
(2010) 04 AHC CK 0263
In the Allahabad High Court

Raj Kumar Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90
Constitution of India, 1950 — Article 226
Registration Act, 1908 — Section 6, 68(2)

Citation : AIR 2010 All 135 : (2010) 3 AWC 3039

Hon'ble Judges : Virendra Singh, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Virender Singh, J.—This writ petition has been preferred by the petitioner with the prayer that a writ in the nature of certiorari to quash the order dated 18.2.2010, passed by respondent No. 3 District Registrar/ Additional District Magistrate (Finance and Revenue), Firozabad be issued and a writ in the nature of prohibition restraining respondent Nos. 4 and 5, the Sub-Registrar, Sadar and Tehsildar, Sadar, Firozabad respectively from making any changes in the registered instrument in Book No. 3, Section 46, Serial No. 150 at pages 345 and 356, the Will executed by the testator Late Krishna Murari Gupta, be issued and a further writ in the nature of prohibition restraining the respondent Nos. 2 to 5 from lodging any criminal prosecution against the petitioner be also issued.

2. We have heard Sri Manish Goyal, learned Counsel for the petitioner, Sri Shashi Nandan, learned senior counsel assisted by Sri Siddhartha Srivastava for respondent No. 6 and the learned standing counsel on behalf of the respondents 1 to 5.

3. It is contended on behalf of the petitioner that the father of the petitioner and grandfather of the respondent No. 6 Aman Gupta, had executed a registered Will in favour of the petitioner and respondent No. 6 whereby he bequeathed 28136 sq. feet of land in favour of the petitioner and 12417 sq. ft. of land in favour of

the respondent No. 6. The Will was duly registered before Sub-Registrar, Sadar, Firozabad (respondent No. 4) in the presence of the testator Sri Krishna Murari Gupta who later on expired on 1.1.2009, it is transpired to the petitioner that Aman Gupta (respondent No. 6), in collusion with the scribe of the Will and attesting witnesses of the Will, manufactured page Nos. 3 to 5 of the Will where the details regarding bequeathing of the property in favour of the petitioner was mentioned and the said pages were replaced showing the entire property bequeathed in favour of respondent No. 6. Thereafter, the said Will was utilized by the respondent No. 6 for mutation of his name in the municipal records on 26.2.2009. The petitioner lodged a complaint before respondent No. 3 the District Registrar, Firozabad regarding alleged forgery committed by respondent No. 6, inter alia requesting to take suitable action against the guilty persons. The District Registrar ordered to the Sub-Registrar for immediately sealing the record. District Registrar called the parties, recorded the statements of Tax Superintendent of Nagar Palika Parishad, Har Govind Singh, the petitioner and respondent No. 6. A written brief of Ashok Kumar Gupta was also taken on record and the statement of the scribe and of the two attesting witnesses were also got recorded by the District Registrar, but there is no opportunity afforded to the petitioner to cross-examine any of the witness recorded by the District Registrar nor the petitioner was supplied the copy of the objections submitted by respondent No. 6. District Registrar/Additional District Magistrate passed the impugned order thereby directing that pages No. 3 to 5 as have come from the custody of respondent No. 6 being the original pages of the Will thereof, be replaced with the original page Nos. 3 to 5 pasted in the books of the Sub-Registrar. The District Registrar has also directed to take action against the Tax Superintendent, Nagar Palika Parishad, Har Govind Singh and penal action against the petitioner. The impugned order suffers from error of law apparent on the face of record besides being arbitrary, illegal and without Jurisdiction. Neither the respondent No. 3 who is a district officer passed the impugned order in the capacity of Registrar as contemplated u/s 6 of the Registration Act nor, he was empowered to act as a Court thereby proceeding and to adjudicate upon the alleged dispute between the petitioner and respondent No. 6 and there was no authority vested in respondent No. 3 to alter a registered instrument. Registrar has very limited powers, merely to correct certain ministerial errors with respect to any act or omission of any Sub-Registrar regarding the books kept in the office of Sub-Registrar as per provision u/s 68(2) of the Registration Act. The respondent No. 3 disbelieved the petitioner merely for the reasons that the petitioner has not raised any objection in the period of 10 years after the Will registered. Such finding recorded by respondent No. 3 is perverse and contrary to the provisions contained under the Indian Succession Act.

4. It is further contended that respondent No. 3 relied upon a gift deed executed by the testator in favour of Ashok Kumar Gupta on 24.4.2008 wherein reference was made to the alleged Will executed by the testator. The gift deed was a bilateral document and the reference of the Will (alleged in this case), in favour

of respondent No. 6, itself is a suspicious circumstance. The exclusion of Class 1 heir is by itself a suspicious circumstance. Respondent No. 6 is not Class 1 heir of the testator while the petitioner is a Class 1 heir of the testator and therefore the adverse inference ought to have been drawn against respondent No. 6. Respondent No. 3 is not empowered to take penal action against the petitioner and therefore, the direction in this regard in the impugned order is without jurisdiction. The petitioner having been adversely affected is left with no other equally efficacious and effective remedy except to approach this Court in its writ jurisdiction under Article 226 of the Constitution of India.

5. Learned Counsel for the respondents contended that there is no ground for quashing the impugned order and prohibiting the respondent Nos. 4 and 5 from making any changes in the registered instrument in the books of the Sub-Registrar because it is found on record after an inquiry conducted by Sri Sheshmani Pandey the Additional District Magistrate, Firozabad who is by virtue of his ex officio capacity, the District Registrar that the copy of the alleged Will kept reserved in the office of Sub-Registrar was changed on its pages 3 to 5 under a conspiracy by Sri Raj Kumar Gupta the petitioner who happens to be the beneficiary directly on the changed pages Nos. 3 to 5. The complaint in this regard by Sri Raj Kumar Gupta the petitioner himself is found false merely to confuse the authorities. The respondent No. 3 has rightly held that the action be taken against the persons involved in the conspiracy of the alleged changing of the pages of the Will in the office of Sub-Registrar and therefore this writ petition has no force.

6. In the light of the contentions of both the parties, we have gone through the facts and circumstances on record. Section 68 deals with the power of Registrar to superintend and control Sub-Registrar. The Sub-clause (2) of Section 68 is very much relevant in this regard which is quoted hereunder:

68. Power of Registrar to superintend and control Sub-Registrar.--(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act, which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him or in respect of the verification of any error regarding the book or the office in which any document has been registered.

7. Perusal of the aforesaid provision shows that the Registrar is empowered to superintend and control Sub-Registrar. This power is an administrative power conferred on the Registrar to exercise superintendence and control over the Sub-Registrar. It gives authority to the Registrar to issue any order consistent with the Registration Act in respect of an act or omission of the Sub-Registrar in respect of their ministerial function and duties. Before a Registrar can issue order under this section, it must show that the act or omission complained of was the act or omission of one of his subordinate. What this section means, a Registrar can issue order, where error has been committed by the subordinate and where the result of such errors appears in books or in the office of subordinate. Here in

this case before us we find that on a complaint regarding change of some pages of a Will registered in the books in the office of Sub-Registrar, after an enquiry the Registrar found the petitioner managing the change of the pages of the Will in his favour, therefore, the District Registrar is fully empowered as per provisions u/s 68(2) to rectify the error appeared in the books kept in the office of the Sub-Registrar and in this regard the contentions raised on behalf of the petitioner have no force.

8. So far the question of writ of prohibition as is sought by the petitioner, is concerned that the changes in the registered instrument in the books of the Sub-Registrar should not be made and so far the question of prohibition in respect to restraining the respondents No. 2 to 5 for lodging any criminal prosecution against the petitioner is concerned, we are of the view that since the respondent No. 3 the District Registrar, on an inquiry found the fraud played in respect to the Will registered in the books of the office of the Sub-Registrar, and since the original pages of the Will are brought out of the possession of respondent No. 6, therefore, the replacement of the original paper of the Will in the books of the Sub-Registrar may not be stopped nor any one could be restricted to file a prosecution against the guilty person if found involved in any fraud played in the office of District Registrar.

9. So far the question of validity of the Will in any manner is concerned, the petitioner is always at liberty to get it established by way of declaration of it in the competent court and the District Registrar cannot be stopped to replace the papers found changed fraudulently in the office of District Registrar as is found by the District Registrar as per inquiry conducted in this regard.

10. We would like to discuss the law referred by the learned Counsel for the petitioner taking recourse to the cases which are as follows:

(i) *Nyadar Singh v. Chen Singh* AIR 1955 MP 205 (Indore Bench), in which it is held that, in fact the Registrar had no Jurisdiction to entertain an appeal from the decision of the Sub-Registrar registering the document. Under the Registration Act the decision of the Sub-Registrar has been made final subject to an appeal u/s 72 to the Registrar. Section 68 of the Registration Act only provides that every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar and every Registrar shall have authority to issue any order consistent with the Act to any Sub-Registrar in respect of any act or omission on his part or in respect of rectification of any error regarding the book or the office in which any document has been registered. This section only empowers the Registrar to issue directions to Sub-Registrars in respect of their ministerial functions doing duties and does not confer the power of cancelling the registration of a document the execution of which is not denied and which has already been registered by a Sub-Registrar.

(ii) *Hussain Ali Shah v. Sardar Ali Shah* AIR 1933 Lah 786, in which it is held that Section 68(2), Registration Act, does not confer power of cancelling the

registration of a document, the execution of which is not denied and which has been already registered by a Sub-Registrar. The Registrar has no power to order the production of a document, after it has been registered and delivered to the party concerned and his action in referring the matter to the Collector was held to be ultra virus.

(iii) Bihar Deed Writers Association and Others Vs. State of Bihar and Others, in which it is held that it is not for the registration authority to inquire and ascertain the title to its own satisfaction under the provisions of the T.P. Act, 1982 that the transferor does not have any title or has an imperfect title to the property, the transferee on transfer will either get no title or he will get an imperfect title. This will be to the prejudice of the transferee and is not of any concern to the registering authority. The powers regarding superintendence and control Sub-Registrars, is an administrative power conferred to the Registrar to exercise superintendence and control over the Sub-Registrars and such power cannot be exercised to direct the Sub-Registrar not to register a document presented for registration if the document complies with the statutory requirements and formalities.

(iv) Chief Engineer, M.S.E.D. and Anr. v. Suresh Raghunath Bhokare AIR 2005 SC 1622, in which it is held that the basic principle of Rule of Evidence which requires a party alleging fraud to give particulars of the fraud and having found no such particulars the person concerned could not be held guilty of fraud. Absence of such particulars in the notice for the fact that the person concerned himself had the knowledge of such fraud and he knowingly or in collusion with other officials indulged in the fraud, no one can be held guilty of fraud.

(v) Management, Mattur Beardsell Ltd. Vs. Workmen of Mattur Beardsell Ltd. and Another, in which it is held that in order to establish fraud there should be specific averments or materials adduced to establish the same. If there is no specific averment in that regard and in any event no evidence lead, the fraud cannot be presumed. Fraud in public law is not the same as fraud in private law, nor can the ingredients which establish fraud in commercial transactions be of assistance in determining fraud in administrative law.

(vi) Saheb Khan Vs. Mohd. Yusufuddin and Others, in which it is held that a charge of fraud or material irregularity under Order XXI, Rule 90 of C.P.C. must be specifically made with sufficient particulars. Bald allegations would not do. The facts must be established which could reasonably sustain such a charge.

(vii) Vishnu Dev Narain and Anr. v. Seogeni Roy and Ors. AIR (38) 1951 SC 280, in which it is held that if there is any rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any one ought to take notice, however strong the language in which they are

couched may be, and the same applies to undue influence and coercion.

(viii) S. Palani Velayutham and Others Vs. The District Collector, Tirunelveli, Tamil Nadu and Others, in which it is held that the power to order a prosecution has to be used sparingly and in exceptional circumstances either to maintain the majesty of law or to ensure that there is clearly established offences relating to fraud/forgery with reference to Court proceedings. Ordering prosecutions in a casual manner without any investigation or inquiry is to be deprecated. Criminal law cannot be set into motion against a litigant, as a matter of course as it results in hardship and prejudice to litigants.

(x) Elizabeth Jacob Vs. District Collector, Idukki and Others, in which it is held that where there is a bona fide auction purchaser in a revenue recovery sale, to whom title had been conveyed free from encumbrances by issue of sale certificate, there is no need for him to go to a civil court and establish that the land sold to him was not forest land, and that the sale by revenue authorities was valid and therefore, he was entitled to possession.

11. In the light of the law as is aforesaid, we have gone through the entire facts and circumstances of this case. Here in this case by way of impugned order, the Registrar has not entertained an appeal from any decision of Sub-Registrar registering the documents rather he enquired the matter of fraud committed in respect to a Will registered in the office of the Registrar and the Registrar is fully empowered to rectify the errors of the Sub-Registrar in respect of the ministerial functions. The Registrar is also not found cancelling the registration of a document in this case rather is found replacing the genuine pages of the Will found fraudulently changed. In this case the Registrar by way of an inquiry does not seem to ascertain or adjudicate the title of the property involved in the Will bequeathed by the testator, rather is found to rectify the error in the record of Sub-Registrar found due to change of the original papers of the Will. The law in respect to the fraud as is laid down in the aforesaid citations is of no importance at this stage because neither this Court is to decide the matter of fraud, nor making any complaint pertaining to the prosecution of the persons committing fraud in respect to the record of the amounts any decision on fraud as the law in this regard will take its own course at the time of investigation and the trial if any in this regard, therefore, we do not find any assistance to the petitioner in the light of the aforesaid citations and we are of this view that no relief could be granted to the petitioner in this petition. Hence the writ petition is hereby dismissed.