

(1992) 09 AHC CK 0024

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32959 of 1992

Baliram and Others

APPELLANT

Vs

Board of Revenue, U.P. and Others

RESPONDENT

Date of Decision : 19-09-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 151

Constitution of India, 1950 — Article 226

Land Revenue Act, 1974 — Section 41, 52

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 48, 49

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 229B

Citation : (1993) 1 AWC 398 : (1993) RD 91

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Triveni Shankar, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—The present writ petition has been directed against the order dated 20-6-86, passed by the Sub-Divisional Officer, the Respondent No. 2, the order dated 24-12-91 and the order dated 13-4-92 passed by the Board of Revenue, the Respondent No. 1.

2. The dispute was raised in respect of plot No. 687/2 area 26 situate in village Ishri, Pargana Sikandarpur Garvi, Tehsil Rasra, Distt. Ballia. This plot has been given new numbers as 270 area 24 and plot No. 274 area 1 decimal. The plot No. 687/2 was recorded in the name of Shiv Ji Maharaj, a deity.

3. The case of the Petitioners is that a suit u/s 229B and 209 of U.P. Z.A. and L.R. Act (hereinafter referred to as the Act) was filed in the year 1960 by Shiv Ji Maharaj, a deity, through its Sarvarakars namely, Ambika Singh, Durga Singh S/o. Ram Raj Singh, Radha Singh S/o. Ram Surat Singh Vidya Dhar Singh, Banshidhar Singh, Murlidhar Singh and Rikhdeo Singh alias Bhola Singh S/o. Mangia Singh against Muneshar Singh. Along with the suit a compromise was

also filed between the parties wherein Plaintiffs accepted Muneshar Singh as adhivasi of the land in question. The compromise application was filed on 9-3-60 and in pursuance of the said compromise application a decree was passed in terms of the compromise on 16-3-60. After the compromise decree was passed, the name of Muneshar Singh was mutated in the revenue records. Subsequently an application was filed on 24-10-75 by Vidyadhar Singh, Murlidhar Singh, Bansidhar Singh, Rkhdeo Singh and Radha Singh to set aside the compromise decree on the allegation that fraud was practiced upon Court in collusion with Ambika Singh and Durga Singh and without any notice to the applicants the decree was obtained. They tried to trace out the record of the suit but it was not available. The entire proceedings for the compromise was forged and when they came to know of it they filed application and the delay in filing the application, if any, be condoned.

4. The Petitioners took various objections. It was stated by them that the compromise was valid one, and after the said compromise the consolidation proceedings intervened and as no objection was filed by the applicants, their names continued in revenue records and they have raised construction on the land in question. The compromise was duly verified and it was valid and in accordance with the law. The Respondents (who were the applicants) also filed an application that report of the handwriting expert may be obtained. They had not put their signatures on the compromise application nor they had signed vakalatnama. The Sub-Divisional Officer obtained a report of the hand writing expert who submitted report stating that the admitted signatures of the Respondents do not tally with those which were existing on the application and the vakalatnama alleged to have been executed by the Respondents. The Sub-Divisional Officer, the Respondent No. 2 after taking into consideration the entire facts, allowed the application and set aside the said compromise decree by order dated 20-6-1986.

5. The Petitioner filed revision against the said order before the Commissioner. The Additional Commissioner II Varanasi Division Varanasi recommended to the Board of Revenue that the case may be remanded for reconsideration of the application. The Board of Revenue did not accept the recommendation of the Additional Commissioner and found that a fraud was practiced upon the Court and it was as fit case in which the compromise decree should be set aside. It dismissed the revision by order dated 24-12-1991. The Petitioners have challenged these orders.

6. I have heard the learned Counsel for the Petitioners at length and the learned Counsel for the State.

7. The learned Counsel for the Petitioners submitted that if any fraud was practiced upon the Respondents, they could have filed the suit for cancellation of the said decree and an application to set aside the compromise decree was not maintainable under the provisions of Section 151 Code of Civil Procedure. On consideration of material evidence on record, the Respondent No. 1 has come to

the conclusion that the fraud was practiced upon the Court and the Court had full jurisdiction to take into consideration the attending circumstances and to find out as to whether the parties to the compromise had actually entered into any compromise. The view taken by the Respondent No. 1 is supported by various decisions. In *Chutur Prasad Shah v. Mt. Bishuni Kuer* AIR (30) 1943 pat 13, the Court had drawn distinction between a fraud practiced upon a party and a fraud practiced upon the Court. The Court with approval relied upon the following observation of Das-J:

A distinction has been drawn in the cases of the Indian Courts between a fraud practiced upon a party and a fraud practiced upon the Court. It has been laid down that where the question is whether there was a consent in fact, there is power in the Court to investigate the matter in a properly constituted application and to set aside the decree if it is satisfied that a party never in fact consented to it but that the Court was induced to pass the decree on the fraudulent representation made to it that the party had consented to it but that where there is a consent in fact, that is to say, where the parties have filed a compromise petition and they admit that they have filed it but one of the parties alleges that his consent was procured by fraud, the Court cannot investigate the matter either in review or in the exercise of its inherent power, and that the only remedy of the party is to institute a suit to set aside the decree on the ground of fraud—in other words, the factum of the consent can be investigated in summary proceedings but the reality of the consent cannot be so investigated.

8. In *Peary Choudhary v. Sonoory Das* AIR 1915 Cal. 622, the Court confirmed the order of the trial Court where the compromise decree was set aside on the ground that false and fraudulent vakalatnama and a petition of compromise was filed inducing the Court to pass a compromise decree and it was observed that a Court has not only power but it is its duty to set aside the decree obtained by fraud practiced upon the Court when it is apprised of it.

9. In *Sundararajalu v. Narayanaswami* AIR 1927 Mad 813, *Srinivasa Ayyangar-J.* observed:

There is always an inherent power in every Court to see that no fraud is allowed to be perpetrated and to prevent any miscarriage of justice by reason of any fraud perpetrated by parties to proceedings.

10. In *Krishan Lal v. Gulab Ram* AIR 1985 P. & H. 197, where the execution application was withdrawn on the basis of the compromise which was found to be fraudulent the Court had held that if one of the parties to the litigation obtains a favourable order from the Court on the basis of compromise which is alleged by the other party to have been obtained by fraud, the Court observed:

It is well settled that if one of the parties to a litigation obtains a favourable order from the Court on the basis of a compromise which is alleged by the other party to have been obtained by fraud, the wronged party can seek redress by instituting a suit, but if the party plays a fraud on the Court as well, then that

very Court has inherent powers to deal with the matter and grant the relief on an application by the wronged party u/s 151, Code of Civil Procedure, and it is not necessary for the said party to institute a suit for getting the wrong undone.

11. In the present case the fraud is apparent on the face of the record. It smells from every corner. The following glaring facts leave no doubt that the compromise decree was obtained collusively and fraudulently.

(1) The property was admittedly in the name of Sri. Shiv Ji Maharaj. The deity was tenure holder of the land in question. Suit was filed under Sections 229B and 209 of U.P. Z.A. and L.R. Act against Muneshar Singh, the alleged predecessor-in-interest of the Petitioners. The suit was filed by 8 persons namely, Ambika Singh, Durga Singh, Radha Singh, Vidyadhar Singh, Bansidhar Singh, Murlidhar Singh and Rekhideo Singh. In the plaint, the allegation was that Muneshar Singh was in unauthorised occupation of the land and he should be evicted. It is surprising to note that along with the suit, compromise was also filed and alleged to have been signed by all the Plaintiffs. The Petitioners in para 4 of the Writ Petition have stated that alongwith suit a compromise application was also filed in between the parties wherein Plaintiffs accepted that the name of Muneshar Singh, the Defendant, be recorded as "adhivasi" of the disputed land. It is surprising to note that the suit is being filed for eviction of a person on the ground that he is in unauthorised occupation and alongwith the suit itself a compromise is filed without any reason in the said compromise the rights of Muneshar Singh are accepted and all the rights and title in the land in dispute is given to Muneshar Singh. If the entire property was to be given to Muneshar Singh, there was no reason to file the suit for ejectment just to get a compromise filed in the suit alongwith the plaint.

(2) The Board was right in its observation "I am sure that the suit was filed at the instance of Defendant Muneshar Singh to secure a collusive decree in his favour

(3) The compromise application which was filed indicates that Muneshar Singh was recorded in 1356 Fasli and 1362 Fasli. The revenue record indicated that Muneshar Singh, who was Defendant in the suit was never recorded in 1356-F and 1362-F in para 4 of the Writ Petition it is also admitted that name of Muneshar Singh was not recorded as tenure holder, though he was in possession this very fact, that in the compromise application the claim was based on the fact that possession of Muneshar Singh was recorded in the revenue records was totally false to his knowledge and this fact has also been admitted in the Writ Petition.

(4) The compromise application indicates that it contains signatures and thumb impressions of the Respondent Nos. 4 to 6 and Radha Singh and Vidyadhar Singh. They denied their signatures and thumb impressions and a report of the expert was called and he proved that the admitted signatures of the Respondents 4 to 6 do not tally with the signatures which are on the compromise application

and the power which were alleged to have been executed in favour of a Counsel of Plaintiffs. The learned Counsel for the Petitioner urged that no opportunity was given for cross-examination of the hand writing expert the record was before the Respondent No. 2 and he was satisfied by taking into consideration the entire circumstances and comparing the signatures that the admitted signatures did not tally with the signatures and thumb impressions on the compromise application. It was not necessary to further investigate into the matter by cross-examining the expert.

(5) The Petitioners submitted that Durga Singh and Ambika Singh did not challenge the compromise decree and they had rather admitted such compromise decree in proceedings u/s 41 of the Land Revenue Act. It is admitted that there were 8 Sarvarakars and it is admitted and averred in the Writ Petition itself that 8 persons filed suit as Sarvarakars. The property belonged to the deity. The position of a Sarvarakar was that of a Manager and he was bound to act for the benefit of the estate of the deity.

12. In Hossein Ali Khan v. Mahanta Bhagaban Das ILR 34 Cal. 240, Rampimi-J. observed that it is not competent to a shebait to alienate endowed property by way of mortgage or sale for satisfaction of his debts yet he is authorised to deal with the Endowed property for its benefit the power of shebait in this respect has been compared to that of a Hindu widow in possession of her husband's estate.

13. The law as propounded in para 6.38 of Chapter VI of B.K. Mukherjea's. The Hindu Law of Religious and Charitable Trusts is "property dedicated to the services of an idol is, as a rule, inalienable but exception to this rule has been recognised in the interest of the deity itself."

14. The property in question was debutter property. It could not be alienated except for its benefit. The compromise should have been a lawful compromise. The effect of the compromise was alienation of the property in favour of the Defendant. There was not even a single record which indicated the possession of Muneshar Singh, who was Defendant in suit. The compromise could be only under Order 23 Rule 3 of the Code of Civil Procedure. It should be proved to the satisfaction of the Court that suit has been adjusted wholly or in part by any lawful agreement or compromise. There was nothing to indicate on the record that there was any lawful agreement or adjustment. In Narayanasami v. Board of Religious Endowments AIR 1930 Mad. 629, the Court while taking into consideration the terms of the compromise held that in case of a Public Trust no compromise can be said to be lawful which sacrifices its interest. The Court rejected the compromise when it found that the temple did not get any advantage and on the contrary the defaulting trustees obtained other possible benefits.

15. The suit is filed and along with filing of the suit, the claim of the Defendant, Muneshar Singh, is admitted and in the compromise decree the rights of the Defendant are admitted and his name is directed to be recorded in the revenue

records. It was indicated that he was recorded in Khasra 1356F and Khasra 1362F when, in fact, he was never recorded. The compromise adversely affected the interest of the deity and it did not get any advantage from the compromise. In effect, it was alienation of the debutter property and was void in law. In *Jokhan Vs. Ram Deo and Others*, , where Court was considering a compromise, filed in a suit on the basis of family settlement, it on the scrutiny of the terms of the compromise, found that, in fact, it was in effect a transfer and effected to circumvent statutory prohibition against transfer and it was invalid. The Court observed :

What the parties really intended was a transfer of some of the plots and they resorted to the device of giving false appearance to the transaction in order to circumvent the law and to save it from the statutory prohibition against transfer. If such was a case the compromise was a mere camouflage and it cannot be regarded as a transaction enforced into by the parties bonafide for the purpose of putting an end to the dispute among family members.

16. The facts in the present case undoubtedly reveal that Ambika Singh and Durga Singh were puppet Plaintiffs and colluded with the Defendants Muneshwar Singh and forged and fraudulent signatures and thumb impressions of other Plaintiffs were obtained just to alienate the property of the deity. The Respondent No. 1 and 2 rightly set aside the said compromise decree.

17. The learned Counsel for the Petitioners vehemently urged that the application for setting aside the compromise decree was filed after a gap of about 18 years and there was no reasonable explanation for such delay. The Respondents had categorically stated that the record of the case was misplaced and they were never aware of such proceedings and when they came to know of it they filed the application. Once it is found that the compromise application did not bear their signatures, they rightly filed the application when they came to know of it. Secondly, when the Court finds that there is a miscarriage of justice on account of fraud practiced upon the Court, they cannot place an embargo of limitation upon it. It is the duty of the Court to see that no miscarriage of justice takes place on account of any fraud practiced by any party upon the Court. Whenever it comes to the light of the Court, it is under a duty to set aside such fraudulent decree. The Court cannot be used as a tool in fraudulent scheme of a party. It is settled principle that fraud vitiates all proceedings. The property was a debutter property and it could be looked only by the Sarvarakars. Taking into consideration the totality of the circumstances, the Court was justified in setting aside the compromise decree and the plea of limitation was rightly rejected by the Respondent No. 1.

18. The last submission of the learned Counsel for the Petitioner is based upon the provisions of Section 49 of U.P. Consolidation of Holdings Act, 1953. It was urged by the learned Counsel for the Petitioner that in the year 1964 the consolidation proceedings started in the village as the village was notified u/s 4 of the said Act. The name of Muneshwar Singh was recorded in the revenue

records. The village was denotified u/s 52 of the Act in the year 1974. The Respondents 4 to 6 did not file any objection during the consolidation proceedings against the entry of the name of Muneshar Singh and as they failed to file such objection, they cannot challenge the compromise decree. The argument has no substance. The name of Muneshar Singh was recorded on the basis of the compromise decree. The name of Muneshar Singh was never recorded in the revenue records prior to the compromise decree was passed by the Court and the Court having recorded a finding that the decree was a collusive and fraudulent, the entry made in perusance of such decree will not give any right to the Petitioners. Secondly, the suit having been filed prior to the notification u/s 4 of the U.P. Consolidation of Holdings Act, the bar of Section 49 of the Act is of no avail, as it contemplates filing of suit after notification u/s 4 of the Act. The Petitioners have invoked extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. In *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, , the Supreme Court observed:

Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them In grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural Justice or refuse to exercise jurisdiction vested in them, or there is an error apparent on the face of record and such act, omission, error, or excess has resulted in manifest injustice. (emphasis supplied).

19. In *Parnu v. Dy. Director of Consolidation and Ors.* 1964 ALJ 240, where in a revision the Deputy Director of Consolidation acted in excess of jurisdiction vested in him u/s 48 of the U.P. Consolidation of Holdings Act, but his order was proper, equitable and just, it was held that the High Court should not issue a writ for setting aside such an equitable order.

20. In *Bux Singh v. Joint Director, Consolidation* AIR 1966 All. 156, this Court held:

Writ remedy by way of certiorari is, however, a discretionary remedy and where impugned orders are equitable and substantial justice seems to have been done to the parties as a result of such orders, this Court would not be inclined to interfere in writ jurisdiction merely on the ground that such orders are wrong in law.

21. In *Grahi Shanker Singh v. VIII Additional District Judge* 1991 RD 10, it has been held that though the learned District Judge had no jurisdiction to entertain revision, but as an illegal order passed by the Sub-Divisional Officer was set aside, the Court was not bound to interfere in hid order.

22. In the present case, a fraudulent compromise decree having been set aside, substantial justice has been done and it is not fit case for interference under Article 226 of the Constitution of India.

23. The Writ Petition fails and is accordingly dismissed.