
(2014) 12 AHC CK 0085
In the Allahabad High Court
Case No : Writ-C No. 67408 of 2014

Om Prakash

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Citation : (2015) 126 RD 365

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

Bench : Single Bench

Advocate : B. Ram, Advocates for the Appellant

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri B. Ram Counsel for the petitioner. The writ petition has been filed for quashing the order of Tehsildar dated 29.9.2006 allowing the mutation application filed by Ranveer Singh and others on the basis of sale-deed dated 20.2.2006 executed by the petitioner, order dated 31.8.2009 dismissing the recall application of the petitioner against the aforesaid order, the order of Sub-Divisional Officer dated 25.1.2011 dismissing the appeal of the petitioner and the order of Additional Commissioner dated 5.8.2014 dismissing the revision of the petitioner filed against the aforesaid order.

2. It is alleged that the land in dispute was allotted to the petitioner on 18.12.1995. Although the petitioner was granted bhumidhari with transferable right over the land in dispute on 1.5.2006 but the alleged sale-deed dated 20.2.2006 was procured by the contesting respondents in the garb of loan documents from the petitioner. The petitioner was bhumidhar with nontransferable right on the date of execution of sale-deed as such the sale-deed is void and no mutation can be made on its basis. However without making due proclamation and without giving notice to the petitioner Naib Tehsildar by order dated 29.9.2006 directed for recording the name of the contesting respondent over the land in dispute on the basis of alleged sale-deed dated 20.2.2006. The order being ex-parte order, the petitioner filed an application for recall of the order. However Naib Tehsildar by order dated 31.8.2009 dismissed the

application of the petitioner for recall of the order. The petitioner challenged the aforesaid order in the appeal before the Sub-Divisional Officer which was dismissed by Sub-Divisional Officer by order dated 25.1.2011. Thereafter the petitioner filed a revision against the aforesaid order which was dismissed by the Additional Commissioner by order dated 5.8.2014. Hence this writ petition has been filed.

3. All the Revenue Courts found that patta was granted to the petitioner on 18.12.1995 and on completion of 10 years the petitioner has become bhumidhar with transferable right under section 131-B of UP Act No. 1 of 1951 as such sale-deed dated 20.2.2006 was not void. It has been further found that the petitioner has filed a Civil Suit for cancellation of the sale-deed which was dismissed by the Trial Court by order dated 21.9.2012. Thus the sale-deed was a valid document and transferees were entitled for mutation of their name on its basis. The Counsel for the petitioner submits that actual bhumidhar with transferable right was given to the petitioner on 1.5.2006 and on 20.2.2006 the name of the petitioner was recorded as bhumidhar with non-transferable right as such the application for mutation was not maintainable. Against the decree of the civil suit dated 21.9.2012 an appeal has also been filed which is pending. In such circumstances the sale-deed being void document no mutation could have been done on its basis.

4. I have considered the arguments of the Counsel for the petitioner and examined the record.

5. On the allegation that the sale-deed was procured in the garb of loan document, the sale-deed cannot be treated as void and the remedy of the petitioner was to get the sale-deed cancelled from Civil Court and so long as the sale-deed is not cancelled revenue authorities cannot ignore it as held by the Full Bench of this Court in the case of Ram Nath v. Munna 1976 RD 220.

6. So far as the allegation of the petitioner that on 20.2.2006 the status of the petitioner was bhumidhar with nontransferable right and he was not eligible to transfer the land in dispute is concerned, the effect of section 131-B of U.P. Act No. 1 of 1951 is automatic and on completion of 10 years period the right of bhumidhar with transferable right has been accrued to the petitioner by the operation of law and the declaration as such is a mere formality, on this ground the sale-deed cannot be said to be void. The Counsel for the petitioner relies upon the judgment of this Court in case of Mahendra Pratap Vs. Bhagwati Devi, , in which it has been held that once execution of sale-deed is denied then misrepresentation, undue influence pale into insignificance and the burden of proof is shifted upon the defendant to prove due execution of the sale-deed. The case law relied upon by the Counsel for the petitioner has to be applied in the civil suit and not before the Revenue Court. The writ petition has no merit, it is dismissed.