

(2010) 05 AHC CK 0157

In the Allahabad High Court

Case No : Civil Revision Defective No. 52 of 2009

Raghu Raj Singh and Another

APPELLANT

Vs

Ghanshyam Das and Others

RESPONDENT

Date of Decision : 24-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115
Hindu Succession Act, 1956 — Section 25, 26

Citation : (2010) 4 RCR(Civil) 269

Hon'ble Judges : Rakesh Sharma, J

Final Decision : Dismissed

Judgement

Rakesh Sharma, J.—Heard Sri V.S. Chaudhary, learned counsel for the revisionists, Sri A.K. Sachan, and Sri P.K.S. Paliwal, learned counsel for the respondents.

2. This revision under Section 115 of Civil Procedure Code has come up for admission today. This revision is pending for admission since 6th July, 2009.

3. The revisionist has assailed the order dated 28.11.2008 passed by the learned Special Judge (SC/ST)/Additional District Judge, Gautam Budh Nagar in execution case No. 24 of 1997. The revisionist claims himself to be son of the decree holder Late Sri Raghu Raj Singh who had sought recovery of the land acquisition compensation granted by the competent Court. The land acquisition execution case Raghu Raj Singh v. State of LI.P., was pending disposal before the execution Court. One Sri Ghanshyam Das who has claimed himself to be transferee of execution of decree on behalf of Late Raghu Raj Singh. The name of Sri Ghanshyam Das was substituted in place of Late Raghu Raj Singh as he had claimed himself to be a transferee seeking execution of decree on behalf of Late Raghu Raj Singh. According to him he had acquired an actionable claim. The executing Court had rejected the application submitted by the revisionist seeking induction in the execution proceedings by writing a detailed order.

4. As per learned counsel for the revisionist Late Sri Raghu Raj Singh who was

the owner of agricultural land plot Nos. 577/1, 578/1 and t90/1 having an area measuring 3 Bigha, 15 Biswa, 14 Biswansis 5 Dhur situate in village Bhodd, Pargana Baran, Tehsil and District Bulandshahar was father of Pankaj Singh, the revisionist. This land was acquired by the Bulandshahar Khurja Development Authority for the purpose of urban development. After completing the process of land acquisition an award for Rs. 76 lakh was made. The amount was to be paid as compensation Sri Raghu Raj Singh was made. It was also brought to the notice of the Court that Late Raghu Raj Singh had sought reference from the Court of District Judge, Bulandshahar which had enhanced the amount of compensation. Sri Raghu Raj Singh, land owner, was allowed Rs. 345/ per square yard as compensation. The father of the revisionist, namely, Raghu Raj Singh filed an execution case No. 740 of 1995 seeking payment of compensation during pendency of the execution case. Sri Raghu Raj Singh suffered two heart attacks and his blood supply system was immensely disturbed and affected. Because of lack of supply of blood to the brain he became senile and his behaviour became absolutely abnormal. It has been alleged that the respondent No. 1 Ghanshyam Das had taken revisionist father Raghu Raj Singh in his undue influence. They were trying to exploit the situation of serious illness of the revisionist father. The revisionist father Raghu Raj Singh was made to move an application for the substitution of his name in the execution proceedings. The substitution application was moved on the ground that the father of the revisionist had rightly transferred the execution of the decree to the tune of Rs. 76 lakh, 45 thousand 495/ for a small sum of Rs. 1 lakh only. The actionable claim and execution of the decree was purchased by Ghanshyam Das. Armed with these documents Ghanshyam Das got himself substituted as transferee of the decree. When the father of the revisionist came to his senses, he has sought recall of the application seeking substitution of respondent No. 1. However, under the evil influence respondent No. 1 and his associates, the said application was got dismissed subsequently. Even the execution case No. 240 of 1995 was dismissed in default and thereafter, another execution case No. 24 of 1997 was filed either by forging the signature of the father of the revisionist or getting his signatures on some plain papers.

5. The revisionist has never admitted these documents. The respondent No. 1 Ghanshyam Das managed to get his name substituted in place of the father of the revisionist in the execution case No. 24 of 1997 vide order dated 16.9.1997. The respondent No. 1 Ghanshyam Das and his associates had played fraud by concealing material facts from the Court. They had committed several other forgeries in the execution proceedings.

6. Learned counsel for the revisionist has further submitted that on 12.10.1997 Raghu Raj Singh, father of the revisionist was found dead having a gun shot injury whereupon a criminal case Crime No. 187 of 1997 under Section 302 of I.P.C. (Police Station Anoopshahar, District Bulandshahar) was registered. The revisionist Pankaj Singh son of Raghu Raj Singh was falsely implicated in the said murder case of his father. It was a conspiracy hatched by the persons who were

interested in the property of the father of the revisionist. However, later on the revisionist was acquitted by the trial Court v/de judgment and order dated 13.8.1998. After his acquittal in the aforesaid criminal case, the revisionist moved an application No.1 28C dated 1.7.1998 under Section 151 read with Order 22, Order 6, Rule 17 C.P.C. For revoking and cancelling the name of Ghanshyam Das, respondent No. 1, and sought substitution of his name in place of his father in the execution case No. 24 of 1997. Another application was moved on 28.7.1999. Later on both the applications were replaced by an amended application No. 41C filed on 27.5.2000 in the said execution case. In this application the revisionist made specific submissions with regard to misdeeds, forgeries committed by the respondent No. 1.

7. Learned counsel for the revisionist pointed out that his name was substituted in place of his father vide order dated 11.1.1999 passed in Misc. Case No. 340 of 1996 on the application moved by Bulandshahar Khurja Development Authority. In response Ghanshyam Das has filed his objections on 27.8.2004. The objections were also filed on the application No. 41C which are on record. The execution case No. 24 of 1997 proceeded further. The learned Court below permitted the parties to place the evidence in support of their contentions. Witnesses were examined by the contesting parties. Written arguments were also filed. Learned Additional District Judge, Gautam Budh Nagar, executing Court had dismissed the application No. 41C filed by the revisionist seeking his substitution in place of his father Late Raghu Raj Singh. The learned Court below has miserably failed to consider the entire evidence and materials available on record. The Court had excluded from consideration that the revisionist Pankaj Singh, was acquitted in criminal case in which he was prosecuted for murder of his father, Sri Raghu Singh. The judgment and order dated 13.8.1998 was ignored by the learned Court below. The forgeries and misdeeds committed by the respondent No. 1 Ghanshyam Das were also excluded from consideration. The Court had failed to exercise his jurisdiction so vested in it and has committed material irregularity without following the settled position of law. The provisions of UP. Zamindari Abolition and Land Reforms Act and Hindu Succession Act has been misinterpreted.

8. Learned counsel for the revisionist has strenuously argued that the revisionist was not involved in the criminal case and as a son he was entitled to inherit the property including compensation awarded by the reference Court, executing Court. The revisionist being the legal heir of deceased Raghu Raj Singh was entitled to receive the entire land acquisition compensation admissible to his father. He has taken the Court to the documents placed on record, various applications, objections and the impugned judgment was read in the Court.

9. The lower Court's judgment is based on conjectures and surmises. The material evidence and other factors have been ignored. The revisionist ought to have been substituted in place of his father Raghu Raj Singh. The case was not properly appreciated.

10. Learned counsel for the respondents have strongly resisted the motion and submitted that the impugned order dated 28.11.2008 passed in execution case No. 24 of 1997 is just, legal, valid and proper.

11. According to the learned counsel for the respondent No. 1 the learned lower Court has considered the fact that the revisionist is the murderer of his father Raghu Raj Singh and according to public policy, equity good consine as well as in view of the Principles of Hindu Law and the provisions contained in Sections 25 and 27 of Hindu Succession Act such son is not entitled to inherit property of his father. It was immaterial that the revisionist was acquitted. His illegal motive (mensrea) was clear as he was interested in grabbing the property alone. He has drawn attention of the Court that in addition to Pankaj Singh, two wives (mothers of revisionist) of Late Raghu Raj Singh i.e. Smt. Rita Singh and Smt. Jaishree are still alive. His two sisters namely Alka Singh and Meenakshi (daughters of Late Raghu Raj Singh) are also alive. How can Pankaj Singh alone enter the execution proceedings and claim the entire compensation. When four other family members are alive.

12. The respondent No. 1 Ghanshyam Das had purchased the decree, actionable claim for consideration from the decree holder Raghu Raj Singh. His name was substituted in the execution proceedings under orders of Additional District Judge, Bulandshahar in place of executor Raghu Raj Singh on 16.9.1997. At that time Sri Raghu Raj Singh had never challenged the order dated 16.9.1997 during his life time nor by Sri Pankaj Singh after demise of his father Raghu Raj Singh, in any competent Court. The order dated 16.9.1997 had become final. The two affidavits filed by Pankaj Singh before the lower Court are contradictory.

13. Learned counsel for the respondent No. 1 has demonstrated before the Court that Sri Raghu Raj Singh, decree holder, land owner had disinherited and disqualified his illegitimate son Pankaj Singh (revisionist) from inheriting the property. Raghu Raj Singh has got this fact published in so many newspapers on different occasions. (Page para 12 of counteraffidavit) Copies of Dainik Jagran newspaper dated 1 st March, 1997, Amar Ujala dated 20.2.1997, Amar Ujala dated 8.11.1995, Amar Ujala dated 7.1.1995 have already been placed alongwith counteraffidavit filed by the respondents. The revisionist had himself admitted on affidavit in the statement in chief before the learned lower Court (paper No. 90C2) that a sale deed dated 4.1.1996 was in fact executed by his father Raghu Raj Singh in favour of respondent No. 1 Sri Ghanshyam Das. However, according to him it was without proper consideration. This sale deed cannot be held to be void, at the instance of the executant and the executant never filed any suit for cancellation of the deed of transfer dated 4.1.1996. Raghu Raj Singh had himself admitted in civil proceeding and before the lower Court that the deed of 4.1.1996 was executed by him. As far as the amount of consideration is concerned it was a sole discretion and sweet will of the executant as to for which amount the transferrer is transferring the property. Sri Raghu Raj Singh has never raised any objection during his life time rather always certified, admitted the deed of

4.1.1996 by which he had transferred his right of executing the deed in favour of Ghanshyam Das.

14. It was also pointed out by the learned counsel for the respondent No. 1 and has also come in the cross examination before the lower Court that Sri Raghu Raj Singh has married Smt. Jaishree (sisterinlaw) in the life time of his first wife Smt. Rita Singh. Raghu Raj Singh was a hindu and in the life time of his first wife Smt. Rita Singh he could not have married Smt. Jaishree. It was also submitted that out of wedlock of Raghu Raj Singh and Smt. Rita Singh his wife a girl child Alka Singh was born. Smt. Rita Singh is alive and is residing in America. Daughter Alka Singh is also alive. The revisionist has admitted in his cross examination that from second wife Smt. Jaishree Devi a girl Meenakshi and son Pankaj Singh (revisionist) were also born. Pankaj Singh had admitted in his cross examination that none of other members of the family like Smt. Rita Singh first wife, Smt. Jaishree second wife or daughters Alka Singh and Meenakshi came forward to set out their claim in the execution proceedings. Following statement was made by Sri Pankaj Singh a practicing Advocate at Bulandshahar before lower Court:

"lekhraj singh ki kothi me main Ghanshyam Das Goyal ke kisi vaad ke samjhaute ke liye main apne pita Raghuraj Singh ke paas nahi gaya tha, Raghu Raj Singh kihatya dinank 12.10.1997 ko huithi, gaon Paitrak Bichaula me huithi, gaon me Raghu Raj Singh ka apna makan tha. Jo unhone banvaya tha. Usme uski hatya hui thi. Unkihatya kiF.I.R. mainenahikaraithi. Sanjeev Kumar Singh ne karai thi. Sanjeev Kumar Singh mere tau Shauraj Singh ke bete hain. Is F.I.R. me aaroppatra mere khilafaaya tha."

From the above statement any reasonable person with an ordinary prudence can gather that Sri Pankaj Singh was prosecuted for murder of his father with a mala fide intention and with mensrea/motive of grabbing his properties with the exclusion of other members of family (including his two mothers and two sisters).

15. Learned counsel for the respondent No. 1 has contended that during land acquisition proceedings, challenge was made in the Reference Court Pankaj Singh never assisted his father or cooperated with him in pursuing the cases. Even at the stage of two execution proceedings he did not appear on the scene after dismissal of execution application No. 740 of 1995. The second execution application No. 24 of 1997 was filed by Sri Raghu Raj Singh decree holder himself on 19.3.1997. Before filing this execution application Sri Raghu Raj Singh had executed a deed of transfer regarding enhanced amount of compensation in favour of Ghanshaym Dasrespondent No. 1 i.e. on 4.1.1996. The respondent No. 1 had moved an application alongwith an affidavit seeking substitution as an executant in place of Raghu Raj Singh on the basis of the deed of transfer dated 4.1.1996. Formal application was moved on 4.8.1997 and the same was allowed.

16. Sri Raghu Raj Singh, decree holder himself moved an application supported by an affidavit before the lower Court requested the Court that name of

Ghamshyam Das be substituted in his place. He had put his signatures in both the languages i.e. English and Hindi. Formal order was passed on 16.9.1997 by learned VIIIth Additional District Judge after hearing the decree holder Raghu Raj Singh. The Court has placed reliance on a judgment in U.P. Jal Nigam v. M/s Kalra Properties, AIR 1996 SC1170, in doing so. This impleadment of Ghanshyam Das had annoyed Sri Pankaj Singh, being son he was deprived of the compensation. He took the drastic step murdering his own father. Much stress was laid that he was an illegitimate son as such also he had no legal right to inherit the property.

17. In the present case FIR was lodged by nephew of the deceased not by his own son Pankaj Singh. The copies of the FIR and chargesheet have already been placed on record. In view of this, no evidence was required to disqualify the revisionist from the inheritance or succession as per provisions of Hindu law and other laws. The executing Court had taken note of these facts and had rightly rejected the application No. 41C2 preferred by the revisionist on 28.11.2008. As far as pleadings of Bulandshahar Khurja Development Authority in case No. 340/1996 is concerned. This admission has no binding effect on the interest of respondent No. 1.

18. Sri A.K. Sachan, learned counsel for the respondent No. 1 has further submitted that late Raghu Raj Singh, decree holder had instituted a Civil Suit No. 219 of 1997 against his illegitimate son Pankaj Singh, the revisionist in the Court of Civil Judge, Bulandshahar seeking permanent prohibitory injunction about the property Hotel Alka Motel situate in G.T. Road, Bulandshahar. In para 15 of the suit the father of the revisionist Raghu Raj Singh has stated as following :

"(15) Yeh ki prativadi jaisa ki purva me likha ja chuka hai ki vaadi ki sampatti ko ek sadyantra ke tahat hadap kar lena chahta tha tatha vaadi ki hatya kar uski sampatti par kabij hona chahta tha."

"(22) Yeh ki isi prakaran me vaadi ne apni bhumi jo arjan ho chuki thi ki ijrai evam hakuk bhi Ghanshyam Das putra Parmanand ko purn pratifal lekar vikray kar chuka tha evam shastam Apar Jila Judge mahoday, Bulandshahar ke nyaylay meukt Ghamshyam Das ka naam chadane hetu rajamandi de di thi. Tab bhi prativadi ne ukt LRAki rakam hadapne ke liye vadi se jabardasti kagajon par hastakshar karaye tatha aapatti prastut ki, jabki vaadi ne apni soch samajh se koi aapatti daakhil nahi ki, kyonki van apni ijrai ko purn pratifal lekar vikray kar chuke the."

19. In addition to these statements made in a Court of law an affidavit was also filed by Raghu Raj Singh in execution case No. 740 of 1995 indicating the same facts. On 29.9.1997 Raghu Raj Singh instituted another suit against his so called son of second wife Smt. Jaishree Devi she was nominated as care taker of his minor daughter Alka Singh. The pleadings made in these suits shows the attending circumstances and the background of this complex family.

20. I have heard the learned counsel for the parties at length and perused the

impugned order, the pleadings putforth by the parties, memo of revision, counteraffidavit and other pleadings.

21. The learned Additional District Judge, Gautam Budh Nagar has written a detailed, well reasoned and well considered order on 28.11.2008. This order runs in 15 pages dealing with the submissions putforth by the contesting parties. The Court had taken note of the chronology of events, background and history of the case, the complex nature of the family and strange relations amongst the members of the family. No doubt Raghu Raj Singh, tenure holder was a Hindu, he had married Smt. Jaishree Devi while his first wife Smt. Rita Singh was alive. From his second wife Smt. Jaishree Devi one daughter and son Pankaj Singh, Advocate, revisionist were born. The Court had appreciated the arguments putforth by the respondent No. 1 that the revisionist Pankaj Singh was illegitimate son of Sri Raghu Raj Singh. In the execution case none of the other family members like two wives of Sri Raghu Raj Singh i.e. Smt. Rita Singh and Smt. Jaishree or daughters Km. Alka Singh and Km. Meenakshi came forward seeking induction in the execution case. As per relevant laws of successions wills where four LH/ LRs being alive, how can Pankaj Singh alone can stake his claim over the property including the amount of compensation admissible to late Raghu Raj Singh. Only Pankaj Singh, Advocate, revisionist at a much later stage after murder of his father appeared on the scene and sought impleadment. His father Raghu Raj Singh had already sold his actionable claim, rights of executing the decree by a registered deed executed on 4.1.1996.

22. As per oral and documentary evidence brought on record the execution deed of transfer is admitted to the revisionist. At the instance of his father Raghu Raj Singh on filing a written application and affidavit, the executing Court has replaced Raghu Raj Singh and substituted Ghanshyam Das as decree holder vide order dated 16.7.1997. It is noteworthy that Raghu Raj Singh was alive on this date. On 4.8.1997 he himself made an application supported with an affidavit before the executing Court spelling out his intention that name of Ghanshyam Das be placed as an executor of the decree in his place. The executing Court after hearing the parties, taking statement of the decree holder passed a formal order on 16.9.1997. This order has remained unchallenged till date. The learned executing Court has rightly held that the revisionist Pankaj Singh was not entitled to be substituted as decree holder. The Court has placed reliance on various judgments as in U.P. JalNigamv. M/s. Kalra Properties, AIR 1996 1170; Bharoshi Sahu v. Malik Chandra Gupta, AIR 1986 24 (Pat) and Chinna Mai v. Nagrathi Nabhal, AIR Mad 1990 249; Dhaniram v. Lalaram and others, 1980 SCC162, in holding that once Ghanshyam Das's name was brought on record as executor of the decree and the order dated 16.9.1997 has remained unchallenged for a long time. One can enter the execution proceedings without challenging the aforesaid order. The deed dated 4.1.1996 was found to be legal and valid. The learned executing Court has heard Sri Raghu Raj Singh as well as Ghanshyam Das while dealing with the application, affidavit of other materials on record. The actionable claim, decree was purchased by Ghanshyam Das vide

saledeed dated 4.1.1996 which was taken into judicial notice and name of Ghanshyam Das was recorded as decree holder. Detailed reasons have been rendered by the Court in forming its opinion and arriving at its conclusions in the light of the above facts.

23. Here is a case, where Sri Pankaj Singh, a practising Advocate at Bulandshahar is said to be illegitimate son of Raghu Raj Singh was involved in murdering his own father Raghu Raj Singh, land owner. Applying principles as contained in Sections 25 and 27 of Hindu Succession Act and other laws, Pankaj Singh was not entitled for land acquisition compensation admissible to his murdered father in such circumstances. The FIR, chargesheet and the judgment shows that he was accused of murdering his father and because of is being a practising Advocate in Bulandshahar, the trial proceeded with lightening speed and he was acquitted within a year. All the relevant, attending circumstances were considered by the learned executing Court in rendering the order. The execution must proceed according to law.

24. The Court has also judicially scrutinized the saledeed dated 4.1.1996 and the other circumstances that the father Raghu Raj Singh had disowned his son Pankaj Singh, suits were filed against him. Apprehension was raised by the father in his pleadings in the Court that he would be murdered by his son Pankaj Singh. The relevant statement recorded in the pleadings have been quoted in the foregoing paras.

25. Considering the entire material, oral and documentary evidence and the detailed discussion recorded by the executing Court and the submissions of parties this Court finds no merit in this revision. There is no error apparent on the face of the record or jurisdictional error etc. to interfere in the impugned order. Accordingly, the revision is dismissed. All the necessary consequences shall follow immediately. The executing Court shall immediately proceed further and conclude the execution proceedings in accordance with law.