
(1982) 08 AHC CK 0011
In the Allahabad High Court
Case No : Civil Misc. Writ No. 3866 of 1982

Mithan Singh

APPELLANT

Vs

Chandra Pal Singh and Others

RESPONDENT

Date of Decision : 09-08-1982

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49, 5(2), 9A(2)

Citation : (1982) AWC 694

Hon'ble Judges : K.N. Misra, J

Bench : Single Bench

Advocate : K.G. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Misra, J.—Heard learned Counsel for the Petitioner and perused the impugned order dated 26th February, 1982. Time was granted to the learned Counsel for the Petitioner to intimate to this Court whether he has filed a revision and also the result of the revision against the impugned order passed by the Consolidation Officer refusing to stay the proceedings. Learned Counsel for the Petitioner is unable to state as to what had happened in the revision which was filed by the Petitioner. Learned Counsel, however, prays for further time to seek instructions in the matter but I do not think it is necessary to grant him any more time in the matter because I find that without waiting for the decision in the revision the matter can be disposed of.

2. Learned Counsel urged that on the basis of the sale deed, which is said to have been executed by the Petitioner in favour of opposite parties Nos. 1 to 3, they are seeking mutation in their name by filing an objection u/s 9A(2) of the U.P. Consolidation of Holdings Act. Since the sale deed is voidable on various grounds the Petitioner had filed a suit in the civil court for its cancellation which is pending and in respect of a voidable sale deed the civil court can alone consider the voidability of the document on the grounds asserted by the Petitioner in the civil suit. Learned Counsel for the Petitioner contended that since

his suit is pending in the civil court seeking cancellation of the sale deed in question, the objection filed by the opposite parties seeking their names to be recorded on the basis of the impugned sale deed should be stayed because consolidation authorities cannot determine the voidability of the sale deed in question on the grounds alleged by the Petitioner. He contended that there will be duplication in proceedings and the Petitioner will be prejudiced.

3. I am unable to agree with this contention. If the name of opposite parties Nos. 1 to 3 will be recorded on the land in dispute on the basis of the impugned sale deed and the Petitioner ultimately succeeds in getting the sale deed cancelled through the competent civil court where his suit is pending, the name of the Petitioner will then be recorded in place of opposite parties Nos. 1 to 3 on the basis of the order passed in the civil suit. The proceedings in the consolidation courts cannot wait for long and the consolidation authorities have to give effect to the sale deed which is voidable. If the sale deed is challenged by the Petitioner on the ground that it is void, then the consolidation authorities can determine the said question but the sale deed cannot be challenged before the consolidation authorities on the ground that it is voidable for reasons stated in the civil suit. The consolidation authorities will have no jurisdiction to determine that question and they will have to record the names of opposite parties Nos. 1 to 3 which will be subject to the final decision in the civil court (see Ram Nath Vs. Smt. Munna,). In this view of the matter the Petitioner will not be prejudiced in any manner.

4. I, therefore, do not find any merit in this petition. The suit which is pending in the civil court will not abate u/s 5(2) of the U.P. Consolidation of Holdings Act, nor it would be barred u/s 49 of the Act and will have to be decided on merits irrespective of the entries made in favour of opposite parties Nos. 1 to 3 on the basis of the sale deed in these proceedings before the consolidation authorities, although the Petitioner may not pursue his remedy before the consolidation authorities after losing before the Consolidation Officer.

5. The writ petition being devoid of merit is dismissed in limini.