

(2011) 08 AHC CK 0126

In the Allahabad High Court

Case No : Civil Miscellaneous Writ petition No. 19394 of 2007

Rajesh Rathore and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Transfer of Property Act, 1882 — Section 52
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 154, 166, 229, 229B

Citation : (2012) 2 AWC 1123

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—This petition questions the judgment and decree of the Sub-Divisional Officer dated 21.01.2001 in a suit u/s 229 of the Uttar Pradesh Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as "the U.P.Z.A. & L.R. Act). The judgment and decree has been affirmed by the learned Additional Commissioner in appeal and subsequently by the Board of Revenue in revisions, which order is also under challenge. The Petitioners were not a party to the suit and they sought leave to appeal which was rejected and the appeal was also dismissed and affirmed by the Board of Revenue.

2. The background of the case is that one Devi Prasad, who was the tenure holder of the land in dispute, was recorded as Bhumidhar. He happens to be the predecessor in interest of Respondents 4 to 11 herein. One Ram Narain filed a suit against Devi Prasad, which was a money suit and upon being decreed, the disputed holdings became subject matter of sale in the execution proceedings of the said suit. The suit being Suit No. 257/60 was decreed and the execution Case No. 93/61 proceeded, in which the sale was held on 11.9.1962.

3. The property in dispute came to be purchased by Gokul Prasad. Needless to mention that Gokul Prasad is the brother-in-law of Devi Prasad. The Respondent

No. 3 Smt. Vimla Devi is the legal heir of late Gokul Prasad.

4. After the sale certificate had been issued Gokul Prasad applied for mutation of his name that came to be rejected on 29.9.1973. Certain portions of the plots in question were acquired for the construction of a canal in the year 1974. Thereafter, Gokul Prasad filed a second mutation application which was also rejected on 16.02.1979 and the appeal filed against the same also met the same fate on 21.06.1979. An acquisition took place in relation to some plots in the year 1979 for an Industrial Estate.

5. In the aforesaid background Gokul Prasad after the rejection of the mutation applications, filed a regular suit u/s 229-B of the U.P.Z.A. & L.R. Act which has given rise to the present proceedings. The relief claimed was to declare him as a Bhumidhar on the basis of the sale certificate having been issued in his favour. Devi Prasad who was arrayed as a Defendant filed his written statement in the said suit contending that as a matter of fact, the Plaintiff Gokul Prasad was his real brother-in-law and that the sale certificate and the entire transaction was conducted with his consent, which was in the nature of a Benami transaction. The said suit remained pending in a contest between Gokul Prasad and Devi Prasad. During the pendency of this suit, Devi Prasad executed sale deeds and the Petitioners before this Court are the said vendees claiming their title from Devi Prasad. These sale deeds were executed on 01.10.1982 and 19.10.1982.

6. The transferees under the said sale deeds including the Petitioners were sought to be impleaded by Gokul Prasad through an application. The trial court rejected the application on 16.04.1983.

7. Simultaneously another event took place namely that the Petitioners succeeded in getting their names mutated in summary proceedings on 20.04.1983 and 06.06.1983 on the basis of the sale executed by Devi Prasad. Devi Prasad died on 01.02.1984 leaving behind his widow Savrani and the Respondents 4 to 11, who are his heirs.

8. Gokul Prasad filed appeals against the mutation orders against the Petitioners, which was also dismissed and he died on 31.12.1992 during the pendency of the suit leaving behind the Respondent No. 3 Smt. Vimla Devi as his heir. The suit came to be decreed on 23.05.2011. The present Petitioners were not parties to the suit as their impleadment had already been rejected. They, however, preferred appeals which came to be dismissed holding that the Petitioners having purchased the property during the pendency of the suit and therefore had No. right to maintain the appeal. Against which, they preferred four separate revisions, which have also been dismissed on 11.01.2007. Hence this petition.

9. Sri R.S. Maurya, learned Counsel for the Petitioners contends that the execution of the sale through which Gokul Prasad claimed title were never given effect to and the possession of the property remained with Devi Prasad. In such a situation, claiming possession and declaration over the land through a suit u/s 229-B of the U.P.Z.A. & L.R. Act was neither maintainable nor such a decree

could have been awarded by the court below. He contends that if the possession was not taken pursuant to the court sale, the sale stood frustrated and Devi Prasad continued to enjoy the property as a Bhumidhar and rightly sold it in favour of the Petitioners who have title over the land in question.

10. Sri Maurya contends that the conclusion drawn by the first appellate court that the Petitioners were not entitled to maintain the appeal, is erroneous as the Petitioners were bona fide purchasers from the recorded tenure holder Devi Prasad, and as such they had every right to maintain the appeals upon gaining knowledge of the judgment and decree. He further contends that the auction was in respect of 16.92 acres of land in favour of Gokul Prasad which was clearly hit by the provisions of Section 154 of the U.P.Z.A. & L.R. Act, and therefore, the transfer was void in view of the provisions of Section 166 of the said Act. These aspects have been completely overlooked by the courts below and hence the judgment and decree of the trial court as well as the orders passed in appeal and in revisions deserve to be set aside. Sri Maurya contends that in view of the law laid down by the Apex Court in the case of Saila Bala Dassi v. Nirmala Sundari Dassi reported in 1958 AIR SC 394, the appeal and the revisions filed by the Petitioners were very much maintainable and the conclusions drawn to the contrary by the courts below deserve to be set aside.

11. He further submits that even if, the impleadment application for impleading the Petitioners were rejected, the Petitioners were neither made aware of the same as the application made by Gokul Prasad came to be rejected without any notice to the Petitioners. Apart from this, even if the Petitioners had not moved any application for setting aside the ex-parte decree under Order IX Rule 13 their right to file a regular appeal against the final judgment and decree being an aggrieved party could not be taken away, and therefore, the courts below have committed an error in nonsuiting the Petitioners on that ground. He relies on the decision in the case of Bhanu Kumar Jain Vs. Archana Kumar and Another, to support his submissions.

12. He has further laid stress on the fact that once Gokul Prasad had failed to obtain possession of the land, he had No. title left so as to maintain the suit, which was filed more than 11 years after the issuance of the alleged sale certificate. This being the correct position, the courts below have erred in ignoring the same. He further submits that all mutation orders went in favour of either Devi Prasad or the present Petitioners which indicates that possession remained throughout with the Defendant in the suit and in such a situation, the decree could not have been granted in favour of the Plaintiff.

13. Another issue has been brought forward through a supplementary affidavit relating to original suit No. 52 of 1983. It appears that a dispute arose with regard to the compensation of the land which had been acquired for the industries department. During the pendency of the suit relating to the present case, Gokul Prasad filed original suit No. 52 of 1983 for an injunction to the effect that the compensation should not be paid to Devi Prasad. It appears that

after the death of Devi Prasad, the Respondents 4 to 11, who are the heirs of late Devi Prasad, put in appearance and a compromise was entered into between Gokul Prasad and the heirs of Devi Prasad with regard to sharing of the compensation. According to the claim of Gokul Prasad, the heirs of Devi Prasad accepted the claim of Gokul Prasad to receive an amount of Rs. 1, 06, 322.6/-. The compromise which was paper No. 104A was made part of the decree and the compensation was accordingly delivered.

14. The main thrust of the argument of Sri Maurya is to the effect that the suit could not have been decreed as the claim was barred by time and the Plaintiff was not in possession over the land in dispute.

15. Sri Triveni Shankar, learned Counsel for the Respondent No. 3 Smt. Vimla Devi, who is the heir of late Gokul Prasad, contends that the sale had become final and he relies on the Supreme Court decision in the case of Devkabai and Others Vs. Union of India (UOI), , paragraph 10 where it has been held that sale certificate is issued to the purchaser only when the sale becomes absolute and as such, the sale certificate is the evidence of such title. He, therefore, contends that sale having become absolute, it was No. longer open to Devi prasad to have sold the property.

16. He submits that even otherwise if the matter was being contested by the answering Respondent in mutation or through a suit, then Devi Prasad could not resume title of the property which had been auctioned through a court and to further sell it in favour of the Petitioners.

17. He contends that Devi Prasad had sold his land not only to the Petitioners but also to some other persons namely Abhai Kumar and Sant Kumar. He further executed sale deed in favour of Hukum Chandra, Prem Chandra and Pankaj Jain and subsequently a sale deed was executed in favour of Santosh Kumar, Sunil Kumar and Anand Kumar. These vendees, who were claiming title through Devi Prasad, approached the answering Respondent No. 3 after the judgment and decree dated 21st January, 2001 and got fresh sale deeds executed from the answering Respondents thereby admitting the title of Gokul Prasad as succeeded to by the answering Respondent No. 3. He, therefore, contends that not only title but possession was also being accepted in favour of the answering Respondent and hence the claim being time barred does not survive.

18. Sri Triveni Shankar further submits that not only the agricultural land but there was also a house which was subject matter of the execution in the sale proceedings over which the name of Gokul Prasad and his heirs were already entered into and they are in possession over the said house. These circumstances also indicate that possession had been handed over to Gokul Prasad. A supplementary counter affidavit has been filed on behalf of the Respondent No. 3 dated 18.05.2010 in which these facts, including the fact of claim of possession of Gokul Prasad and the answering Respondent No. 3 has been averred. He, therefore, contends that possession had been transferred,

nonetheless, Devi Prasad had No. right, title or interest left after the issuance of the sale certificate on 06.10.1969 to have entered into any transaction of sale, which is void.

19. Sri Triveni Shankar further submits that No. suit was filed either by Devi Prasad or his vendees for declaring the sale proceedings or the sale certificate dated 6.10.1969 to be void or voidable. Accordingly, any such claim against the said sale certificate is barred by time and the Petitioners are estopped from raising any such plea. He further contends that neither Devi Prasad nor his heirs after his death ever disputed the sale certificate. On the contrary in the suit relating to the apportionment of compensation, the claim of Gokul Prasad had been accepted by the legal heirs of late Devi Prasad. In such a situation to contend that the suit filed by Gokul Prasad for a declaration was barred by time is absolutely misplaced and misconceived. To the contrary, the claim of the Petitioners is absolutely frivolous and they could not have advanced their claim against the right, title and interest of late Gokul Prasad. The appeal was, therefore, rightly dismissed as being not maintainable and the Board of Revenue has committed No. error in dismissing the revision. A technical plea has been raised to the effect that since the proceedings arise out of Section 229-B of the U.P.Z.A. & L.R. Act, therefore, No. revisions were maintainable before the Board of Revenue and that a second appeal could have only been entertained that too even on a substantial question of law. Since No. substantial question of law was involved, the Board of Revenue did not commit any error in rejecting the revisions filed by the Petitioners.

20. Having heard learned Counsel for the parties and having perused the records, the Board of Revenue affirmed the finding recorded by the first appellate court and the judgment and decree of the trial court dated 21.1.2001. The trial court by a one line order has recorded a finding that after the death of Gokul Prasad, the Respondent No. 3 Smt. Vimla Devi came into possession on the presumption that Gokul Prasad, her predecessor in interest, was in possession. The trial court had nowhere recorded any finding in relation to the possession having been actually taken by Gokul Prasad. Sri Maurya contended that in a written statement filed in suit No. 52 of 1983 relating to claim of apportionment of compensation, Gokul Prasad had admitted that he was not in possession. This aspect of the matter does not appear to have been raised either at the appellate stage or at the revisional stage. Neither the grounds of appeal nor the memo of revisions filed on behalf of the Petitioners indicate any such plea having been taken. Accordingly, such a plea cannot be raised for the first time in a writ petition as this stage when all forums relating to appreciation of facts stand exhausted. The appellate court has also recorded a finding that since the sale deed was a court sale and being compulsory in nature arising out of a civil suit in execution proceedings, the bar of Section 154 of the U.P.Z.A. & L.R. Act would not be attracted.

21. The Petitioners have admittedly purchased the property during the pendency

of the suit and the impleadment application moved by the Plaintiff Gokul Prasad for impleading the transferees had been rejected by the trial court. The Petitioners even after having come to know of the same did not choose to challenge the order passed by the trial court rejecting their impleadment, but they state to have filed an application under Order IX Rule 13 to set aside the judgment and decree of the trial court. They also filed the appeal and in the grounds thereof such a plea on admission was not even taken. The appellate court, therefore, came to the conclusion that they had No. right to maintain the appeal as the transactions in their favour were hit by the provisions of Section 52 of the Transfer of Property Act, 1882 and as such, the transactions were clearly inexecutable and void. As a matter of fact, the appellate court has recorded a finding that the Appellants have already moved an application under Order IX Rule 13 before the trial court which is still pending consideration.

22. Learned Counsel for the Respondent No. 3 Sri Triveni Shankar has not disputed this finding that the application under Order IX Rule 13 had been filed. Accordingly, in my opinion, also neither the appeal nor the revisions filed by the present Petitioners were entertainable and the courts below have not committed any error in dismissing the appeal and the revisions.

23. There is yet another major hurdle in the passage of the Petitioners. Devi Prasad had already burnt his boats and the property after attachment was put to sale under court custody. This status of custodia legis did not revert through any lawful method back in favour of Devi Prasad. The judgment and decree ending up in a court sale remained intact and was not subjected to challenge any further either by Devi Prasad or his successors. The continuance of entries cannot confer a fresh title on Devi Prasad to make him competent to execute sale deeds in favour of the Petitioners. There is No. scope for any argument that the title of the property stood resumed in Devi Prasad. This would not be possible on the basis of any summary orders relied on by the Petitioners in mutation proceedings. There is also No. evidence or finding to establish that the auction in favour of Gokul Prasad was Benami except for a bald averment in the pleadings. If that was so, it ought to have been challenged in an appropriate forum backed up by evidence which was never either attempted or accomplished. On the contrary the argument of Sri Triveni Shankar on the issue of possession relating to part of the property, which is in the shape of a house that was also part of the same transaction, has not been rebutted.

24. Whatever rights Devi Prasad had stood extinguished with No. further challenge to the auction or sale certificate in favour of Gokul Prasad. It was not even sought to be revived by his natural heirs who have not put in any contest. The Petitioners therefore in my opinion have purchased litigation at their own risk and they do not seem to have derived any valid title from Devi Prasad, who could not have passed on something better than what he had. This being the position, the Petitioners have rightly been refused relief by the courts below.

25. Accordingly, the writ petition fails and is hereby dismissed.