
(2013) 05 AHC CK 0348
In the Allahabad High Court
Case No : C.M.W.P. No. 17271 of 2013

Gulab	Vs	APPELLANT
Om Prakash		RESPONDENT

Date of Decision : 13-05-2013

Acts Referred:

Citation : (2014) 102 ALR 561 : (2014) 2 AWC 1372 : (2014) 122 RD 503

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard Sri Sunil Kumar, learned Counsel for the petitioner and Sri Rahul Sahai and Sri Manoj Kumar Tiwari learned Counsel for the respondent. Petitioner is defendant in O.S. No. 7 of 2012 Om Prakesh v. Gulab. Trial Court/Civil Judge (J.D.) Sardhana, district Meerut through order dated 13.3.2012 granted temporary injunction to the plaintiff and restrained the defendant from interfering in the possession of the plaintiff over the land in dispute detailed at the foot of the plaint till the disposal of the suit. Against the said order petitioner filed Misc. Appeal No. 45 of 2012. A.D.J. Court No. 10, Meerut dismissed the appeal on 3.12.2012, hence this writ petition.

2. Property in dispute is agricultural land total area of which is about half hectare. According to the plaint case since before 1999 defendant was owner (bhoomidhar with transferable right) of the property in dispute; on 17.11.1999 he sold the property in dispute through registered sale-deed to late Sri Ram Bhajan and Ram Bhajan, thereafter, executed registered agreement for sale in favour of the plaintiff on 1.2.2001. It was further pleaded in the plaint that Ram Bhajan became seriously ill after execution of the agreement for sale and could not execute the sale-deed hence he executed an unregistered Will in favour of the plaintiff on 23.5.2001 and plaintiff was in possession since before that. In para 3 of the plaint it was alleged that Ram Bhajan died on 4.7.2001 and thereupon plaintiff became owner of his property. It was further stated that

about 20 years before the area where land in dispute is situate had come within the limits of Nagar Nigam.

3. Defendant petitioner pleaded that Ram Bhajan was member of Scheduled Casts hence he could not execute sale-deed in favour of the plaintiff. Defendant petitioner further asserted that for cancellation of the sale-deed dated 17.11.1999 which was shown to be executed by him in favour of Ram Bhajan he had filed O.S. No. 937 of 2012 Gulab v. Ram Bhajan.

4. It has been stated by learned Counsel for the petitioner that in the said suit in which petitioner is plaintiff, he has filed substitution application seeking substitution of legal representatives of Ram Bhajan. Copy of the same has been supplied. It is very strange that in the substitution application it is mentioned that from service report petitioner (plaintiff of the said suit) came to know that Ram Bhajan had died ten years before filing of the suit i.e., on 4.7.2001 (the same date which is mentioned by respondent, plaintiff of the suit giving rise to the instant writ petition. Three sons of Ram Bhajan have been sought to be substituted at his place by the said substitution application.

5. The Courts below held that suit for cancellation of the sale-deed of 1999 had been filed by the defendant petitioner after 10 years while the limitation for such suit is 3 years. Courts below also held that in the agreement for sale executed by Ram Bhajan in favour of the plaintiff on 1.2.2001 delivery of possession was not shown. The Court below particularly the Lower Appellate Court held that unless the sale-deed of 1999 executed by defendant petitioner in favour of Ram Bhajan was cancelled in the suit filed by him, no relief could be granted to him and he could not be deemed to be in possession. In para 7 of the judgment of the Lower Appellate Court argument of the defendant petitioner was noticed that after the death of Ram Bhajan plaintiff filed mutation application before the revenue Court but that was rejected.

6. As far as the question of validity of the Will is concerned it can be raised only by natural legal representative of Ram Bhajan and not by the petitioner. Court below also held that after inclusion of the area in the Nagar Nigam U.P. Z.A. and L.R. Act ceases to apply. No provision in this regard has been quoted.

7. It appears that in the revenue record name of defendant petitioner is continuing, however, the Courts below particularly Lower Appellate Court brushed aside the said aspect merely on the ground that entry in the revenue record is only for the purposes of payment of revenue. Entry in revenue record is a strong presumption of possession khasra is evidence of possession and Khatauni of title. Even though presumption is rebuttable but revenue records raise a very strong initial presumption.

8. Annexure-3 to the writ petition is counter-affidavit of the defendant petitioner to the temporary injunction application filed before the Trial Court. In the said reply date of sale-deed shown to have been executed by defendant in favour of Ram Bhajan is mentioned as 17.11.1999/23.4.2001. In para 5 of the plaint also

these two dates are mentioned. It is not clear that why two dates regarding one sale-deed have been mentioned. However in para 5 of the reply it has been mentioned that on the basis of sale-deed dated 17.11.1999/23.4.2001 ex parte mutation proceedings were taken and mutation took place on 24.6.2010 and against that restoration application of the defendant is pending.

9. The following important points have not been decided in the impugned orders:

1. Why two dates of sale-deed by defendant in favour of Ram Bhajan i.e., 17.11.1999 and 23.4.2001 have been given?.

2. What was the position of entry in the revenue record from 17.11.1999/23.4.2001 till 24.6.2010 (this date is mentioned in para 5 of the reply filed by the petitioner before the Court below)?

3. In case from 17.11.1999/23.4.2001 till 24.6.2010 name of Ram Bhajan was not recorded what was the reason therefore?

4. What steps were taken by the plaintiff for entry his name in the revenue record on the basis of the alleged Will of May, 2001 immediately after the death of Ram Bhajan and if no immediate steps were taken then what was the reason therefore?

5. At the time of filing of the suit or at the time of consideration of temporary injunction application whose name was entered in the revenue record?

10. Accordingly, Writ petition is allowed, both the impugned orders are set aside, matter is remanded to the Trial Court to decide the temporary injunction application again in the light of the observations made above. Both the parties are directed to appear before the Trial Court on 22.5.2013. If the Trial Court is not in a position to hear the arguments on temporary injunction application on the said date then some date for the said purpose may be fixed in the 2nd or 3rd week of July 2013 and all efforts must be made to hear the matter on the said date. Until final decision of temporary injunction application by the Trial Court both the parties shall maintain status quo and no party shall alienate property in dispute or any part thereof or make any construction thereupon.