

(2012) 02 AHC CK 0168

In the Allahabad High Court

Case No : Second Appeal No. - 97 of 2012 and Civil Miscellaneous Stay
Application No. 28287 of 2012 in Second Appeal No. - 97 of 2012

Ram Suresh

APPELLANT

Vs

Najeer Ahmad

RESPONDENT

Date of Decision : 06-02-2012

Acts Referred:

Specific Relief Act, 1963 — Section 26

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

Citation : (2012) 02 AHC CK 0168

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Judgement

Hon'ble Sanjay Misra, J.—Sri R.U. Ansari advocate has put in appearance on behalf of the sole plaintiff respondent therefore notice need not be issued to the plaintiff respondent.

2. Admit.

3. The substantial question of law that arises for decision in this second appeal is:-

(1) Whether boundaries will prevail over plot number when fraud is alleged and proved against purchaser for mentioning incorrect boundaries?

(2) Whether changing of plot number in a registered instrument of sale amounts to declaration of tenurial right over different plot therefore decree passed is violative of Section 331 of U.P.Z.A. & L.R. Act?

(3) Whether rectification as provided u/s 26 of Specific Relief Act can be granted without recording any finding regarding "real intention" of seller?

4. This is a defendants second appeal against the judgment and decree dated 8.11.2011 passed in Appeal No. 38 of 2007 by the Additional District Judge, Court no. 1, Gorakhpur whereby the defendants appeal has been dismissed and

the judgment and decree of the Trial Court dated 27.9.2007 in Suit No. 907 of 2004 (Najeer Ahmad Vs Ram Suresh) has been affirmed.

5. According to learned counsel for the respondent the plaintiff respondent had purchased a part of Plot No. 532 from the defendant appellant by the registered sale deed dated 6.9.1999. He filed the Suit No. 907 of 2004 for rectification in the sale deed by stating that in accordance with the boundaries mentioned in the sale deed the mention of Plot No. 532 was an error and it should be Plot No. 345. He submits that the suit has been decreed by the Trial Court and the first appellate court has rightly dismissed the appeal filed by the defendant appellant.

6. Sri S.C. Verma learned counsel appearing on behalf of the defendant appellant has contested the said submission to state that the sale deed dated 6.9.1999 is admitted between the parties. In the sale deed the total area of the plot wherefrom 12 ahrs have been sold to the plaintiff respondent were shown as 38 ahrs. He states that Plot No. 532 has an area of 38 ahrs wherefrom 12 ahrs was sold by the defendant appellant. According to Sri Verma Plot No. 345 has a total area of 72 ahrs therefore when the total area was specifically mentioned it could only be Plot No. 532 which had a total area of 38 ahrs and it could not be Plot No. 345 which was admittedly having a larger area of 72 ahrs. Sri Verma states that in view of the specific mention of the plot number and the correct area of that plot the rectification sought by the plaintiff respondent in the sale deed to mention another plot number could not have been allowed and as such the decree passed by the courts below for rectification of the sale deed is liable to be set aside.

7. The submission of Sri Verma prima facie appears to have substance inasmuch as the total area of Plot No. 532 mentioned in the sale deed is admittedly 38 ahrs. The total area of Plot No. 345 is 72 ahrs. Therefore the sale deed of 12 ahrs is from a plot having a total area of 38 ahrs which is Plot No. 532 and not Plot No. 345.

8. Sri Ansari on the other hand has referred to the findings recorded by the courts below to state that the plaintiff respondent has got existing constructions over Plot No. 345 and as such he is in possession thereof.

9. In view of the aforesaid circumstances it is provided that the plaintiff respondent shall not alienate 12 ahrs which is subject matter of sale deed of Plot No. 532 nor change the nature of the said land until further orders of the court. The defendant appellant shall also not alienate or change the nature of Plot No. 345 until further orders of the court.