
(2009) 12 UK CK 0021
In the Uttarakhand High Court

Om Prakash and Another

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Criminal Procedure Code, 1973 (CrPC) — Section 125, 126, 127, 128, 145
Stamp Act, 1899 — Section 33, 33(4), 33(5), 40, 47A
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : AIR 2010 Utt 64 : (2010) 1 UD 136

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Heard Mr. Raman Kumar Shah, learned Counsel for the petitioners and Mr. R.C. Arya, learned Brief Holder for the State-respondents.

2. By means of this writ petition, the petitioners have sought a writ in the nature of certiorari quashing the order dated 19-2-1991 (Annexure No. 2) passed by the Collector, Pauri Garhwal as well as the order dated 18-7-1991 (Annexure No. 4) passed by the Commissioner, Garhwal Division Pauri Garhwal.

3. Brief facts giving rise to the present writ petition are that the petitioners father Sri Tota Ram had purchased the land measuring 2.41 acres situated in Village Dhrovepur, Kotdwar, District Pauri Garhwal of which agreement for sale was executed on 25-8-1969 by one Sri Kedar Singh in his favour. The petitioners in the year 1990 sent a notice u/s 80 of CPC to the Collector, Pauri Garhwal on the ground that since the petitioners have acquired the title of the land by way of adverse possession and in case their name is not recorded in the revenue records, the petitioners would be compelled to institute a suit for declaration u/s 229-B of U.P.Z.A. and L.R. Act.

4. It has been stated in paragraph Nos. 6 and 7 of the writ petition that the petitioners had filed a suit in the Court of Assistant Collector, Kotdwara u/s 229-B of the U.P.Z.A. and L.R. Act. The Assistant Collector, Kotdwara on 16-2-1990

decreed the petitioners" suit declaring the petitioners as bhumidhar of the land.

5. According to them, the suit was not contested by the State as well as by the Gaon Sabha concerned. It is pertinent to mention here that the petitioners had served a notice u/s 80 of CPC to the Collector, Pauri Garhwal for the institution of the proposed suit u/s 229-B of U.P.Z.A. and L.R. Act to the respondent No. 3. In reply thereto the respondent No. 3 issued a show cause notice against the petitioners u/s 47-A(3) 33/40/Stamp Act/1899 asking the petitioners to show cause why the stamp duty be not imposed on the alleged agreement for sale. The reply was filed by the petitioners that no title and rights was transferred to the petitioners by way of "Tehreer" dated 5-8-1969 and the same could not be termed as a sale deed.

6. In the enquiry, the learned Collector came to the conclusion that the said alleged agreement in favour of the petitioners was not duly stamped and he imposed stamp duty of Rs. 33,547.20 and penalty of Rs. 1000 vide judgment and order dated 19-2-1991 as per market value prevailing in the year 1991.

7. Feeling aggrieved by the aforesaid judgment and order passed by the Collector, Pauri Garhwal, the petitioners filed a Revision No. 1 of 1991 before the Chief Controlling Revenue Authority under the Stamp Act (i.e. Commissioner, Garhwal Division), Pauri Garhwal. Commissioner Garhwal Division, Pauri, by his judgment and order dated 18-7-1991 rejected the revision and confirmed the judgment and order passed by the Collector, Pauri Garhwal.

8. Aggrieved by the order passed in the revision, the petitioner preferred this writ petition inter alia on the ground that no title and rights have been transferred in favour of the petitioners and his father by way of tehreer alleged to have been executed on 5-8-1969 by Sri Kedar Singh who was neither the owner or the bhumidhar of that land nor had any title or right or authority to execute the said "Tehreer". Sri Manohar Lal was recorded bhumidhar on the relevant date. Thus the documents dated 5-8-1969 being void was not legally chargeable at all.

9. The suit was filed by the petitioners u/s 229-B of the U.P. Z.A. and L.R. Act which was decreed. The counter-affidavit has been filed by the State and it has been stated that in view of Section 47-A of the Indian Stamp Act the valuation of the land in question was verified and found that the said transaction is illegal, causing revenue loss to the Government and found it was irrigated land as per circle rate Rs. 96,000/-per Bigha. The stamp duty was rightly calculated and imposed.

10. It was further stated in paragraph No. 8 of the Counter-affidavit that the petitioners are in a possession over the land by way of agreement executed between Sri Kedar Singh and the father of the petitioners and it is not the case of adverse possession but it is against consideration of sale and as such the said transfer is deemed to be sale.

11. I have heard learned Counsel for the parties and perused the impugned orders and material on record. It reveals that the only controversy which is to be decided by this Court is whether the duty and penalty could be imposed on the copy of the alleged agreement ("Tehreer") by the Collector while he was obliged to reply the notice u/s 80, CPC.

12. The undisputed facts of the case before filing the suit u/s 229(b) of the U.P.Z.A. and L.R. Act, are that the petitioners served the notice to the Collector u/s 80 of CPC, which is mandatory provision for filing the suit. This fact is also not disputed that the suit was decreed on 16-3-1990 by the Assistant Collector, Kotdwar, since it has not been denied in counter-affidavit.

13. Learned Counsel appearing for the State has vehemently urged that u/s 47-A(3) of the Stamp Act, the Collector may, suo motu, take action to realize the deficit stamp duty, if any, together with penalty on the copy of the instrument which is under stamped.

14. The arguments made by the learned State Counsel are misconceived. This section only authorises the Collector in case of the registered documents and copies thereof, Sub-section (3) of Section 47-A provides to take action on the copy of the instrument within four years from its execution of the documents.

15. Only Section 33 of Indian Stamp Act, 1899 is the section, which provides for examination and impounding of instruments. Section 33 of the Indian Stamp Act, 1899 reads as under:

Examination and impounding of instruments.- (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed.

Provided that:

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Sections 125 to 128 and Sections 145 to 148 of the Code of Criminal Procedure, 1973.

(b) in the case of a Judge of High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section the State Government may in cases of doubt, determine what offices shall be deemed to be public offices and who shall be deemed to be persons in charge of public offices.

(4) Where deficiency in stamp duty paid is noticed from the copy of any instrument, the Collector may suo motu or on a reference from any Court or from the Commissioner of Stamps or an Additional Commissioner of Stamps or a Deputy Commissioner of Stamps or an Assistant Commissioner of Stamps or any officer authorised by the Board of Revenue in that behalf, call for the original instrument for the purpose of satisfying himself as to the adequacy of the duty paid thereon, and the instrument so produced before the Collector shall be deemed to have been produced or come before him in the performance of his functions:

(5) In case the instrument is not produced within the period specified by the Collector, he may require payment of deficit stamp duty, if any, together with penalty u/s 40 on the copy of the instrument:

Provided that no action under Sub-section (4) or Sub-section (5) shall be taken after a period of four years from the date of execution of the instrument.

Provided further that with the prior permission of the State Government an action under Sub-section (4) or Sub-section (5) may be taken after a period of four years but before a period of either years from the date of execution of the instrument.

16. If it is presumed that the copy of the instrument came before Collector in the performance of his normal functions while replying the notice u/s 80, CPC on behalf of the State. The learned Collector has committed manifest error of law, while he was taking action on the copy of the instrument by not considering the provision of Sub-sections (4) and (5) of Section 33, which provides that no action under Sub-sections (4) and (5) shall be taken after a period of four years from the date of the execution of the instrument. The alleged agreement was executed on 25-8-1969 and the action was taken by the Collector in the year 1988-1989, admittedly after four years, which was time barred.

17. It is clarified that this proviso was subsequently amended in the year 1998 by the U.P. Act No. 22 of 1998 (w.e.f. 1-9-1998) wherein the provision was made after a lapse of four years by the prior permission of the State Government an action can be taken within further four years but before a period of eight years from the date of execution of the instrument. This proviso is not applicable in the case of petitioners, since, it was not made applicable retrospectively and even otherwise, the action was taken after a lapse of eight years. Therefore, both the orders dated 19-2-1991 (Annexure No. 2) and order dated 18-7-1991 (Annexure No. 4) are manifestly erroneous and are liable to be set aside.

18. In view of discussion in foregoing paragraphs, the writ petition is allowed. The order dated 19-2-1991 (Annexure No. 2) passed by the Collector, Pauri

Garhwal as well as the order dated 18-7-1991 (Annexure No. 4) passed by the Commissioner, Garhwal Division, Pauri Garhwal are set aside. It is made clear if any amount was paid in terms of interim order, the amount be refunded to the petitioner within a period of eight weeks from the date of production of certified copy of this order.

19. All pending applications stand disposed of accordingly.