
(2006) 09 AHC CK 0202
In the Allahabad High Court

Lal Chand and Others

APPELLANT

Vs

Mst. Atwari (D) represented by Dukhran and Others

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Constitution of India, 1950 — Article 300A
Uttar Pradesh Tenancy Act, 1939 — Section 49

Citation : (2007) 1 AWC 548

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri G. N. Verma, learned Counsel for the appellants.

2. This second appeal arises out of judgment and decree passed by IVth Additional Munsif, Varanasi in Suit No. 721 of 1970, Lal Chand and Ors. v. Mst. Atwari and Ors. dated 27.1.1973, dismissing the suit for cancellation of sale deed dated 24.7.1967, executed by Jagarnath, defendant No. 2 in favour of Mst. Atwari, defendant No. 1. The plaintiffs also sought a relief that if it was found that they are not in possession, the possession of the disputed plot be given to them. The Civil Appeal No. 83 of 1973 were dismissed by 1st Additional Civil Judge, Varanasi on 19.9.1975, confirming the judgment of the trial court.

3. The defendant No. 2 Jagar Nath is plaintiffs uncle. It was alleged that Shri Vishwanath, the plaintiffs father died leaving plaintiffs as their heirs and in possession of the properties as members of joint Hindu family. Defendant No. 2 claimed himself to be a "sadhoo" and often lived outside the village. Whenever he visited the village Shri Ramji, the brother of defendant No. 1, visited him and together they smoked tobacco and ganja. The defendant No. 2 came under the influence of Shri Ramji, who got a sale deed dated 24.7.1967, executed from the defendant No. 2 in her favour, by exercising undue influence. The sale deed is a fraudulent document without any sale consideration and without any Information to the plaintiffs. The sale deed gave to plot No. 131/1 in sale whereas it

described the boundaries of plot No. 130/1. When the defendant No. 1 tried to take possession of the land in 1968 on which the plaintiffs acquired knowledge and filed the suit.

4. The defendant No. 1 contested the suit on the ground that plaintiffs have no concern with the land and are not bhumidhar thereof. They are not in possession and have no right to file the suit. The sale deed was executed by defendant No. 2 after receiving adequate consideration and the possession was handed over to defendant No. 1. No undue influence or fraud was practiced on defendant No. 2.

5. The trial court held that the sale deed is not liable to be cancelled. The defendant No. 1 did not practise any undue influence over defendant No. 2. The civil court has Jurisdiction to try the suit for cancellation of sale deed. Shri Raja and Beepath, the other two sons of Mangroo the uncle of the plaintiffs were found to be necessary party and impleaded as defendant Nos. 3 and 4. The suit was dismissed.

6. In appellate court the plaintiffs alleged, that the plot in dispute is the ancestral plot of the appellants and that defendant No. 2 and the plaintiffs father were co-tenants of the plot. The sale deed for an area of only 17 decimal in favour of defendant No. 1 is void and liable to be cancelled. The oral and documentary evidence established that plot No. 130/1 was the ancestral plot with an area of 51 decimal. Mangroo and Samroo had half shares, i.e., 25-1/2 decimal each. After the death of Mangroo, Vishwanath, Raja and Beepath inherited his shares measuring 8-1/2 decimals each. Samaroo's share was inherited by Jagarnath. The oral evidence established a private partition of plot No. 130/1 in the family alongwith other properties.

7. The appellate court further found that Vishwanath and Samaroo had executed a sale deed in respect of 130/1 (area 17 decimal) in favour of Ramesh Chand Jain on 11.6.1963 (Ex. A-7). Raja and Beepath had executed a sale deed in favour of Santoo in respect of plot No. 130/1 area 17 decimal on 23.4.1962 (Ex. A-8) after which Raja and Beepath were left with 17 decimal land in their share. They sold this share to Santoo on 1962. Ramesh Chand Jain purchased the share of Raja and Beepath from Santoo. Shri Vishwanath, the appellants' father had only 8-1/2 decimal land in their share, which was also transferred alongwith Samaroo's share to Ramesh Chandra Jain. These sale deeds clearly suggested private partition of plot No. 130/1 in the family. The statement of Lal Chand (P.W. 3) proved that Raja and Beepath got their shares separated after the death of Mangroo and they left after selling their share. The first appeal was, consequently, dismissed.

8. Shri G. N. Verma, learned Counsel for the appellants submits that Mangroo and Samroo were co-tenants of plot No. 130/1. They had not partitioned their shares. A partition was not permissible except through Court. Vishwanath, Raja, Beepath and defendant No. 2 continued to be co-tenants. After the death of Samroo, Mangroo and Vishwanath, the appellants, Raja. Beepath and defendant

No. 2 became co-tenants, and thus defendant No. 2 had no right to execute the sale deed in respect of 17 decimal of land of plot No. 130/1.

9. I have considered the submission. The appellants' father and their uncles Raja and Beepath had sold their shares in the plot to different persons, Samroo had sold 8-1/2 decimal to Ramesh Chandra Jain leaving only 17 decimal in the share of Samroo, which was inherited by Jagarnath, the defendant No. 2, who sold it to defendant No. 1. The appellants did not challenge the sale deeds executed by their father and uncles. Each of them had executed sale deeds in respect to their shares.

10. The cases cited at the bar do not support the case of the plaintiff-appellants, as their father had sold the property out of the same plot, which was subject-matter of private partition. Section 49 of the U. P. Tenancy Act prohibits partition in a co-tenancy unless the land revenue is also partitioned through competent court. The right to property is a common law right. It is also constitutional right u/s 300A of the Constitution of India, which cannot be defeated on the ground of ministerial requirement of apportionment of land revenue between the co-owners entering into private partition. Shri G. N. Verma relied upon *Batasar v. Udit Narain* 1970 AWR 204, in submitting that the land is held under the terms of the tenancy, according to which the tenancy could not be partitioned until the rent is apportioned. The apportionment of rent is a ministerial act to be performed after the partition or sale. There is no legal bar for partition or transfer except that the land should be held under the same terms in which it was held by the parties or the transferees, and does not suffer from the vice of uneconomical holding by fragmentation. The rule, however, is not applicable where the entire holding is sold by the person or is partitioned between the co-owners.

11. In the present case, Shri Jagarnath was the owner of only 17 decimals of plot No. 130/1. He sold the entire area for valuable consideration to defendant No. 1. The findings are based on assessment of oral and documentary evidence. These findings of fact do not call for any interference in the second appeal, even if it was admitted prior to the C.P.C. (Amendment) Act, 1976, effective from 1.7.1977.

12. The second appeal is accordingly dismissed.