

(2014) 12 AHC CK 0226
In the Allahabad High Court
Case No : Civil Revision No. 143 of 2014

Purushottam Prakash Bansal

APPELLANT

Vs

Bhagwati Solvent Extraction Pvt. Ltd.

RESPONDENT

Date of Decision : 18-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143, 144, 189, 2(14), 331

Citation : (2015) 2 ADJ 433 : (2015) 126 RD 494

Hon'ble Judges : Pradeep Kumar Singh Baghel, J

Bench : Single Bench

Advocate : Madhav Jain, Advocate for the Appellant; Swapnil Kumar, Advocate for the Respondent

Judgement

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Pradeep Kumar Singh Baghel, J.—This Civil Revision under section 115 of Code of Civil Procedure is preferred by the defendant against the order dated 11.3.2014 passed by the Additional District Judge (Court No. 3), Agra in Original Suit No. 844 of 1995 whereby he has decided the issue No. 8 and 9 in favour of the plaintiff rejecting the objection of the defendant in respect of jurisdiction of the civil court over the disputed property.

2. Briefly stated the facts of the case are that the respondent/plaintiff instituted a Original Suit No. 844 of 1995 in the court of Civil Judge, Agra for possession over the property in suit and the mesne profit. The plaintiff case is that it is a Company duly registered under the Indian Companies Act, 1956, having its head office at Kolkata. The plaintiff claims that one of its Director Shyam Sunder Taparia purchased a plots No. 82(M), 83(M)/1(M), 84-A(M), 85-A(M), 86-A(M), 87-A(M), 88(M) measuring 3 bighas 7 biswas 8 biswansis situated at Mauza Chhalesar/Bholai Mohammadpur, Tehsil Etmadpur, district Agra. The Company

was incorporated on 23.5.1973. Shyam Sunder Taparia later on relinquished the land in favour of the Company after its incorporation. Shyam Sunder Taparia stood in fiduciary relationship in relation to the plaintiff. In fact the property in question was owned by the plaintiff Company.

3. Since from very beginning the land has been used for the plaintiff factory and has never been used for agriculture. It is stated that the land was mortgaged with the Central Bank of India. Due to some dispute the factory was closed in the year 1980. It is stated that after insolvency of 1991, when Satya Narain Taparia visited the factory unit he found that the defendant No. 1 to 6 are running their business under the name and style of defendant No. 7 M/s. Salig Ram Food & Allied Industries Pvt. Ltd. On inquiry they failed to show any document for approval of title in their favour. Hence, he filed the present suit.

4. A written statement was filed by the revisionist/defendant. The stand taken in the written statement was that the plaintiff Company was not owner of the land. Shyam Sunder Tapadia is recorded Bhumidhar in the revenue record and also subsequently recorded in the consolidation proceedings. However, the location of the land and installation of plant and machinery over the portion of the land is not denied by the revisionist/defendant in the written statement. It is also stated that since the year 1985 the possession was delivered to the revisionist/defendant on execution of the lease deed and Oil Mill was started. It is also stated that the sign Board of the defendant No. 7 was fixed on the main gate of the premises after incorporation of M/s. Salig Ram Food & Allied Industries Pvt. Ltd. The revisionist-defendant has relied on an agreement dated 17.2.1982 and claims that the possession of the property was handed over to them under the party performance of the contract of the agreement dated 17.2.1982 to transfer entire shares of the Company.

5. The trial court has framed the issue No. 8 and 9 in respect of the suit being barred by section 49 of the U.P. Consolidation of Holdings Act, 1953 and under section 331 read with section 143 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The trial court has decided both the issues as a preliminary issue in favour of the plaintiff and has held that the civil court has the jurisdiction to hear the suit.

6. I have heard Sri Shashi Nandan, learned Senior Advocate assisted by Sri Madhav Jain, learned counsel for the revisionist and Sri Swaplin Kumar for the plaintiff-respondents.

7. Learned counsel for the revisionist submits that the plaintiff-respondent has based their claim on the deed of relinquishment dated 12.11.1973. Shyam Sunder Tapadia is recorded as a Bhumidhar in the revenue record and the land in question is agricultural land. Under section 189 of the Act of 1950, prescribed extinction of interest of bhumidhar with transferable right in the agricultural holding or part thereof. Since none of the condition are attracted in the present case therefore the suit is barred by section 49 of the Act of 1953. He further

submits that the finding of the court below on the issue No. 9 is also erroneous as there is no evidence on record about declaration under section 143 of the Act of 1950, in relation to the land in question. Learned counsel for the revisionist has placed reliance on a judgment of the Supreme Court in Shri Chandrika Singh and others Vs. Raja Vishwanath Pratap Singh and another, .

8. Learned counsel for the respondent submits that the revisionist-defendant have admitted in their written statement that the property in suit is being used for factory. Even the perusal of the alleged agreement on which the defendant-revisionist are placing reliance clearly mentions that they got the possession of the factory along with the building machinery and all other fixtures. It was further submitted that the document filed by the revisionist-defendant itself establishes abadi an factory. He has place reliance on a judgment of the Supreme Court in Randhir Singh and others Vs. Deputy Director of Consolidation and others, , and judgment of this Court in Ramzan Ali v. Deputy Director of Consolidation, Azamgarh and others 1997 ALL. L.J. 1934,; M/s. Mahabir Jute Mills Ltd. v. A.D.J., Gorakhpur and others 2010(2) ADJ 533, and Ajaz Carpets and Others Vs. Birla International Pvt. Ltd.,

9. I have considered the rival submissions and perused the record. From the perusal of the pleadings of the parties it is admitted case that factory is running on the disputed land. The revisionist-defendant in their written statement has admitted that since the year 1985 when the possession was delivered to them on execution of sale deed they are running Oil Mill. A relevant part is being extracted hereunder below:--

"paragraph 4..... since the very inception, when company was floated in the year 1985 and possession was delivered on execution of the lease deed and Oil Mill was started. The sign Board was also fixed on the main gate of the premises after incorporation of M/s. Salig Ram Food and Allied Industries Pvt. Ltd. Sri Satya Narain Taparia also inspected the Dal Mill of M/s. Salig Ram Food & Allied Industries Pvt. Ltd. Which was started in 1987-88."

10. The revisionist-defendant have placed reliance on their agreement dated 17.2.1982 which was executed in favour of the revisionist-defendant by the three Directors of the Company namely Shobha Chand Taparia, Shyam Sunder Taparia and Nand Kishore Taparia. The agreement dated 17.2.1982 is on the record as Annexure-8 to the Stay Application). The relevant part of the agreement is extracted hereunder blow:--

"Whereas in lieu of the receipt of the earnest money they have been delivered possession of the factory along with its site, buildings machines, and all other fittings and fixtures and have been permitted to carry out all repairs, constructions and replacements according to their requirements and possess and use the said factory, its site, buildings, machines, fittings, fixtures etc. as suits them.

Whereas it has been agreed between the vendors and vendees that the vendors

shall transfer their and those of remaining shareholders all the shares in the company in the manner desired by the vendees either in their favour or in favour of their nominees."

11. The aforesaid pleadings and agreement clearly goes to show prima facie that there is no dispute that the land is not being used for agricultural purposes and initially it was alleged by the plaintiff that they had established the factory over the disputed land and at present the revisionist-defendant are claiming to run an Oil Mill over the disputed property. The revisionist-defendants have filed some documents such as CH-41 and assessment of the Nagar Nigam and Municipal Tax receipt which also indicates that the land in question is not an agricultural land.

12. This Court in *M/s. Mahabir Jute Mills Ltd. (supra)*, has dealt with similar submission. The Court held that if land is leased out for manufacturing purposes then it was not a land as the lease was obviously not for agricultural purposes. The relevant part of the paragraph 8 reads as under:--

"8..... It is not in dispute that the property in dispute has been given on lease on 15.2.1935 for manufacturing purposes and it authorized the petitioner to put up a mill or a factory on a land, if so desired. On the said land the factory and the building was constructed. When the rent was not paid for the period from January, 1950 to 15.1.1951, the suit was filed in the year 1951. In the said suit it was pleaded by the petitioner that the suit was not maintainable as the nature of the property was agricultural land and the Civil court has no jurisdiction to entertain the suit. Such plea has been rejected by the trial court, in the first appeal and in the second appeal by this Court. This Court in the order dated 7.1.1964 has observed that the land was leased out for manufacturing purposes and the land in dispute was not "land" as the lease was obviously not for agricultural purposes, the suit was properly filed in the civil court. The order of this Court is between the same parties and, therefore, binding upon the petitioner. In the circumstances, it is not open to the petitioner to raise the same plea, viz. That the suit is not maintainable as the property in dispute is the land for agricultural purposes. The revisional court has recorded a categorical finding that in the land a factory and buildings have been constructed and it is no more land. It ceases to be the land prior to the commencement of the U.P.Z.A. & L.R. Act and therefore, the provision of the U.P.Z.A. & L.R. Act does not apply and in the circumstances the revisional court has rightly held that the nature of the property was not the land for agricultural purposes and, therefore, there was no question of referring the matter to the revenue Court for deciding the nature of the land."

13. The fact of the present case is similar to the aforesaid matter. In so far as the judgment relied by the learned counsel for respondent the similar view has been taken in the case of *Ajaz Carpets (M/S) and others (supra)*, this Court dealing with the similar plea with regard to section 143 of the U.P.Z.A. & L.R. Act and section 331 of the U.P.Z.A. & L.R. Act has held in paragraph 18 and 19 which is extracted hereunder below:--

"paragraph 18. If a land is not being used for agricultural purposes then it is not necessary that in every situation certificate under section 143 of U.P.Z.A. & L.R Act must be obtained otherwise that land will continue to be governed by U.P.Z.A. & L.R Act. Section 331-A of the Act is quoted below:

331-A Procedure when plea of land being used for agricultural purposes is raised in any suit.--(1) If in any suit, relating to land held by a bhumidhar, instituted in any court, the question arises or is raised whether the land in question is or is not used for purposes connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, and a declaration has not been made in respect of such land under section 143 or 144, the court shall frame an issue on the question and sent the record to the Assistant Collector in-charge of the sub-division for the decision of that issue only:

Provided that where the suit has been instituted in the court of Assistant Collector in-charge of the sub-division, it shall proceed to decide the question in accordance with the provisions of Section 143 or 144 as the case may be.

2. The Assistant Collector in-charge of sub-division after reframing the issue, if necessary, shall proceed to decide such issue in the manner laid down for the making of a declaration under section 143 or 144, as the case may be, and return the record together with his finding thereon to the court which referred the issue.

3. The court shall then proceed to decide the suit accepting the finding of the Assistant Collector in-charge of the sub-division on the issue referred to it.

4. The finding of the Assistant Collector incharge of the sub-division on the issue referred to it shall, for the purpose of appeal, be deemed to be part of the finding of the court which referred the issue.

Paragraph 19. From the above it is quite clear that if a suit relating to land held by bhumidhar is instituted in a court other than revenue record (Assistant Collector/S.D.O.) and a question arises whether the land in question is or is not used for purposes connected with agricultural then matter has to be referred to the Assistant Collector. However if in any such suit filed before the Civil Court or J.S.C.C., there is no dispute that the land is actually being used for purposes not connected with agricultural and it is admitted that the land is having constructed portion and is being used for residential, commercial or industrial purposes then there will be absolutely no necessity to refer the matter to the Assistant Collector. The necessary corollary which follows is that if plaintiff claims and defendant admits that on an agricultural land constructions have been made and the same is being used for residential, commercial or industrial purposes then there will be no necessity or a certificate under section 143 of U.P.Z.A. & L.R Act and the Civil Court or J.S.C.C. Or any other Court other than revenue court will have full jurisdiction to decide the matter."

14. In so far as the aforesaid judgment is concerned the relief by the learned

counsel for the revisionist in the case of Shri Chandrika Singh and others v. Raja Vishwanath Pratap Singh (supra) is concerned the said fact has a distinguishing features. As the dispute in the said case was with regard to a property comprising of 10 bighas 10 biswas and out of which the residential house, pucca well and the land appurtenant to the house over an area of 10 biswas and the rest of the land measuring about 4 bighas was being used for agricultural purposes.

15. In view of the said facts, Court held that the question as to whether a particular land is "land" under section 2(14) of the Act to which provision of Act, 1950 are applicable would require determination of fact which land is being used for purpose connected with agriculture, horticulture or animal husbandry. It can be determined in accordance with provisions of Section 143 and 144 of the Act, 1950.

16. For the reasons stated above, I am of the view that the order of the civil Judge does not suffer from any illegality. The Civil Revision lacks merit and is accordingly dismissed.