(2015) 06 AHC CK 0009

In the Allahabad High Court

Case No : Misc. Single No. 3591 of 2015

Bajrang Vikram Singh	APPELLANT
Vs	
Board of Revenue U.P. Allahabad and Others	RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Evidence Act, 1872 — Section 60
Uttar Pradesh Land Revenue Act, 1901 — Section 34, 34(5)

Citation : (2015) 06 AHC CK 0009

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

Bench : Single Bench

Advocate : U.S. Sahai, for the Appellant; Azad Khan and Sanjay Tripathi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.

1. Heard Sri U.S. Sahai for the petitioner and Sri Azad Khan, Standing Counsel for Gaon Sabha.

2. The writ petition has been filed against the order of Board of Revenue dated 5.6.2015 passed in Second Appeal No. 37 of 1984-85 dismissing the Second Appeal filed by predecessor of the petitioner.

3. The dispute between the parties related to plot No. 123 situated in village Gadhakala, pargana Miranpur and district Sultanpur. It is admitted to the parties that one Vritanti was the tenure holder of the land in dispute. Bhagirathi (now represented by respondents- 3 to 6) derives his title on the basis of sale deed dated 3.3.1965 allegedly executed by Vritanti in his favour. While the petitioner derive his title on the basis of sale deed dated 31.12.1970 executed by Nirmal son of Vritanti in favour of predecessor of the petitioner. Bhagirathi filed a suit under Section 229B/209 of UP Act No. 1 of 1951 for declaring him as bhumidhar

of the land in dispute and for ejectment of the petitioner from the land in dispute. The suit was tried by the Assistant Collector 1st Class, Sultanpur who by order dated 18.9.1981 held that at the time of sale deed dated 3.3.1965 Vritanti was not bhumidhar as such the sale deed was not valid document. He further found that sale deed dated 31.12.1970 was a bonafide transfer for a valid consideration. The petitioner entered into the possession on its basis as such he was not liable to be ejected. He further found that suit was barred under Section 34(5) of UP Land Revenue Act 1901. On this finding the suit was dismissed. Bhagirathi filed an appeal from the aforesaid decree. The appeal was heard by Additional Commissioner, Faizabad Division, Faizabad who by judgment dated 3.12.1984 found that a perusal of khatauni 1373 F-1375 F shows that there is endorsement regarding grant of bhumidhari Certificate No. 28603 of the land in dispute thus it is clear that at the time of sale deed dated 3.3.1965 the recorded tenure holder has deposited required amount of land revenue and bhumidhari certificate was issued as such the sale deed dated 3.3.1965 was valid document. So far as the bar under Section 34(5) of UP L.R. Act is concerned, the proclamation has been filed in the suit that Bhagirathi had applied for mutation of his name on the basis of sale deed as such bar under Section 34(5) of UP L.R. Act is not applicable. On this finding the appeal was allowed and decree of the trial court was set aside and the suit was decreed. Ram Sunder Singh and Nirmal filed a Second Appeal against the aforesaid decree. The Second Appeal was heard by Board of Revenue who by the order dated 1.2.1991 has set aside the finding of the Commissioner regarding issue of bhumidhar certificate as well as execution of sale deed executed by Vritanti. He further found that proclamation of the proceeding under Section 34, which was brought on record, was the original proclamation and issued in the name of Vritanti as such Bhagirathi was not supposed to be in possession of the original proclamation and document appears to be procured and forged accordingly the suit is barred under Section 34(5) of UP L.R. Act. On this finding the Second Appeal was allowed and plaint was rejected under Order 7, Rule 11 CPC. Bhagirathi challenged the aforesaid order in Misc. Single No. 1472 0f 1991 before this Court. This Court found that as the suit was filed for ejectment and suit itself was for delivery of possession as the provisions of Section 34(5) of UP L.R. Act will not be applicable and the Second Appeal was wrongly allowed on this ground. On this finding the writ petition was allowed and the judgment of Board of Revenue was set aside and the matter was remanded to the Board of Revenue for deciding the second appeal afresh. After remand the matter was heard by Board of Revenue who by the impugned order dated 5.6.2015 found that in the sale deed it has been mentioned that in order to obtain bhumidhari certificate the required amount of land revenue has been deposited. The sale deed being the registered document was proved from the statement of the witnesses. Uma Shankar who was scribe of the sale deed has also proved its execution. In such circumstances, the finding of the appellate court regarding execution of the sale deed is upheld and it has been further held that Nirmal was not son of Vritanti as such sale deed executed by Nirmal dated 31.12.1970 was not valid. On this finding the second appeal has been dismissed. Hence this writ petition has been filed.

4. The counsel for the petitioner submits that so far as the sale deed dated 3.3.1965 is concerned, it was executed by some impostor while Vritanti had already died in the beginning of the year 1965. Bhagirathi did not produce the original bhumidhari certificate on record and no reliance can be placed only on the basis of endorsement in the khatauni regarding conversion of nature of the land from sirdari to bhumidhari which could not be evidence regarding issuance of bhumidhari certificate. Kanhai Lal the alleged marginal witness of the sale deed, who in his entire statement, has not stated a word that sale deed dated 3.3.1965 was signed by Vritanti. He clearly stated that when he had signed the document, Vritanti was not present there. Further he has stated that he has not gone to the Registrar office thus due execution of the sale deed was not proved from the statement of Kanhai Lal and execution of sale deed dated 3.3.1965 has been wrongly taken as proved.

5. So far as the finding that the suit is barred under Section 34 of UP L.R. Act is concerned, the finding of Board of Revenue in this respect was against Bhagirathi but the judgment was not challenged by Bhagirathi. In such circumstances, relying upon this finding, he submits that the suit is barred under Section 34(5) of UP L.R. Act and the suit is liable to be dismissed but the second appeal has illegally been dismissed.. The petitioner filed the copy of voter list of the year 1971 in order to show that Nirmal was son of Vritanti but the Board of Revenue has illegally ignored this document and held that no documentary evidence has been filed to show that Nirmal was son of Vritanti. He submits that judgment of Board of Revenue, is illegal and liable to be set aside.

6. I have considered the arguments of the counsel for the petitioner and examined the records. So far as the arguments raised in respect of suit being barred under Section 34(5) of UP L.R. Act is concerned, this issue has been specifically decided by this Court in Misc. Single No. 1422 of 1991 by order dated 1.10.2013. The High Court has clearly held that the suit was not barred under Section 34(5) of UP L.R. Act. The judgment of Board of Revenue has been set aside as such judgment along with findings has become non est and no reliance can be placed on the finding recorded in it.

7. So far as the execution of the sale deed is concerned, the execution of the sale deed is required to be proved according to the provisions of Section 60 of the Evidence Act and the person who has seen the writing and signature of particular person can prove it. In such circumstances, the Board of Revenue found that due execution of the sale deed was proved from the statement of Bhagirath as well as scribe Uma Shankar son of Radhey Lal. Thus apart from Kanhai Lal, the marginal witness, two other persons have also been examined who had seen Vritanti signing the document of sale deed and due execution of the sale deed was found to be proved by the appellate court as well as second appellate court. Thus it cannot be said that the finding is perverse or based upon no evidence and no interference is required by this Court in exercise of writ

jurisdiction.

8. So far as the possession of the petitioner is concerned, a perusal of khasra shows that possession of Nirmal was started from 1378 F while the suit was filed in 1387 F and at that time the limitation was of 12 years and suit was within 12 years. Thus the possession of the petitioner will not deprive the court below from decreeing the suit for ejectment.

9. So far as the sonship of Nirmal is concerned, this is not very relevant as the sale deed executed by Nirmal is subsequent to the sale deed executed by Vritanti. Although the Board of Revenue recorded a finding that Nirmal was not the son of Vritanti, but the judgment is not liable to be set aside on this account.

10. So far as the arguments that the sale deed was executed by some impostor as Vritanti died prior to sale deed dated 3.3.1965 is concerned, no documentary evidence has been filed in this respect as such this ground does not arise.

11. So far a bhumidhari certificate is concerned, the sale deed contains a recital that Vritanti had deposited requisite amount of land revenue for issuance of bhumidhari certificate and thereafter the khatauni contains the endorsement regarding the conversion of nature of the land from sirdari to bhumidhari. In such circumstances, Board of Revenue has recorded a finding that bhumidhari certificate has been issued and sale deed was valid. The petitioner as well as Nirmal derive their title as well as bhumidhari right only on the basis of that endorsement in the khatauni. It has been relied upon by the Board of Revenue and there is not any independent evidence to show that Nirmal had obtained bhumidhari certificate later on and argument in this respect has no force.

12. The writ petition is concluded with the findings of fact. No interference is required by this Court. The writ petition is dismissed.

