prasad Vs. IIIrd Additional District Judge Varanasi and others reported in 2003 (94) RD 36 wherein suit was filed for cancellation of sale deed and further relief was for injunction and for possession. The court has held in paragraph 11 of the judgement that on account of the plaint allegation, defendants are recorded tenure holders on the basis of sale deed executed in their favour and even if it be presumed that sale deed in favour of defendant was cancelled, the plaintiff cannot appropriate it to his advantage by claiming any right unless a declaration comes to be made by the revenue court that his sale deed is valid and he is the real and bonafide Bhumidhar. In this perspective, the pith and substance of the cause of action in the said case is declaration of the right of the plaintiff as Bhumidhar. It is not a case where after obviating the hurdles by cancellation of the void document, the name of the original tenure holder will be automatically restored by ministerial act. It was held that it is, thus obvious that the plaintiff cannot derive any right unless declaration is made by the revenue court. The plaintiff in the said case having claimed title on the basis of subsequent sale deed which was executed after the sale deed executed in favour of defendant, and his name recorded as Bhumidhar, can not claim any right unless his right come to be declared as Bhumidhar. Before entering into the question of cancellation of the sale deed in favour of defendant, the civil court had to adjudicate upon and make declaration whether the sale deed in favour of the plaintiff is valid one and this necessarily entails declaration of the title of the plaintiff as Bhumidhar. It is not simply denial of the title of the defendant itself on the basis of the deed but it is declaration of the title in favour of the plaintiff and in view of the same it is only Revenue Court which has jurisdiction to entertain the suit and civil court has no jurisdiction.

40. Having perused the plaint allegation in the present case, it is amply borne out that the plaintiff Ravi Shanker Prasad Singh is claiming title on the basis of sale deed dated 27.6.89 executed by Mohan and others, who had claimed right on the basis of sale deed dated 19.4.1985 executed by Rajaram, original tenure holder. The compromise has been arrived on 27.8.1997 between petitioner defendant No.1 Babu Ram successor of Raja Ram, and Mohan and others, the vendee of the sale deed dated 19.4.1985. In the said compromise, exclusive rights were given to the petitioner Babu Ram over entire area of plot no. 125 which is subject matter of original suit no. 1180 of 89 filed by Ravi Shanker Prasad against Babu Ram and other, out of which present writ petition arose.

41. It is further apparent from the record that plaintiff Ravi Shanker Prasad Singh is not in possession of the arazi no. 125 area 28 decimal for which he is seeking relief of permanent prohibitory injunction on the basis of sale deed dated 27.6.89. Thus the "cause of action" emerging from the aforesaid fact is that plaintiff is seeking declaration of his right as Bhumidhar on the basis of sale deed dated 27.6.89 and unless said declaration is made no relief can be granted in his

favour.

42. The plaintiff/respondent no.3 is not a recorded tenure holder nor in possession of the land in question. In view of the same no relief can be granted to him by the civil court in suit for permanent prohibitory injunction on the basis of sale deed dated 27.6.89. The real cause of action and the relief sought as discussed in Full Bench decision of Ram Padarth (Supra) as considered in the judgement of the Apex court in Shri Ram and another (supra) can only be granted by the revenue court. The objection regarding jurisdiction of the civil court was taken before framing of issues in the suit filed by plaintiff/respondent no.3. Issue no. 3 was framed regarding the jurisdiction of the civil court.

43. In the case of Rameshwar and Brajesh(supra) relied upon by the counsel for the respondents, court has come to the conclusion that in view of plaint allegations and the relief clause, the suit for cancellation of sale deed and permanent injunction was cognizable by the civil court. In Chhabi Lal and others (supra), the court had concluded that suit for injunction filed by the plaintiff was based upon undisputed title of the plaintiff/respondent and as such he could not be relegated to the revenue court and the civil court had jurisdiction over the subject matter of the suit. In Kulwant Kaur Sidhu(supra), the suit was held to be cognizable by civil court in the facts of the said case where plaintiff had established that she was a recorded tenure holder as well as in possession of the land in suit. In the case Amir Alam Khan(supra) the suit was filed for permanent injunction against the Lucknow Development Authority through its Secretary with the contention that employees of Lucknow Development Authority and representatives of Narendra Nagar Housing Cooperative Society came to the property and tried to dispossess the plaintiff on the pretext that property had been acquired for Lucknow Development Authority and has been transferred to Narendra Nagar Housing Cooperative Society. In the said case, the court has held that suit for relief of permanent injunction alone was not maintainable as plaintiff's title over the plot in question was seriously in dispute. The plaintiff was not in possession of the plot and was required to claim declaration of title to prove his title and possession over the plot in dispute.

44. The judgements relied by the learned counsel for the respondents as discussed above, are not applicable in the facts and circumstances of the present case where plaintiff is not recorded tenure holder nor in possession of the suit property.

45. In view of the above discussion, it is clear that courts below had wrongly held that the suit is maintainable in the civil court and relief of injunction and cancellation of sale deed can only be granted by the civil court. The courts below had wrongly concluded that main point in the suit is to consider the legality of the sale deed and for which civil court alone has jurisdiction. The suit for permanent prohibitory injunction filed by the respondent no.3 cannot be maintained without declaration of his title as Bhumidhar over the disputed property

46. In the result, the writ petition is allowed. The orders dated 12.9.2003 and 4.9.2003 passed by the Additional Civil Judge (J.D.)Haveli Varanasi and District Judge Varanasi; respectively are quashed.

47. It is however, made clear that this court has not adjudicated upon the respective claims of the parties over disputed land and the competent court having jurisdiction to decide the claim of the parties over the disputed land, if approached, shall decide the same without being influenced by the observations made above.