
(1987) 02 AHC CK 0077

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 14770 of 1986

Ram Bahadur and Another

APPELLANT

Vs

Ist Addl. Civil Judge and Another

RESPONDENT

Date of Decision : 16-02-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143, 331

Citation : (1987) RD 143

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Advocate : S.N. Singh and R.N. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

N.N. Mitbal, J.—The writ petition is listed for admission in which parties have already exchanged counter and rejoinder affidavits and all the relevant facts have been placed on record. Learned Counsel for the parties, therefore, suggested that the writ petition may itself be disposed of at this very stage finally. Consequently parties' learned Counsel were heard on the merits of the petition also.

2. In this writ petition the order passed by 2nd Addl. Civil Judge, Allahabad dated 18.8.86 the said order the court has allowed the Plaintiff "the injunction application by the and the from interfering with her possession over

3. In order to properly appreciate the controversy it will be relevant to point out that a suit for permanent injunction was filed by the Plaintiff on the allegations that she was bhumidhar of the disputed land. The Petitioners got a sale deed executed on 6th February, 1965 in respect thereof through impersonation and on its basis got an ex-part mutation of their names made in the revenue records. The mutation order was challenged by the Plaintiff without loss of time and ultimately the Tahsildar recalled the same. Against that order an appeal was filed

by the Petitioners but without success There after the matter was brought before the Board of Revenue and implementations of the order was stayed by it and the matter is still sub-Judie.

4. In the suit the Plaintiff had prayed for the relief of permanent injunction only and simultaneously applied for issue of a temporary injunction restraining the Defendants from interfering in her possession. The application was rejected by the trial court holding that the suit was not cognizable by the Civil Court but it was reversed by the appellate court holding that the civil court had the jurisdiction.

5. The Petitioners' learned Counsel has urged that the civil court could have no jurisdiction in view of decision in *Vijai Singh v. 2nd Addl. District and Sessions Judge* 1982 RD 207 where the facts were no doubt very similar to the facts of the instant case. The decision was based on the down in the Full Bench decision of this Court in *Ram Awlamb* "468 AWR 731. However, the point in controversy in that It related to jurisdiction of Civil and Revenue Court we claimed in the suit, some of which were amenable Use some others could be granted exclusively by the - case, the controversy relates to a suit in which the oil, tin and the question raised is whether this necessarily of Plaintiffs' right in respect of the land? The controversy head narrower and is confined to the question whether in a suit Win... relief claimed is an injunction, in all cases invariably a declaration is in. In view of Section 9 CP J normally a suit for injunction would be cognizable by the Civil Courts. However, in view of Section 331 of UP ZA and LR Act the jurisdiction of the civil court has been taken away in certain types of cases. Section 331, in so far as it is relevant for our purposes, provides as under:

331. Cognizance of suits, etc. under this Act -(1) Except as provided by or under this Act no Court other than a Court mentioned in column 4 of Schedule II shall notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 43 thereof, or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application:

Provided that where a declaration has been made u/s 143 in respect of any holding or part thereof the provisions of Schedule II in so far as they relate to suits, applications or proceedings Under Chapter VIII shall not apply to such holding or part thereof.

Explanation - If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the Civil Court may not be identical to that which the Revenue Court has granted.

6. Thus, a perusal of the Section will show that apart from suits for possession and declaration in respect of land covered by that Act, all other suits, where relief could be granted by the Revenue Courts on the cause of action on which the suit is founded, will also be amenable to the jurisdiction of the revenue

courts and civil court shall have no jurisdiction over such suits. It is by now well established by a catena of decisions that it is not the form in which the relief is couched but the true nature of the cause of action from which the rights flow which should determine the forum of the suit. There may indeed be cases where the relief appears to be innocent looking e.g. for injunction or cancellation of a void deed but some where deep down in the allegations constituting the cause of action there might be a hidden desire to seek declaration of rights. If on examining all the plaint allegations and other surrounding circumstances, the court gathers that the true relief is not for pure injunction but is coupled with declaration, then the civil court shall have no jurisdiction and the matter must be left to be decided by the revenue court.

7. In this connection it will be better to make a reference to two other decisions of this Court. In *Mahabir Singh and Others Vs. Smt. Ilam Kaur*, Hon^{ble} K.C. Agarwal, J. while dealing with a suit for cancellation of a void gift-deed and for an injunction repelled the Defendant's contention that the suit involved declaration and, therefore, civil court had no jurisdiction. The learned Judge held that it would not be correct to say that the relief of declaration must be substituted invariably in all cases where cancellation of a document is sought. In the other case *E.I.D. Parry (India) Ltd. Vs. Union of India (UOI)* Hon^{ble} B.D. Agarwal, J. was dealing with a similar matter and after examining a large number of cases on the point including *Vijai Singh s case* (supra) held that if in pursuance of a void deed the transferee has actually entered in possession or his name is mutated in the revenue records, then it may become necessary for a Plaintiff seeking cancellation of a void deed and or injunction to seek the relief of declaration also inasmuch as the entries may not be set right until a declaration in this regard is sought and granted by the proper court where Gaon Sabha and the State will also be necessary parties. From this it follows that this course may not be necessary if the Plaintiffs' name still continues in the papers of the revenue records. Thus the question cannot be resolved merely by having a look at the relief claimed in the suit but must depend on the nature of allegations constituting the cause of action and also on other attending circumstances from which the court must draw conclusion about the true and real nature of the relief, notwithstanding the language in which it is couched.

8. On applying the aforesaid principles to the facts of the case before me, it will reveal that the deed is alleged to be void and relief of injunction alone has been claimed. It is not disputed before me that transferee's name had been mutated ex-part but soon thereafter, on being moved by the Plaintiff, the said ex-part mutation order was recalled. An appeal filed by the Petitioner was dismissed where after a further appeal was filed before the Board of Revenue. In this appeal implementation of the recall order has been stayed. In the impugned order, the court has taken the view that in the circumstances narrated above it must be deemed that Plaintiff's name still continues to be recorded. This view cannot be said to suffer from any manifest error of law inasmuch as the ex-part order having been recalled it must be deemed that the pre-mutation entry has

been revived i.e. the Plaintiff's name has reappeared in the revenue records. By mere stay by the Board of Revenue the legal effect of recall of mutation order in Petitioner's favor is not taken away as only the ministerial act or the follow up action in pursuance of the recall order alone stands stayed. Thus, for our purposes it must be deemed that Plaintiff's name still continues on the revenue papers in such a situation, jurisdiction of the civil court will not be barred.

9. The learned Counsel next submitted, that the court below has not recorded any finding about Plaintiff's possession and in its absence no injunction should have been granted. It is true that the court has not specifically recorded a finding in this behalf. However, the true import of the findings recorded in paragraph 15 of the impugned order is that the Plaintiff was prima facie found to be in possession over the land in question. Support which the learned Counsel seeks from the decision in U.P. State Sugar Corporation v. Raza Buland Sugar Company 1985 ALJ 1017 is also not justified. In that case temporary injunction had been granted merely on the basis of balance of convenience and irreparable injury without recording any finding regarding possession. The court, as I have said earlier, while dealing with the question of possession in para 15 of the impugned order must be deemed to have held the Plaintiff to be prima facie in possession. The observation, made there necessarily imply that she was in possession. Although the finding may not be happily worded yet we cannot lose sight the true import of the same and to my mind the findings do show that the Plaintiff was in possession. For an error, if any, as trivial as this, I do not find it as a reason enough to exercise jurisdiction Under Article 226 of the Constitution and to interfere with the impugned order.

10. In view of the above the petition fails and is accordingly dismissed. It is hoped that in the circumstances of the case, the parties will cooperate with the trial court in disposing of the suit itself expeditiously. There will be no order as to costs.