

(2013) 05 AHC CK 0262

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24748 of 2013

Jagjeet Kaur

APPELLANT

Vs

Charan Singh and Others

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Citation : (2013) 05 AHC CK 0262

Hon'ble Judges : Sibghat Ullah Khan, J

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.

Heard learned counsel for both the parties.

The question involved in this writ petition is as to whether O.S. No.403 of 2009, Charan Singh and others Vs. Smt. Jagjeet Kaur and others is maintainable before the civil court or revenue court. Petitioner is defendant No.1 in the suit. Trial Court/Additional Civil Judge (J.D.), Court No.3, Rampur through order dated 01.10.2012 held that the question of jurisdiction was a mixed question of fact and law, hence issue No.6 pertaining to the jurisdiction would be decided after the evidence. Against the said order, petitioner filed Civil Revision No.71 of 2012. A.D.J., Court No.4, Rampur dismissed the revision by a detailed order on 11.02.2013, hence this writ petition.

The order passed by the Civil Judge is extremely sketchy.

Initially Sri Teja Singh was Bhoomidhar in possession of the agricultural land in dispute. According to the plaint allegations, Sri Teja Singh executed a Will of his entire properties on 05.02.1974 in favour of his nephews the plaintiffs, who are sons of Banta Singh, real brother of Teja Singh, who died issueless and that even otherwise they were legal representatives of Teja Singh and that even prior to death of Teja Singh, plaintiffs were owners of the properties in dispute. In para4 of the plaint, it was stated that petitioner defendant had got a forged Will deed

dated 19.01.1990 executed in her favour purporting to be on behalf of Teja Singh but he had died much before 19.01.1990 and some other person impersonated as Teja Singh, and that Will was got executed with active support of defendants No.2 & 3. In para5 of the plaint, it was stated that plaintiffs came to know about the Will dated 19.01.1990 on 01.07.2009 (after more than 19 years) when they obtained copy of khatauni, and that they had filed application before the revenue court also on 15.07.2009 for cancellation of the name of petitioner defendant No.1. The prayer sought through the plaint of the suit is to the effect that permanent prohibitory injunction be issued against defendant restraining her from interfering in the possession of the plaintiffs over the land in dispute. Prayer for declaration has also been made to the effect that Will dated 19.01.1990 is forged, fabricated and got executed after the death of Teja Singh by someone who impersonated as Teja Singh.

In the plaint, no date of death of Teja Singh has been mentioned. Lower revisional court mentioned that in the entry dated 15.04.1985 in the khatauni, it was mentioned that Teja Singh had died and lekhpal must submit report about the legal representatives.

There was absolutely no allegation in the plaint that why after the death of Teja Singh, the names of plaintiffs were not entered in the revenue record on the basis of Will dated 05.02.1974 alleged to have been executed by Teja Singh. According to the plaint, allegations itself since 23.03.1991 till 30.06.2009, i.e. for more than 18 years, the name of petitioner was undisputedly continuing in the revenue records and only on 15.07.2009, application had been filed for correction of the revenue entry.

The matter is squarely covered by the Supreme Court authority reported in Sri Ram and another Vs. A.D.J., AIR 2001 SC 1250. If the name of petitioner was continuing for 19 years, then without seeking declaration from the revenue court, suit for cancellation of the Will could not be filed. If the plaintiffs had been recorded tenure holders or the recording of the name of the defendant petitioner had been promptly objected to by the plaintiffs only then they could maintain the suit before the civil court. The relief claimed is purely of declaration. The Supreme Court in the aforesaid authority observed as follows in para7:

"7. On analysis of the decisions cited above, we are of the opinion that where a recorded tenure holder having a prima facie title and in possession files suit in the civil court for cancellation of sale deed having obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the revenue court reason being that in such a case, prima facie, the title of the recorded tenure holder is not under cloud. He does not require declaration of his title to the land. The position would be different where a person not being a recorded tenure holder seeks cancellation of sale deed by filing a suit in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the revenue court, as the sale deed being void has to be ignored for

giving him relief for declaration and possession."

Accordingly, both the impugned orders are set aside. It is held that the suit is not maintainable before the civil court. Issue No.6 is decided against the plaintiffs. The plaintiffs may either file fresh suit before the revenue court under Section 229B of U.P.Z.A. & L.R. Act and such others sections of the said Act, which may be available to the plaintiffs or they may within two months from today apply before the trial court/Additional Civil Judge (J.D.), Court No.3, Rampur to return the plaint for filing before the revenue court. If they do so, then the plaint shall be returned to them for filing the same before the revenue court.

Writ Petition is accordingly allowed.