
(2011) 07 AHC CK 0216

In the Allahabad High Court

Case No : C.M.W.P. No's. 5336 of 1986 and 51605 of 2000

Kanhaiya Lal

APPELLANT

Vs

1st Addl. District Judge, Mathura and others

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 153

Citation : (2011) 6 AWC 5541

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard Learned Counsel for the parties.

First Writ Petition :

2. A suit for specific performance of an agreement for sale of specified agricultural plots dated 20.12.1974 was instituted by the petitioner against respondents No. 2 and 3, Nawab Singh and Babu Lal (O.S. No. 109 of 1976). The suit was decreed. The decree became final on 1.9.1979 and the real trouble of the plaintiff petitioner decree holder started thereafter. The decree was put in execution by the petitioner. The sale deed was executed by the executing court on 29.8.1980 and possession of the property in dispute was delivered to the petitioner on 10.11.1980. However, during consolidation plot numbers of the property in dispute had changed. An application was filed by the plaintiff petitioner under Sections 151, 152 and 153, C.P.C. for correction of agreement for sale, plaint, judgment and decree and dakhnama on 1.12.1980. The application (Misc. Case No. 70 of 1983) was allowed on 21.7.1984 by Civil Judge, Mathura and it was directed that the agreement for sale, plaint, judgment and decree and dakhnama be corrected and the new plots numbers in place of old plot numbers be written. The application had been registered as Misc. Case No. 70 of 1983 and was allowed by Civil Judge, Mathura on 21.7.1984. Against the

said order respondents No. 2 and 3 filed Civil Revision No. 142 of 1984, which was allowed on 19.2.1986 by 1st Additional District Judge, Mathura, hence this writ petition.

3. In the plaint and the agreement, plot numbers mentioned were 7512, 7513, 7514 and 7516, total area 1.78 acres. Numbers of plots sought to be corrected were 8411, 8412, 8414 and 8415 with almost the same area.

4. The revisional court held that the executing court exceeded its jurisdiction and agreement could be enforced only in respect of the plots mentioned therein and in any case relief in respect of newly allotted numbers should have been sought during pendency of the suit. In the counter-affidavit in various paragraphs including Paragraphs 3 and 5, it has been stated that consolidation was concluded in the year 1963. The fact that consolidation concluded in the year 1963 has not been denied in the rejoinder-affidavit.

5. Area of the four disputed plots was 1.78 acres and of the new plots 1.75 acres.

6. In my opinion it was a case of wrong mentioning of fact which could be corrected even afterwards. In this regard reference may be made to the following authorities :

(1) Ganesh Vs. Sri Ram Lalaji Mahraj Birajman Mandir and Others,

(2) Aziz Ullah Khan and Others Vs. Court of Wards,

(3) Harbans Lal Tauh v. Allahabad Bank Limited, Ghaziabad. 1981 All LJ NOC 122.

(4) Pratibha Singh and Another Vs. Shanti Devi Prasad and Another,

(5) Niyamat Ali Molla Vs. Sonargon Housing Co-operative Society Ltd. and Others,

7. Regarding identity of the lands, there is no dispute. However, petitioner should have been more vigilant. In case he had been more vigilant, even in the agreement new numbers would have been mentioned. Accordingly, in my opinion, even though the executing court rightly allowed the amendment application and revisional court wrongly set that order aside, however the executing court should have imposed heavy cost upon the plaintiff petitioner for his lack of due care.

8. Accordingly, impugned order passed by the revisional court is set aside. Order passed by the executing court/ trial court allowing the amendment is affirmed with the modification that the application of the petitioner for correction stands allowed on payment of Rs. 5,000 as cost which shall be deposited before the trial court/ executing court within two months from today and shall immediately be paid to respondents No. 2 and 3 failing which this writ petition shall be deemed to have been dismissed.

First writ petition is accordingly disposed of.

Second Writ Petition :

9. As far as second writ petition is concerned, it is directed against order dated 29.9.2000, passed by S.O.C. directing Station House Officer. Sadabad to put the respondent No. 4 of the said writ petition, i.e., Kanhaiya Lal (petitioner of the first writ petition), in possession. The said writ petition has been filed by Nawab Singh and his sons. As the main basis of the claim of the petitioners of the second writ petition was the order of the revisional court, which has been set aside in the first writ petition, hence there is no need to pass any order in the second writ petition. It is, therefore, dismissed as infructuous.