

(1998) 05 AHC CK 0099
In the Allahabad High Court
Case No : C.M.W.P. No. 14269 of 1998

Prashidh Singh Chauhan and others	Vs	APPELLANT
Additional Judge Small Causes Court, Varanasi and others		RESPONDENT

Date of Decision : 13-05-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1998) 3 AWC 1778 : (1998) 3 CivCC 600

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : R.J. Singh, for the Appellant; Km. Farida Jamal, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The opposite party Nos. 3 and 4 had filed a suit being Original Suit No. 145 of 1996 before Civil Judge. Junior Division, Chakla Varanasi. In connection with the said suit, an application for temporary injunction was filed. By an order dated 11.9.1997 temporary injunction was granted. Appeal being Civil Misc. Appeal No. 225 of 1997 was filed by the defendants. The appeal was dismissed by an order dated 20.3.1998 passed by the Additional Judge, Small Causes Court. These are the orders under challenge.

2. Learned counsel for the petitioner Sri R.J. Singh contends that opposite party No. 3 Smt. Piyari Devi, has been claiming interest over the property by virtue of will executed in her favour on 31.1.1973 whereas petitioner-defendant claiming interest over the property by virtue of Will dated 25.3.1973 executed by the same person. According to him, it is an established principle of law that the last will shall prevail.

3. He further contends that the petitioners having been in physical possession, they cannot be dispossessed by virtue of interim order. From the material on record according to him, the plaintiff was unable to establish prima facie case. On the face of will, the plaintiff did not have any title to the property. In the

Commissioner's report it was found that the masons and workers working on the land has testified that they were working under defendant-petitioners, herein. Both the Courts below have overlooked the said findings recorded in the report of the Commissioner and had arrived at altogether to a perverse conclusion. He further submits that the order, as it appears, suffers from the perversity. He led me through various orders in order to substantiate his case.

4. Miss Farida Jamal, learned counsel appearing on behalf of opposite parties, on the other hand, contends that both the Courts have come to a finding of fact on the basis of materials placed before it. The said findings being concurrent finding, this Court sitting in revision, cannot interfere with the same. The materials on record overwhelming support the contention of the learned counsel for the petitioner that the property is recorded in the name of the plaintiff. She points out that the report of the Commissioner was also taken into consideration by the Courts below and it had come to a conclusion against the defendants on the basis of such report. According to her even if on the basis of such report, this Court is of a different view, this Court cannot substitute its own view to that of the view taken by the Court, that too concurrently. She also contends that there is no perversity in the order impugned and, therefore, this Court should not interfere with the same.

5. Heard learned counsel for both the parties at length and perused the relevant papers placed before this Court. It appears that both the Courts below have relied upon the documents produced by the parties and had come to a conclusion on the basis thereof that the plaintiff was in possession of the property. The alleged Will was executed sometimes in the year 1973 while the suit was filed in 1996, namely, after twenty three years. All the records produced before the Court below were found in favour of the plaintiff. The report of the Commissioner was also considered and reasons have been given as to why the Courts below did not agree with the finding recorded in the Commissioner's report. In the report of the Commissioner, it was pointed out that the masons and workers working on the said land were working under the petitioners but their testimony cannot have any impact on the present case. I do not find any unreasonableness in such a finding. The title of the property which is to be decided in this case is a prima facie finding which is to be concluded by the material placed before the Court. The findings are tentative. On the basis of the materials placed, the Court shall come to a particular conclusion. Even if this Court is of a different view, then this Court cannot substitute its own view to that of the view taken by the Court below, unless it is of the view. That no reasonable person could come to such a conclusion or in other word that the finding is perverse. I have not been able to persuade myself to agree with the contention raised by the learned counsel for the petitioners that there is any perversity in the order itself. The finding being finding of facts, this Court sitting in revision is very slow to interfere.

6. Learned counsel for the petitioner relied on the decision in the case of Balwant Singh and others v. Daulat Singh. 1992 (2) CRC 291. In the said case, the Apex

Court has held that mutation of names or entry in record, the right in respect of property in the revenue record does not create nor extinguish title nor has it any presumptive value on title. There is no dispute with regard to the ratio laid down in the said decision. Entry in revenue record may not have any presumptive value on title, but it has value on possession. The records of right only are documents of possession and are not of title. Then again the question is not final adjudication of the title, it is only with regard to the finding for the purposes of grant of injunction. If on the basis of documents produced the Court comes to prima facie finding, for the purposes of grant or refusal of injunction, in that event, the said order cannot be assailed in view of decision cited by the learned counsel for the petitioner in Balwant Singh (supra).

7. Since I have not been able to find any perversity in the order impugned, I am not inclined to interfere with the impugned order. This writ petition, therefore, falls and is accordingly dismissed.

8. There will, however, be no order as to costs.