
(2011) 04 AHC CK 0083
In the Allahabad High Court
Case No : Writ C No. 35649 of 1992

Ghoore and Others

APPELLANT

Vs

Moti Lal

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

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

Citation : (2011) 04 AHC CK 0083

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the Petitioners. Learned Counsel for Respondent No. 1 did not appear when arguments were heard and judgment was reserved. Respondent Nos. 2 to 5 are Board of Revenue, Additional S.D.O., gaon sabha and State of U.P. formal parties. In spite of sufficient service upon Respondent No. 6, Ahmad Ali, he did not engage any Counsel.

2. Moti Lal, Respondent No. 1 filed a suit u/s 229-B of U.P.Z.A.L.R. Act against the Petitioners (or their predecessors) and proforma Respondents claiming right in the agricultural land on the basis of sale deed executed by Shaukat Ali and Ahmad Ali Respondent No. 6. Petitioners contended that the vendors had no right to sell the land in dispute as they were not Bhoomidhar. The suit was registered as suit No. 528, Moti Lal v. Babu and others and was decreed on 27.01.1978 by Additional S.D.O. Jaunpur. Against the said judgment and decree Petitioners filed appeal No. 181 of 1978 which was allowed by Additional Commissioner Varanasi, Division Varanasi on 13.09.1979, judgment and decree passed by the A.S.D.O. was set aside and the suit was dismissed. Against the said judgment and decree of the appellate Court Moti Lal filed second appeal (second appeal No. 7 of 1979-1980) before the Board of Revenue which was dismissed on 30.05.1992.

Thereafter, Moti Lal filed Review petition before the Board of Revenue (Review petition No. 86 of 1991-92). Board of Revenue allowed the review petition on 08.09.1992 which order has been challenged through this writ petition.

3. Moti Lal Plaintiff-Respondent No. 1 purchased plot No. 103 on 30.08.1967 from Shaukat Ali and Ahmad Ali and 1/3 share of plot No. 102 on 27.08.1971 from Shaukat Ali. The vendors never denied the sale deed executed by them in favour of the Plaintiff.

4. It is undisputed that initially Bismillah was tenure holder of plot No. 102 area 0.50 acres and plot No. 103 area 0.07 acres and after his death the land was inherited by his three sons namely Shaukat Ali, Ahmad Ali and Mohammad Ali. Plaintiff Respondent No. 1 Moti Lal purchased whole plot No. 103 and 1/3 part of plot No. 102 from Shaukat Ali and Ahmad Ali. All the three sons were Defendant Nos. 5,6 and 7 in the suit. Babu father of Petitioner Nos. 1 and 2 claimed that he had purchased some other land from Bismillah and at the same time he was given plot No. 103 on sub tenancy. Simultaneously, he also pleaded adverse possession. However, no period was mentioned and other ingredients of adverse possession were also not mentioned in the plaint. In respect of plot No. 102 Moti Lal asserted that he had purchased 1/3 share. In respect of this plot Sajjad Hussain Defendant No. 2, Petitioner No. 7 and Mohd. Ayub, Defendant No. 4 since deceased and survived by Petitioners No. 8 to 10 pleaded that they had also purchased 1/3 share in the same plot prior to the sale deed executed in favour of Moti Lal. However, they had taken possession of the entire plot. They also did not plead the ingredients of ouster which are much more rigorous than the ingredients of pleas of adverse possession. The title of seller of Plaintiff could not be questioned by the Defendants as they themselves claimed that they had purchased the property from the same vendors or their father.

5. A son inheriting agricultural land from his father can transfer the same even before mutation of his name in the revenue record. If in respect of plot No. 103 the name of sons of Bismillah were not recorded then name of Babu was also not recorded after the death of Bismillah. Accordingly, non recording/mutation of the name was not material at all.

6. From the mere fact that name of sons of Bismillah were not recorded over plot No. 103 immediately after his death the lower appellate Court inferred that Babu was in adverse possession. The subsequent recording of name of Babu while the matter was being contested by Moti Lal in mutation proceedings is wholly irrelevant as immediately thereafter title suit u/s 229-B was filed and in such a situation orders passed on mutation applications are not binding. At the time of sale deed, the name of Babu was not recorded in the revenue record.

7. Similarly, without any rhyme or reason the case of Defendant No. 2 and 3 Sajjad Husain and Mohd. Ayub in respect of forceful possession over plot No. 102 was accepted by lower appellate Court. They were purchasers of 1/3 share hence their possession would be as co-sharer in the entire plot No. 102 area of which is

0.50 acres. As they were co-sharers and hence their names were mutated in the revenue record. Plea of ouster was not properly taken. Ingredients were neither pleaded nor proved.

8. Judgment and decree passed by the lower appellate Court was utterly erroneous in law. The board of revenue wrongly dismissed the second appeal at the earlier stage hence it rightly reviewed its judgment through order dated 08.09.1992.

9. Accordingly, there is no merit in the writ petition, hence it is dismissed.