
(2011) 09 AHC CK 0174

In the Allahabad High Court

Case No : Civil Miscellaneous Writ petition No. 43814 of 1998

Damodar Das and Another

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2011) 09 AHC CK 0174

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The present writ petition arises out of a suit instituted u/s 229-B of the U.P.Z.A. and L.R. Act by one Anand Singh (since deceased) now represented by Respondent Nos. 4 to 7, against the Petitioners.

2. The suit was instituted for declaration that the sale-deed allegedly executed by him on 30th May, 1974 registered on 31st May, 1974 in favour of the Petitioners is a void document as the said sale-deed was never executed by him. The suit was instituted on 16th June, 1988 after the expiry of more than 14 years from the date of execution of the sale-deed. The suit was contested by denying the plaint allegations on the pleas inter alia that in pursuance of the sale-deed in question the names of the Petitioners/purchasers were mutated in the revenue record on 20th March, 1975 and since then they are continuing in occupation of the disputed land. On the basis of the pleadings of the parties, the issues were framed. The evidence documentary and oral was led and the suit was decided by the trial court in the first round. The appeal was preferred and ultimately second appeal was preferred by the Petitioners herein before the Board of Revenue earlier. It was urged by the Petitioners that one of the issues in the suit was as to whether the sale-deed in question bears the signature of the Anand Singh or not? An opportunity should be granted to prove the signature of Anand Singh on

the disputed document by calling expert opinion. It appears that the plea was found favour with the Board of Revenue. The appeal was allowed by it by providing that an opportunity be afforded to file evidence to prove the disputed sale-deed. The matter was restored to the trial court. After remand, the suit has been decreed by all the three courts below, hence, the present writ petition.

3. Shri S.C. Varma, learned Counsel for the Petitioners submits that there has been no proper appreciation of evidence by the courts below. Therefore, the finding recorded by them is vitiated. Much emphasis was laid on the point that the Sub Registrar, who registered the sale-deed, was examined by the Petitioners. He deposed that he knew Anand Singh and verified signature of Anand Singh. The oral deposition of Sub Registrar (Rajeshwar Singh Pawar) has not been considered. Therefore, the finding recorded that the sale-deed was got executed and registered by impersonation, is incorrect and is vitiated. It was also submitted that the finding of possession recorded by the three authorities below is incorrect.

4. In contra, Shri Siddharth Varma, appearing on behalf of the contesting Respondents submits that no case for interference in the present writ petition under Article 226 of the Constitution of India has been made out. The evidence has been appreciated by the Revenue Courts and on examination of the evidence, they have reached to a right conclusion. Submission that the statement of Rajeshwar Singh Pawar, Sub Registrar was not considered, is not correct.

5. It was further submitted that the witnesses examined by the parties established that the contesting Respondents are in possession over the disputed land. In any case, the writ petition is concluded by finding of fact. He also raised a preliminary point that the writ petition as framed is not maintainable. The State of U.P. and Gaon Sabha are necessary parties as required under the statute namely, U.P.Z.A. and L.R. Act in such proceedings but they have not been impleaded here. The writ petition is liable to be rejected on this ground also.

6. Considered the respective submissions of the learned Counsel for the parties and perused the record.

7. At the very out set, it may be noted that on earlier occasion, the matter had reached to the Board of Revenue in second appeal and the matter was restored to the trial court to enable the Petitioners to produce the expert opinion. A copy of the said judgment of the Board of Revenue has not been produced by either party and as such, it is not clear whether the said remand order passed by the Board of Revenue was an open remand order or a limited remand order. Be that as it may, the parties proceeded with the hearing of the writ petition.

8. Question for consideration in the present writ petition is whether the execution of the sale-deed dated 30th May, 1974 in favour of the Petitioners is established. Question relating to possession over the disputed land is also implicit in the aforesaid question.

9. The basic question involved in the present writ petition is with regard to genuineness of signature of Anand Singh.

10. The statement of Anand Singh was recorded on commission as he was lying ill and confined to bed. After about so many years, with the passage of time, signature of a person is bound to differ, submits the Petitioners' counsel. In the same breath, he submits that the Trial Judge committed mistake in comparing the signature of Anand Singh himself. Reliance was placed on the statement of Rajeshwar Singh Pawar, the Sub Registrar who personally identified Anand Singh at the time of registration of the document in question. This witness has stated that he is acquainted with Anand Singh and that is the reason that the thumb impression of Anand Singh was not taken on the disputed document, which was otherwise necessary. This witness deposed that he knew Anand Singh as he had executed the other sale-deeds also. Now the argument of the Petitioners that the statement of Sub Registrar has been ignored, may be considered. The Trial Judge has dealt with the matter in the light of the statement of Anand Singh. Anand Singh in his deposition has denied any acquaintance with Sri Rajeshwar Singh Pawar, the Sub Registrar. He also denied his association with Surendra Singh through whom Sri Rajeshwar Singh Pawar, the Sub Registrar claimed that he had come in contact with Anand Singh. There is nothing on record to show, at least none was referred, to contradict the statement of Anand Singh in this regard. The courts below have, thus considered the statement of Sub Registrar and thus reached to a particular conclusion in the light of the evidence. This is one aspect of the matter. The second aspect of the matter is that Anand Singh came out with the case that he never came to know about the sale-deed in question and continued to be in possession of the disputed land throughout. To prove his possession, he examined two witnesses of the same village. The Petitioners, on the other hand, examined Mahendra Singh S/o Sallu Singh who is resident of other village. The said witness has no personal knowledge about the Petitioners' possession as he claimed that he came to know about the Petitioners' possession from one Amar Singh and he is giving the statement on asking of Damodar Das, Petitioner No. 1 herein. His statement regarding possession has been discarded and rightly so, as his evidence is hearsay and the witness has no personal knowledge.

11. A close reading of statement of Rajeshwar Singh Pawar, Sub Registrar would show that he was an interested witness. There appears to be no reason, why thumb mark of Anand Singh was not taken on document by him being Sub Registrar. Similarly, thumb mark of one of the attesting witness was not taken on the document. The reason is obvious. Had there been thumb mark of the Anand Singh, the said thumb mark could have been very well compared with the admitted thumb mark of Anand Singh, to find out the truth.

12. In this factual background, all the three courts below have recorded categorical finding that in pursuance of the sale-deed in question, the Petitioners never took possession of the disputed land. This is essentially a finding of fact

based on appraisal of evidence, which cannot be disturbed in a writ jurisdiction.

13. It is not out of place to mention here that there was a civil litigation between the parties before Civil Court in Suit No. 660 of 1988, Damodar Das v. Anand Singh and Ors. wherein, the possession of Anand Singh was found by the order dated 19th September, 1988. This is also indicative of the fact that the Petitioners never came in possession of the disputed plot and it is a very strong circumstance which goes against them.

14. The other aspect which has been taken into consideration is that the land is covered under the provisions of Urban Ceiling Act. When a question was put to the Petitioners as to whether any statement with regard to land in dispute is furnished, only evasive reply, pleadings ignorance has been given. The Court has also examined the statement of Daya Shankar Mishra, the scribe and preferred not to place any reliance upon it as the witness could not stand the cross-examination. In the statement, the Petitioner No. 1 could not give any reply as to whether the sale-deed was preceded by any agreement to sale or any advance money was given. He states that a sum of Rs. 2000/- was given as advance money but he could not state the source of the said amount. The courts below have thus correctly appreciated the evidence and there is no legal infirmity therein.

15. It is difficult to accept the argument of the Petitioners' counsel that the Trial Court could not itself compare the signature of Anand Singh on the disputed document. When there was conflicting expert's evidence, the Court has done no wrong in looking into the matter and reaching to a conclusion. It has been noticed by the trial Court that certain letters of signature on the disputed document do not tally with the admitted signature of Anand Singh. It corroborates the statement of the contesting Respondents that the sale-deed was obtained by impersonation.

16. Learned Counsel for the contesting Respondents submits that the written statement was filed on behalf of the State of U.P. in the suit u/s 229-B of the U.P.Z.A. and L.R. Act. The State of U.P. and Gaon Sabha are statutorily necessary party and therefore, the writ petition is not maintainable. It is not necessary in the present case to say anything on this point and the said point is left open for decision in a proper case.

17. Viewed as above, the findings recorded by the three courts below are essentially findings of fact. No illegality or perversity could be pointed out by the Petitioners therein. There is no merit in the present writ petition.

18. The writ petition is dismissed with costs of Rs. 5000/-.