
(2013) 10 AHC CK 0032
In the Allahabad High Court
Case No : Writ B. No. 52473 of 2013

Nanhey Ram

APPELLANT

Vs

Ram Adhar and Others

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2014) 102 ALR 143 : (2013) 121 RD 644

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : Harsh Vikram and D.V. Jaiswal, for the Appellant; Arun Kumar and R.S. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri D.V. Jaiswal Counsel for the petitioner and Sri Arun Kumar, for respondents-1 and 2 (hereinafter referred to as the respondents). The writ petition has been filed against the orders of Settlement Officer Consolidation (respondent-3) dated 16.12.2011 and Deputy Director of Consolidation (respondent-4) dated 13.9.2013, passed in title proceedings, under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act).

2. The dispute relates to 1/8 share of Ayodhya Prasad (father of the petitioner) in plot No. 300 (area 0-4-0 bigha), 301 (area 6.11.1919 bigha) and 455 (area 4-2-3 bigha) (total area 1-7-5 1/4 bigha) of village Devapur, tahsil Soraon, district Allahabad. It is alleged that Ayodhya Prasad executed a sale-deed dated 5.10.1968 of the land in dispute in favour of the petitioner, who was his minor son through his guardian Smt. Champa Kali (natural mother) for Rs. 1000/-. The name of the petitioner was not recorded over the land in dispute on the basis of the aforesaid sale-deed and the name of Ayodhya Prasad continued in the revenue records. Thereafter Ayodhya Prasad executed another sale-deed dated 15.1.1969 of the land in dispute in favour of Ram Adhar and Shiv Narain (the respondents) and handed over possession of the disputed land to them. Ram Adhar and Shiv Narain (the respondents) filed an application (registered as Case

No. 38/24/75) for mutation of their names over the disputed land, on the basis of the aforesaid sale-deed, which was allowed by Sub-Divisional Officer, Soraon, Allahabad by order dated 4.10.1969 and their names were mutated in the revenue record.

3. The guardian of the petitioner filed an application in the year 1981 for mutation of the name of the petitioner, over the disputed land on the basis of the sale-deed dated 5.10.1968. The application of the petitioner was dismissed by Naib Tahsildar Soraon, by order dated 26.10.1981. The petitioner, thereafter, filed a suit (registered as Suit No. 110) u/s 229-B of U.P. Act No. 1 of 1951, on 4.11.1981, for declaring him as bhumidhar in possession of the disputed land on the basis of the sale-deed dated 5.10.1968, which was also dismissed by order dated 1.3.1982. It is alleged that the petitioner then filed a civil suit for cancellation of the sale-deed dated 15.1.1969, executed in favour of the respondents, which was later on abated on 22.9.1982, u/s 5(2)(a) of the Act, on the village being placed under consolidation operation by notification dated 10.7.1982. The appeal filed by the petitioner from the order dated 22.9.1982 was also dismissed on 3.3.1987.

4. The petitioner then filed an objection u/s 9 of the Act. The respondents got the proceedings of his objection stayed by the order of this Court in Writ Petition No. 7927 of 1986, on the ground that validity of the sale-deed dated 15.1.1969 has been challenged in civil suit as such till the dispute is not finally decided by Civil Court, the proceeding before consolidation Court be stayed. This writ petition was dismissed, by the order dated 21.8.2007. In the meantime due to fire in Collectorate Record Room, Allahabad, the record was burnt. The parties, therefore, reconstructed the record. The objections was registered as Case No. 100/139/2011. The parties adduced their evidence. The matter was heard by Consolidation Officer Soraon, Allahabad, who by his order dated 8.7.2011 held that as the sale-deed in favour of the petitioner was prior in time as such it will prevail over the sale-deed of the respondents. The petitioner was minor and has guardian was an illiterate lady as such he could not take proceedings on the basis of the sale-deed in time. Ayodhya Prasad had no right to execute the sale-deed dated 15.1.1969 after selling his properties on 5.10.1968 in favour of the petitioner. On these findings the Consolidation Officer allowed the objection of the petitioner by order dated 8.7.2011. The petitioner filed an application (registered as Case No. 63) u/s 52(2) of the Act, read with Rule 109-A, in which the Consolidation Officer by order dated 13.07.2011 directed for giving effect to the order dated 8.7.2011. It is alleged that the name of the petitioner was recorded on 21.9.2011.

5. The respondents filed two appeals (registered as Appeal No. 1699 and Appeal No. 165) against the aforesaid orders dated 8.7.2011 and 13.7.2011, along with delay condonation application. These appeals were consolidated and heard by Settlement Officer Consolidation (respondent-3), who by his order dated 16.12.2011, condoned the delay in filing the appeals and held that suit of the

petitioner u/s 229-B of U.P. Act No. 1 of 1951 was dismissed on 1.3.1982, which order has not been challenged and has become final against the petitioner. The name of the respondents were mutated by the order dated 4.10.1969, in consolidation also the chaks were carved out in their names in the year 1984. The petitioner has not taken any proceeding for taking possession over the land in dispute, on the basis of his sale-deed dated 5.10.1968 for more than 12 years as such his claim under consolidation, which was started by notification dated 10.7.1982 has become time barred. Ayodhya Prasad took Rs. 2000/- from respondents on 20.5.1968 as admitted in the sale-deed dated 15.1.1969 as such execution of sale-deed dated 5.10.1968 by him in favour of his son for Rs. 1000/- was a sham transaction and had been procured to defraud the respondents. The reason for selling the disputed land has been given as necessity of Rs. 1000/- for payment of loan and other daily expenses which could be taken by Ayodhya Prasad from his wife, if he had at all any necessity of this money. Immediately thereafter, Ayodhya Prasad executed sale-deed dated 15.1.1969 in favour of the respondents after taking remaining sale consideration, which further shows that Ayodhya Prasad had no intention to transfer the land in favour of his son. The respondents were given possession over the disputed land and their names were mutated in the revenue record by order 4.10.1969 and no objection has been raised against it by the petitioner within reasonable time. The possession of the respondents over the land in dispute was proved. On these findings respondents-3 by his order dated 16.12.2011 allowed both the appeals of the respondents and set aside orders of Consolidation Officer. The petitioner filed a revision (registered as Revision No. 2/7) from the aforesaid order, which has been dismissed by Deputy Director of Consolidation (respondent-4) by order dated 16.9.2013. Hence this writ petition has been filed.

6. The Counsel for the petitioner submitted that the sale-deed dated 5.10.1968 executed in favour of the petitioner was a prior sale-deed as such has an overriding effect as held by this Court in Jangi Vs. The Board of Revenue, U.P. and Others, and Ram Adhar v. Board of Revenue U.P. and others 1984 RD 213. Being the son, Ayodhya Prasad sold the disputed land to the petitioner for Rs. 1000/-. In any case inadequacy of sale consideration is no ground to ignore the registered sale-deed as held by this Court in Narain Prasad Vs. Deputy Director of Consolidation and Others, . After executing this sale-deed, Ayodhya Prasad left with no right to transfer the disputed land to the respondents on 15.1.1969. By the sale-deed dated 15.1.1969, title of the disputed land has not passed to the respondents. Ayodhya Prasad, himself was not in possession over the disputed land on 15.1.1969, as such, on the basis of recital relating to delivery of possession in the sale-deed, possession of the respondents over the disputed land cannot be proved. The petitioner was minor and his mother was an illiterate rustic lady as such no proceedings on the basis of the sale-deed was taken by her within reasonable time, for mutating the name of the petitioner over the disputed land, however the petitioner throughout remained in possession over it. The objection of the petitioner before Consolidation Officer was within 12 years

from the date of his attaining majority. Payment of Rs. 2000/- as mentioned in the sale-deed dated 15.1.1969 was not proved, by any other evidence. In any case, this payment was by way of loan to Ayodhya Prasad and not an advance or earnest money for selling the land in dispute. The Courts below have illegally drawn conclusion on its basis that Ayodhya Prasad executed the sale-deed dated 5.10.1968 to defraud the creditors and the sale-deed was a fraudulent transaction. Orders of respondents-1 and 2 are illegal and liable to be set aside.

7. I have considered the arguments of the Counsel for the parties and examined the record. The first question arises for consideration as to whether sale-deed dated 5.10.1968 executed in favour of the petitioner was a genuine transaction. Supreme Court in *Vidhyadhar Vs. Manikrao and Another*, held the real test for deciding the validity of the sale-deed is to examine the intention of the parties. In order to constitute a "sale", the parties must intend to transfer the ownership of the property and they must also intend that the price would be paid either in present or in future. The intention is to be gathered from the recital in the sale-deed, the conduct of the parties and the evidence on record. Supreme Court again in *Kaliaperumal Vs. Rajagopal and Another*, held that normally, ownership and title to the property will pass to the purchaser on registration of the sale-deed with effect from the date of execution of the sale-deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is *prima facie* proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property. The answer to the question whether the parties intended that transfer of the ownership should be merely by execution and registration of the deed or whether they intended the transfer of the property to take place, only after receipt of the entire consideration, would depend on the intention of the parties. Such intention is primarily to be gathered and determined from the recitals of the sale-deed. When the recitals are insufficient or ambiguous the surrounding circumstances and conduct of parties can be looked into for ascertaining the intention, subject to the limitations placed by section 92 of the Evidence Act.

8. Thus according to the law laid down by Supreme Court intention of the parties has to be examined in order to decide the validity of the sale-deed. Surrounding circumstances and conduct of parties can be looked into for ascertaining the intention. Settlement Officer Consolidation found that Ayodhya Prasad took Rs. 2000/- from the respondents on 20.5.1968 and executed the sale-deed dated 15.1.1969 in their favour. The reason for selling the disputed land to the petitioner has been given as necessity of Rs. 1000/- for payment of loan and other daily expenses. In case, the husband was in need of Rs. 1000/- for meeting out daily expenses and payment of loan, he could have taken this money from his wife, as a loan without selling the property and there was no necessity for this purpose to sell the property. The other circumstance that Ayodhya Prasad or his wife never took any step for getting the name of the petitioner mutated on the basis of the sale-deed dated 5.10.1968, in the

meantime Ayodhya Prasad himself executed the sale-deed dated 15.1.1969 in favour of the respondents, treating him as the owner the disputed land. In these circumstances, it was found that Ayodhya Prasad never intended to transfer the property to the petitioner and sale-deed dated 5.10.1968 was a sham transaction and had been procured with an intention to defraud the respondents, from whom he had already taken Rs. 2000/- on 20.5.1968. The petitioner has not examined either his father or his mother to prove payment of sale consideration. This Court in Ved Prakash Vs. Phool Chand and others, held that such a transaction was fraudulent transaction. Findings of fact recorded by Settlement Officer Consolidation does not suffer from any illegality.

9. Settlement Officer Consolidation further found that suit of the petitioner u/s 229-B of U.P. Act No. 1 of 1951 was dismissed on 1.3.1982, which order has not been challenged and has become final against the petitioner. The respondents were given possession over the disputed land and their names was mutated in the revenue record by order 4.10.1969 and no objection has been raised against it by the petitioner within reasonable time, in consolidation also the chaks were carved out in their names in the year 1984. The petitioner has not taken any proceeding for taking possession over the land in dispute, on the basis of his sale-deed dated 5.10.1968 for more than 12 years as such his claim under consolidation, which was started by notification dated 10.7.1982 and the objection was filed in 1984 has become time barred. According to the age as disclosed in the affidavit, the petitioner might have attained the age of majority in the year 1981. The possession of the respondents over the land in dispute was proved. These findings have not been challenged by the petitioner. In view of the aforesaid discussions, the impugned orders do not suffer from any illegality. The writ petition has no merit and is dismissed.