
(2015) 05 AHC CK 0201

In the Allahabad High Court

Case No : Matters Under Article 227 No. 1416 of 2015

Mamta Rai

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Constitution of India, 1950 — Article 227
Trusts Act, 1882 — Section 37

Citation : (2015) 4 ALJ 537

Hon'ble Judges : Ashwani Kumar Mishra, J

Bench : Single Bench

Advocate : D.S. Yadav, for the Appellant; Rajesh Kushwaha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ashwani Kumar Mishra, J—This petition is directed against the orders dated 16.2.2015 and 24.2.2015, whereby application for impleadment filed by the petitioner, in proceedings initiated under section 37 of the Indian Trust Act, has been rejected and permission for transfer of the property has been granted to the trustees. A perusal of the record goes to show that proceedings have been initiated under section 37 of the Indian Trust Act, for grant of permission by the court to permit trustees to transfer the trust property. In these proceedings, an application for impleadment has been filed by the petitioner, by contending that she has purchased the property in question through a registered sale deed dated 4.7.2007, from Jagdish and Parshuram sons of Indra Dev. It is submitted that Indra Dev was actually recorded over the property, pursuant to an entry made in his favour on 17.2.2004 in revenue record, and therefore, being a bhumidhar of land, heirs of Indra Dev had right to transfer the land. Submission is that once property in question has been purchased by the petitioner, she has right over such property and no permission for transfer of it can be granted in favour of trustees without impleading and hearing petitioner. The learned District Judge

concerned has examined this issue and it was found that revenue entry in favour of Indra Dev dated 17.2.2004 was subsequently expunged by an order passed on 19.7.2008, and it was observed that previous entry, according to which, property was recorded in the name of trust, be restored. The District Judge, therefore, has come to the conclusion that Indra Dev had no right over the property in question and any transfer, claimed through his heirs, by the petitioner, would not vest any right in the property in question for her. Accordingly, petitioner's application for impleadment was rejected. By the subsequent order, the District Judge has granted permission to the trustees to transfer the same.

2. This matter was heard on 15.4.2015. After some argument in the matter, learned counsel for the petitioner was granted opportunity to bring on record documents of title in favour of Indra Dev. Accordingly, following orders were passed on 15.4.2015:--

"Learned counsel for the petitioner prays for and is granted a week's time to file supplementary affidavit, bringing on record the documents of title in his favour."

3. On the next date i.e. 27.4.2015, learned counsel for the petitioner came up with the prayer to grant further opportunity in the matter. Accordingly, following orders were passed on 27.4.2015:--

"On the request made on behalf of learned counsel for petitioner, put up as fresh on 4.5.2015. It is clarified that no adjournment would be allowed on the next date."

4. Matter thereafter was heard on 4.5.2015, on which date proceedings were recorded by the court in following orders:--

"In proceedings instituted by the trustees under section 37 of the Indian Trust Act, 1882, read with section 92 of the Civil Procedure Code, an application for impleadment was filed by the petitioner, contending that she is the owner of the property in question, as such, no permission could be granted in the proceedings for disposal of such property. An objection was raised by the respondents, contending that petitioner is complete stranger and no sale deed was ever executed in her favour. On this, a request was made by Sri. D.S. Yadav, learned counsel for petitioner, to grant a week's time to file supplementary affidavit, bringing on record the documents of title in favour of petitioner. Accordingly, matter was adjourned to 27.4.2015 and following orders were passed on 15.4.2015:--

"Learned counsel for the petitioner prays for and is granted a week's time to file supplementary affidavit, bringing on record the documents of title in his favour/ Put up as fresh on 27.4.2015."

On 27.4.2015 the matter was again adjourned to 4.5.2015 by following orders:--

"On the request made on behalf of learned counsel for petitioner, put up as fresh on 4.5.2015. It is clarified that no adjournment would be allowed on the next

date."

Today a supplementary affidavit has been filed by learned counsel for, petitioner, bringing on record, a photocopy of the document, which has been claimed to be an unregistered agreement to sell of the year 1987. Upon being confronted with this unregistered document dated 5.2.1987, on the ground that no transfer of immovable property was possible by it, learned counsel for petitioner submits that the matter may be released by this court, as he would not like to argue before this Bench and would instead argue before another Bench.

This court cannot approve of the conduct of petitioner or her counsel in making aforesaid submission. However, in the interest of justice, it is provided that papers of this case be placed before Hon"ble the Chief Justice for passing appropriate orders."

5. Thereafter, the matter was placed before Hon"ble the Chief Justice, who has been pleased to nominate this court for hearing of this matter, vide order dated 6.5.2015. It is pursuant to order of Hon"ble the Chief Justice that the matter has been placed again before this court.

6. Learned counsel for the petitioner has filed a supplementary affidavit and it is submitted that an unregistered agreement to sell was executed in favour of Indra Dev dated 23.2.1970 by the trustees and pursuant to such agreement to sell, a transfer deed must have been executed and that is how name of Indra Dev was got recorded.

7. Having considered the aforesaid submission, this court finds that despite grant of repeated opportunities, petitioner has not filed any document of title in favour of Indra Dev before this court, nor was it filed before the District Judge concerned. Perusal of the record goes to show that property in question was recorded in the name of trust from much prior in point of time. A bare perusal of the revenue record i.e. khatauni goes to show that till 1384-1387 fasli, which corresponds to year 1977 to 1980, the property, was recorded in the name of trust. No document of title has been brought on record, which could demonstrate that property in question in fact got transferred by trust in favour of Indra Dev. Even otherwise, such a transfer was not permissible, unless a permission was obtained from the competent court under the provisions of Indian Trust Act. Without any valid transfer of property by trust in favour of Indra Dev, his name was recorded vide order dated 17.2.2004 and for this reason such entry was later expunged, restoring entry of trust over the property. District Judge in his order, under challenge, has recorded a finding that there existed no document of title in favour of Indra Dev, and the finding returned by the District Judge cannot be said to be perverse or erroneous, inasmuch as even till date no document of title has been brought on record, showing transfer of property by the trust in favour of Indra Dev. In such circumstances, this court finds no good ground to interfere with the finding returned by the District Judge that Indra Dev had no right over the property in question. Once it has been found that Indra Dev had

no right over the property in question, obviously his heirs also had no right, based upon inheritance, to transfer the same. In view of the aforesaid factual scenario, this court finds no good ground to interfere with the orders passed by the District Judge concerned. There is no error of jurisdiction or failure of justice in the matter, which may require any interference under Article 227 of the Constitution of India. Petition fails and is dismissed.