(1982) 10 AHC CK 0004

In the Allahabad High Court

Case No : Second Appeal No. 3098 of 1982

Rafiq Khan and Others — APPELLANT

Vs

Mohammad Umar Khan and Others — RESPONDENT

Date of Decision : 21-10-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Court Fees Act, 1870 — Article 17, 18, 19, 7, 7A
Specific Relief Act, 1963 — Section 34
Suits Valuation Act, 1887 — Section 3, 4
Uttar Pradesh Suits Valuation Rules, 1942 — Rule 3

Citation : (1983) AWC 315

Hon'ble Judges : N.D. Ojha, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant;

Judgement

N.D. Ojha, J.—The suit giving rise to this second appeal was filed by the Plaintiff-Respondents who are minors governed by the Mohammedan Law for cancellation of a sale deed to the extent of their 4/5th share on the ground that the same having been executed by their natural guardian was void. The suit has been decreed by the lower appellate court and the sale deed to the extent of 4/5th share which was the share of the Plaintiff Respondents has been cancelled.

2. It was urged by counsel for the Appellants that the Plaintiff-Respondents not being in possession and the possession being with the Appellants even over their 4/5th share after the sale deed which was for the entire land including the Plaintiff-Respondents'' 4/5th share the suit for cancellation of the sale deed was barred by Section 34 of the Specific Relief Act. Having heard counsel for the Appellants at some length I find it difficult to agree with this submission. Section 34 of the Specific Relief Act reads:

Any person entitled to any legal character, or to any right as to any property may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the Plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the Plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.-A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

On the plain language of Section 34 it is apparent that it applies only to a suit for declaration of any legal character or for declaration of right as to any property. In the instant case it has not been disputed by counsel for the Appellants, and in my opinion rightly, in view of the provision contained in this behalf in Section 364 of Mulla''s Principles of Mohammedan Law which provides that a de facto guardian has no power to transfer any right or interest in the immovable property of the minor and that such a transfer is not merely viodable but void, that the impugned sale deed being by the de factor guardian of the minors was void. What is void is in law non est. No declaration is needed holding it to be void. In the very nature of things it is void ab initio. The sale deed being void the minors were never divested of their right over the property in dispute. Their suit was not for declaration of any legal character or right as to any property. There is nothing in law to prohibit a person from instituting a suit for cancellation of a sale deed even if it is void by way of abundant caution and to avoid all future possibility of dispute. If such a suit is filed neither any declaration of a legal character is involved nor declaration in respect of any right as to any property is involved. As already seen the sale deed being void the title continues in the minors and no declaration is needed in this behalf. It is for these reasons that I am of opinion that there is no substance in the submission that the suit was barred by Section 34 of the Specific Relief Act.

3. It was then urged by counsel for the Appellants that the consideration of the sale deed was Rs. 40,000/- and the suit was consequently not cognizable by the Munsif. I find it difficult to accept this submission either. For purposes of payment of court fees a suit for or involving cancellation of or adjuding void an instrument securing money or other property is covered by Section 7(iv-A) of the Court Fees Act. For purposes of jurisdiction Section 4 of the Suits Valuation Act would be relevant. This section reads:

4. Valuation of relief in certain suits relating to land. Suits mentioned in paragraph IV(a), IV-A, IV-B, V, V-A, VI-B, VI, VI-A, VIII and X-(d) of Section 7 and Articles 17, 18 and 19 of Schedule II of the Court Fees Act, 1870, as in force for the time being in the Uttar Pradesh, shall be valued for the purposes of jurisdiction at the market value of the property involved in or affected by the relief sought, or of the amount involved in or affected by or the title to which is affected by the relief sought, and such value shall in the case of land be deemed

to be the value as determinable in accordance with the rules framed u/s 3.

The instant suit being for cancellation of a sale deed would be covered by Section 7(iv-A) referred to in Section 4 of the Suits Valuation Act. As such the value of the suit for purposes of jurisdiction is to be determined in accordance with the rules framed u/s 3 of the Suits Valuation Act. Rule 3 of the Uttar Pradesh Suits Valuation Rules, 1942, inter alia deals with suit for possession which is covered by Section 7(v) of the Court Fees Act which section too is mentioned in Section 4 of the Suits Valuation Act along with Section 7(iv-A). Rule 3(b) provides:

3. Suits for possession of land, building and gardens. In suits for the possession of land, the value of the land for purposes of jurisdiction shall be determined as follows:

(b) where the land forms an entire estate or a definite share of an estate paying annual revenue to Government or forms part of such estate and such part is recorded in the Collector''s register as separately assessed with such revenue, and such revenue is not permanently settled thirty times the annual revenue so payable;

...

Counsel for the Appellants produced a copy of the plaint, paragraph 9 whereof indicates that the annual revenue payable in respect of the land of the share of the Plaintiff-Respondents is Rs. 75.52. Thirty times the annual revenue as contemplated by Rule 3(b) aforesaid comes to Rs. 2,265.60. And this would be the valuation of the suit for purposes of jurisdiction. A suit of this valuation was undisputably cognizable by a Munsif.

4. No other point has been pressed by counsel for the Appellants.

5. In the result I find no merit in this second appeal. It is accordingly dismissed Under Order 41 Rule 11 Code of Civil Procedure.

