(2003) 05 AHC CK 0260

In the Allahabad High Court

Case No : Writ Petition No. 1392 (M/S) of 2003

Jagmohan alias Munna APPELLANT

Vs

Commissioner and Others RESPONDENT

Date of Decision : 23-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 52
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209, 229B, 333

Citation : (2003) 6 AWC 5326

Hon'ble Judges : U.K. Dhaon, J

Bench : Single Bench

Advocate : S.D. Srivastava and S.K. Maurya, for the Appellant; G.P. Mishra and A.R. Khan and R.N. Gupta, S.C., for the Respondent

Final Decision : Allowed

Judgement

U.K. Dhaon, J.—Heard Sri S. D. Srivastava, learned Counsel for the Petitioner, Sri A. R. Khan, learned Counsel appearing for the opposite parties 2 to 4 and the learned standing counsel.

2. The Petitioner has alleged that his father (Chhanga) was the bhumidhar of the land in dispute and during the consolidation operation, some manipulation was done by one Sri Satya Narain in C.H. Form 45 and thereafter the father of the Petitioner filed a Regular Suit u/s 229B/209 of the U.P. Zamindari Abolition and Land Reforms Act against Sri Satya Narain. The said suit was decreed by the judgment and order dated 23.1.1976. Sri Satya Narain, being aggrieved by the said order filed an appeal before the Commissioner, Faizabad Division, Faizabad, which was dismissed by the order dated 25.5.1977. During the pendency of the appeal, the possession was given to the father of the Petitioner by the Amin over the land in dispute. Sri Satya Narain, being aggrieved by the judgment and order dated 25.5.1977, filed a second appeal before the Board of Revenue, which was dismissed by the order dated 16.8.1982. During the pendency of the second

appeal, Sri Satya Narain executed a sale deed on 17.10.1980, in respect to the land in dispute in favour of his sons Girish Kumar and Kamlesh Kumar, who later on executed the sale deed on 25.8.1986, in favour of opposite parties 3 and 4. Sri Girish Kumar also executed a sale deed in favour of opposite party 2 whose name was also mutated in the revenue record.

3. The Petitioner has also alleged that Girish Kumar also prepared an unregistered Will said to be executed by the Petitioner and declaring the Petitioner as dead got an order dated 23.10.1986 in his favour by which in place of the Petitioner, the name of Girish Kumar was mutated. The Petitioner has also alleged that his father expired in the year 1982 and his name was mutated in the revenue record on the basis of P.A. 11. The Petitioner has also alleged that on his representation, the Sub-Divisional Officer, Gonda, passed an order on 31.1.1989 for issuance of parwana/ amaldaramad in pursuance of the judgment and decree dated 23.1.1976. The parwana/ amaldaramad was also incorporated in the namantran bahi but the name of the Petitioner was not incorporated in the khatauni by the Leekhpal. The Lakhpal on the approach of opposite parties 2 to 4 submitted a report dated 24.2.2000 before the Sub-Division Officer, Gonda, who by the order dated 10.3.2000 directed the revenue authorities for amaldaramad. The opposite parties 2 to 4, being aggrieved by the order dated 10.3.2000 filed a revision before the Commissioner, Devi Patan Division, Gonda, u/s 333 of the U.P. Zamindari Abolition and Land Reforms Act. The said revision was allowed by the judgment and order dated 25.2.2003. The Petitioner being aggrieved by the order dated 25.2.2003 passed by opposite party No. 1 has approached this Court.

4. The learned Counsel for the Petitioner submits that the revision against the order dated 10.3.2000, was not maintainable under the provisions of Section 333 of the U.P. Zamindari Abolition and Land Reforms Act, as the incorporation of the order in the revenue record is the official duty of the revenue authority as provided in para 39 of the Revenue Court Manual. The learned Counsel for the Petitioner has relied upon a Division Bench decision of this Court in Subhana and Anr. v. Dy. Director of Consolidation 1973 ALJ 375. He further submits that the sale deed executed by Sri Satya Narain was a collusive transfer, which was barred under the provisions of Section 52 of the Transfer of Property Act. He further submits that on the basis of the fraudulent unregistered Will alleged to be executed by the Petitioner, Sri Girish Kumar cannot claim any right over the property of the Petitioner. He further submits that on the basis of the judgment and decree dated 23.1.1976, passed by the Sub-Divisional Officer, the possession was delivered to the father of the Petitioner in the year 1977. The learned Counsel for the Petitioner has pointed out that the order dated 30.1.1989 by which parwana/ amaldaramad was issued was not challenged by Sri Satya Narain during his life time and the present revision was not maintainable.

5. Sri A. R. Khan, learned Counsel for the opposite parties submits that the writ petition is not maintainable as the Petitioner has a remedy of revision under the provisions of Section 333 of the U.P. Zamindari Abolition and Land Reforms Act.

He has relied upon the decisions of Hon''ble Supreme Court in Gujarat University Vs. N.U. Rajguru and Others, and Kumari Mamta Jauhari Vs. State of U.P. and another, . He further submits that transferee are bound by a decree or order which is passed in a suit when they have knowledge about the proceedings. He relied upon the judgment of the Hon''ble Supreme Court in Jaskirat Datwani Vs. Vidyavati and Others,

6. I have considered the arguments of the learned Counsel for the parties and gone through the record.

7. The suit filed by father of the Petitioner u/s 229B/209 of the U.P. Zamindari Abolition and Land Reforms Act against Satya Narain was decreed on 23.1.1976 and against the said order, Sri Satya Narain filed an appeal, which was dismissed by the Commissioner by the order dated 25.5.1977. The second appeal preferred by Sri Satya Narain before the Board of Revenue, U.P., Allahabad, was also dismissed by the order dated 16.8.1982. The father of the Petitioner was put in possession on 27.3.1977 in pursuance of the judgment and decree dated 23.1.1976 by the Amin. The sale deed during the pendency of the second appeal executed by Sri Satya Narain in favour of his own sons Girish Kumar and Kamlesh Kumar on 17.10.1980, was a collusive transfer. The sale deed in respect to the property in dispute executed by Girish Kumar and Kamlesh Kumar sons of Sri Satya Narain in favour of opposite parties 3 and 4 on 25.8.1986 is barred under the provisions of Section 52 of the Transfer of Property Act and on the basis of the said sale deed, the opposite parties 3 and 4 cannot claim any right over the property in dispute. The sale deed executed by Girish Kumar, son of Sri Satya Narain in favour of opposite party 2 is also of no consequence and on the basis of the said sale deed the opposite party 2 cannot claim any right over the property in dispute. In the instant case, in pursuance of the judgment and decree dated 23.1.1976 parwana/amaldaramad was issued on 30.1.1989 and name of the father of the Petitioner was incorporated in the namantran bahi. The Division Bench of this Court in the case of Subhana and Anr. v. Dy. Director of Consolidation and Ors. (supra) has held that a declaratory decree does not require an application for execution by the decree holder and the Court has to carry out the correction in the revenue papers in accordance with the decree as provided by para 39 of the Revenue Court Manual. The subsequent proceedings done by the revenue authorities in pursuance of the judgment and decree dated 23.1.1976 were only ministerial job and the order dated 10.3.2000, passed by the Sub-Divisional Officer was not a judicial order and as such, it was not subject to revision u/s 333 of the U.P. Zamindari Abolition and Land Reforms Act. The order passed by the Sub-Divisional Officer was only to maintain the revenue record upto date in pursuance of the judgment and decree dated 23.1.1976. The revision petition preferred by the opposite parties against the order dated 10.3.2000, was not maintainable under the provisions of Section 333 of the U.P. Zamindari Abolition and Land Reforms Act. As the revision was incompetent, the Petitioner cannot be directed to file a revision petition before the Board of Revenue. The law cited by the learned Counsel for the opposite parties that the

Petitioner has an alternative remedy is not applicable to the facts of the present case.

8. In the result, the writ petition succeeds and a writ in the nature of certiorari is issued quashing the order dated 25.2.2003, passed by the Commissioner, Devi Patan Division, a copy of which has been annexed as Annexure-1 to the writ petition.

9. In the circumstances, there shall be no order as to costs.

