

(2016) 01 AHC CK 0294
In the Allahabad High Court
Case No : C.M.W.P. No. 29921 of 2006

Bechan

APPELLANT

Vs

Lal Chand

RESPONDENT

Date of Decision : 23-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 133 RD 645

Hon'ble Judges : Sibghat Ullah Khan, J.

Bench : Single Bench

Advocate : S.S. Tripathi and A.P. Tiwari, Advocates, for the Petitioner; V.S. Srivastava, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Sibghat Ullah Khan, J. - Heard learned Counsel for both the parties.

2. This is a classical case demonstrating wastage of time and energy of parties and Courts and money of parties and resources of the State in administration of justice. Just one sale-deed and ten cases pending or already decided and about fifteen more in the offing. It is a tragedy. However the catastrophe is that, dozens of thousands of such cases are filed and pending.

3. Petitioner alleges that respondent No. 1 sold the agricultural land in dispute to him on 24.7.1989 and thereafter the name of the petitioner was mutated/ entered in the revenue record on 23.10.1989 (first case). Respondent No. 1 filed application for recall of the said order in 1999-2000 (after eleven years) which was allowed by Naib Tehsildar Nautanawa District Mahrajganj on 27.1.2001 (second case). Appeal filed against the order (case No. 39) was dismissed by S.D.O. on 1.3.2005 (third case). Additional Commissioner (Adm.) Gorakhpur set aside the orders dated 27.1.2001 and 1.3.2005 by allowing the Revision No. 313/135/M of 2005 on 25.3.2010 (R.A.I.) and remanded the matter to Tehsildar to decide the restoration application after hearing both the parties (fourth case).

Said order was challenged before Board of Revenue through revision No. 1970/L.R./2009-10 which was disposed of with the direction to the Naib Tehsildar to decide restoration application (fifth case). The restoration application is still pending. Five similar cases will follow the decision of restoration application. If restoration application is allowed ultimately then another similar round of five cases will follow the decision on mutation application. (Total 15 cases) grant/non grant of stay in restoration or mutation may lead to additional five rounds of litigation in similar manner. Orders passed on mutation are subject to the result of regular suit based on title (such suits have already been filed as mentioned below.) The suit and the injunction application filed therein also give rise to several rounds of litigation before Trial Court, Appellate/Revisional Court and second Appellate Court.

4. The sale-deed also gave rise to four suits. Earlier one suit was filed by respondent No. 1 for injunction, other suit was filed by the wife of respondent No. 1 for cancellation of the sale deed, the third suit was filed by respondent No. 1 for cancellation of sale deed, the fourth suit out of which this writ petition arises was filed by the petitioner purchaser for permanent prohibitory injunction i.e. O.S. No. 312 of 2002. The temporary injunction application filed in O.S. No. 312 of 2002 was rejected by Civil Judge J.D. Farenda, Mahrajganj on 20.7.2002. Against the said order petitioner filed Misc. Civil appeal No. 29 of 2003 which was dismissed by A.D.J. Mahrajganj on 12.5.2006, hence this writ petition.

5. Till date sale-deed has not been cancelled. Revenue entries are also in favour of the petitioner. Learned Counsel for the respondent has argued that respondent No. 1 took permission of the D.M. to sell his land to Ramvriksha and firstly he did not execute the in sale-deed in favour of the petitioner and secondly even if sale-deed was executed it was illegal because no permission had been sought. Both petitioner as well as respondent No. 1 are scheduled caste. The property is not covered by section 131-B of U.P.Z.A.L.R. Act. Accordingly, permission was not necessary.

6. Accordingly, in my opinion prima facie the petitioner has made out a case for grant of temporary injunction. Writ petition is accordingly allowed impugned orders are set aside, petitioner's temporary injunction application is allowed in the following manner:-

It is directed that until decision of the suit respondents shall not interfere in the possession of the petitioner. Petitioner is also restrained from alienating the property in dispute or changing its nature till the decision of the suit. All the four suits shall be consolidated and decided together. It is stated that in OS. No, 47 of 1999 filed by respondent No. 1 Lal Chand. He (Lal Chand) has filed application for dismissal of the suit as withdrawn. If such an application is pending then the suit shall be dismissed as withdrawn. Respondents No. 2 to 5 are sons of Lal Chand. The suits must be decided very expeditiously. Absolutely, no unnecessary adjournment shall be granted to the plaintiff as he has been granted temporary injunction. If any adjournment is granted to the plaintiff thee it shall be on heavy

cost which shall not be less than Rs. 300/- per adjournment payable before the next date failing which suit shall be dismissed for non-prosecution. However, if defendants-respondents seek more than two adjournments in this direction shall stand automatically vacated/recalled.

7. Writ petition is accordingly disposed of.