

(1999) 05 AHC CK 0006
In the Allahabad High Court
Case No : C.M.W.P. No. 17511 of 1984

Ram Gopal and others

APPELLANT

Vs

Vlth Addl. District Judge, Fatehpur and others

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 All 300 : (1999) 3 AWC 1859

Hon'ble Judges : A.K. Yog, J

Bench : Single Bench

Advocate : B.N.L. Katiyar, S.K. Singh and V.K. Singh, for the Appellant; S.C. and H.N. Singh, A.K. Sand and S.N. Srivastava, for the Respondent

Judgement

A.K. Yog, J.—Heard learned counsel for the parties.

2. Original Suit No. 456 of 1980 was filed by one Drikpal Singh (plaintiff/respondent No. 2) against Smt. Lalti, Ram Jiwan defendant Nos. 1 and 2 (respondent Nos. 3 and 4 in the present petition) and Ram Copal, Madan Gopal, Ashok Kumar, defendant Nos. 3. 4 and 5 (present petitioners) in the Court of Munsif, Fatehpur seeking decree for cancellation of sale deed dated 16.10.1980, damages for demolishing plaintiff's house, decree for possession against defendants along with cost of the suit and other ancillary reliefs. In the plaint. (Annexure-7 to the petition) plaintiff asserted that he had become owner of the property under compromise decree filed in another Suit No. 353 of 1978 (para 12 of the plaint). Defendant No. 1, who was originally allowed to occupy property in question as licensee, became dishonest and with intention to inflict harm to the plaintiff maliciously executed fictitious sale deed dated 16.10.1980 in favour of the defendant No. 2 who had full knowledge of the aforementioned compromise decree in Original Suit No. 353 of 1978 and title of the plaintiff. It is contended that disputed sale deed was executed in collusion with defendant No. 2 in order to cause damages to the plaintiff. By amendment in the plaint, it is further pleaded that during the pendency of the suit, defendant No. 2 had executed

another sale deed dated 23.2.1982, in favour of defendant Nos. 3, 4 and 5. Plaintiff indicated valuation of the suit and paid court fee accordingly. Defendant appeared and an issue was framed regarding correction of valuation of the suit. A Commissioner report's was invited. Trial court by means of judgment and order dated 23.11.1984 (Annexure-2 to the petition) decided issue, being Issue No. 10. Trial court held that valuation of the suit ought to be Rs. 20.000 and plaintiff was directed to amend the suit.

3. Feeling aggrieved, plaintiff filed Civil Revision No. 15 of 1984, Drikpal Singh v. Smt. Lalti and others and said revision was allowed by learned VIth Additional District Judge, Fatehpur vide judgment and order dated 9.11.1984 (Annexure-3 to the petition). Learned Additional District Judge considered the matter at length and has given its reasoning for coming to the conclusion that valuation adopted by trial court was not justified. It had accordingly set aside trial court Judgment and order dated 23.1.1994 (Annexure-2 to petition) and it sent the case back to the trial court directing it to decide the question of valuation and court fee, i.e., issue No. 10, afresh keeping in mind the observation made in Judgment and order dated 9.11.1984.

4. Re visional court, thus, directed the trial court to adjudicate the question of valuation of the suit for the purpose of jurisdiction and court-fee to be determined on the basis of market value of the disputed property on the date of presentation of the plaint and thereby directed the trial court not to take into account the valuation of that property which included structure which were raised during the pendency of the suit.

5. An interim order dated 19th December, 1984 was passed when writ petition was filed and as a consequence whereof proceedings in Original Suit No. 546 of 1980 pending in the Court of Munsif were stayed. This order was extended from time to time. Interim order was extended on some occasion. Finally it lapsed. The stay vacate application filed on behalf of respondent No. 2 was decided as being infructuous, which reads thus ;

"Taken up in revised list. None responds for the petitioners. Learned counsel appearing for the respondents prays for vacation of the interim order dated 19.12.1984.

That interim order appears to have been extended by order dated 13.9.1996 till 9.10.1996. Thereafter, the effect and operation of this order has not been extended and it had come to an end on 9.10.1996.

Therefore, the application for vacation of the interim stay order has become infructuous and it is accordingly dismissed as infructuous."

6. The fact that interim order had lapsed and even the stay vacate application was dismissed as infructuous vide order dated 28.10.1997, it is evident that suit has been allowed to proceed.

7. Statement has been made on behalf of the counsel, representing Plaintiff No.

2 that though suit proceeded but it is being delayed by the defendants. It is evident that petitioners (defendant Nos. 3, 4 and 5 in original suit) derived title and interest from defendant Nos. 1 and 2 (impleaded as respondent Nos. 3 and 4). Their interest is common and that is the reason that respondent Nos. 1 and 2 have not put in appearance in spite of notice having been issued. Office report dated 10th March, 1998 on the order-sheet of the case indicates that respondent Nos. 2, 3 and 4 are duly served and notices served and service is deemed sufficient under Chapter VIII Rule 12, Rules of Court.

8. Present petition is misconceived and is liable to be dismissed on two scores. First writ petition has been filed against an order passed by civil court in original suit heard under Code of Civil Procedure, which is a self contained exhaustive Code. Grievance by means of present petition should be raised by the defendants before appellate court after the said suit is finally decided by the trial court. There is no occasion for challenging it in High Court by filing writ petition under Article 226, Constitution of India. In the facts of the present case, it is an abuse of process law since it is being used to delay hearing of the original suit by civil court.

9. This Court strongly deprecates tendency of filing writ petition against an order of Civil Court while matter can be adjudicated under the provision of Code of Civil Procedure.

10. The above view finds support from the view taken in the following decision 1976 All 261 (DB) and Swetambar Sthanakwasi Jain Samiti and another Vs. The Alleged Committee of Management, Sri R.J.I. College, Agra and others, (also see page 564).

11. From the facts enumerated above, it is abundantly clear that defendant-petitioners have in fact achieved their object to delay hearing of the original suit before trial court.

12. Second, the other aspect of the matter is, that petitioners have not indicated in their writ petition as to how they would be prejudiced, that by the decision on question of valuation of suit, if the decision goes this way or that way. It is not enough to point out mere illegality. Without indicating as to how the order passed by learned VIth Additional District Judge in revision adversely affected or prejudiced the rights of the defendant, this petition could not be maintained. It is settled principle that writ Jurisdiction cannot be invoked and Court will refuse to exercise its Jurisdiction under Article 226, Constitution of India, if petitioner fails to show prejudice by violation of some right.

13. In view of what has been stated above, the writ petition is dismissed with costs, which are quantified Rs. 5,000. Petitioner will deposit the said cost before trial court where Original Suit No. 456 of 1980, Drikpal Singh v. Smt Lalti and others is pending. Certified copy of this judgment shall be filed by the plaintiff, Drikpal Singh, (respondent No. 2). Trial court shall proceed ex parte against said defendant Nos. 3, 4 and 5 (present petitioners), if they fail to deposit the cost as

indicated above by the next date fixed in the original suit or as may be allowed by trial court.

14. Before parting with the case, it is observed that suit was filed in the year 1980 and the writ petition has been pending since 1984. Original suit, as stated, at the Bar is still pending. It is quite late but still the trial court shall ensure to decide the suit giving it utmost priority and, if possible, within six months from today.

15. Learned counsel appearing for the parties assure and undertake before this Court that their clients will not seek unnecessary adjournments before the trial court.