
(2010) 03 AHC CK 0088
In the Allahabad High Court

Razia Begum

APPELLANT

Vs

Collector/District Magistrate and Others

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 286

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 285C, 285H

Citation : (2010) 3 AWC 2962 : (2010) 2 UPLBEC 1017

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard learned Counsel for the petitioner as well as learned standing counsel for respondent No. 1.

2. In spite of sufficient service no one appeared on behalf of respondent Nos. 2 to 4. Prem Chand, respondent No. 4 and petitioner have instituted O.S. No. 13 of 2007 against respondents No. 1 to 3, i.e., Collector, Budaun, Prahalad Kumar Gupta and Murari Lal Gupta both sons of Ram Prasad Gupta. The relief claimed in the plaint is that a permanent prohibitory injunction may be issued restraining the Collector, Budaun from auctioning the property in dispute in pursuance of decrees passed against Prahalad Kumar and Murari Lal by District Consumer Forum as plaintiffs are owners of the property. It has further been elaborated in the plaint that petitioner, plaintiff No. 2 is owner of half of the property in dispute through sale deed executed by Murari Lal on 18.11.2006 and plaintiff No. 1/proforma respondent No. 4 has got an agreement for sale in his favour executed by Prahalad Kumar. It has also been alleged in the plaint that Prem Chand has filed suit for specific performance against Prahalad Kumar.

3. In the suit application for temporary injunction was also filed. Trial court/Additional Civil Judge, Senior Division, Budaun rejected the temporary injunction application through order dated 16.4.2007. Against the said order both the

plaintiffs filed Civil Misc. Appeal No. 55 of 2007 which was dismissed by A.D.J. Court No. 2, Budaun hence this writ petition by plaintiff No. 2 alone. Both the courts below have held that property in dispute had been attached on 13.11.2006 (even though it was alleged by the plaintiff that attachment in fact took place on 23.11.2006). The courts below further held that plaintiffs could proceed under relevant provisions of U.P.Z.A.L.R. Act and the Rules framed thereunder :

4. Prima facie there appears to be a defect in the suit to the effect that the decree holders who have obtained decrees from District Consumer Forum which are being executed have not been made parties in the suit. During argument learned Counsel for the petitioner could not give any satisfactory reason for non-impledment of the decree holders.

5. u/s 286 of U.P.Z.A. and L.R. Act, arrears of land revenue (or any amount recoverable like arrears of land revenue) may be realized by the Collector by attachment and sale of the interest of the defaulter in any immovable property of the defaulter. It is obvious that the amount due against a person may be recovered only from the property of that person and not from the property of any other person not belonging to the defaulter. This has also been clarified by Section 286 of the Act. Under Rule 285C of the Rules framed under U.P.Z.A. and L.R. Act, defaulter may pay the arrears before the sale. Under Rule 285H, a person whose immovable property has been sold may within 30 days from the date of sale apply to have the same set aside on depositing the due amount and 5% of the purchased money and cost of the sale. However, under the said Rule or under any other provision under the Act or the Rules, it is not provided that the owner of the attached and sold property can assert that the property did not belong to the defaulter and was wrongly attached or sold. Even otherwise the remedy of first depositing the amount and then raising the dispute/making the claim by a third party is extremely arbitrary and unjust.

6. In such type of situation, the only remedy or at least one of the concurrent remedies is to file civil suit. Filing of such civil suit is not barred by any of the provisions of the Act or the Rules. The Act or the Rules do not even make such remedy dependent upon depositing of the amount if sale has taken place.

7. As Rule 285H does not state that a non-defaulter, owner of sold property can initiate proceedings for recovery of the amount deposited by him, hence the words "any person whose holding or other immovable property has been sold" shall be read to refer only to the defaulter and not a person who was not the defaulter but whose property was sold presuming that to be belonging to the defaulter.

8. Under Order XXI. Rule 58, C.P.C., in case objections by a third party are dismissed as unduly delayed or having been filed after the sale, the aggrieved person is entitled to file suit. There is no corresponding provision under U.P.Z.A. and L.R. Act or Rules framed thereunder.

9. Accordingly, a suit seeking to restrain sale or for setting aside sale on the ground that property does not/did not belong to the defaulter is quite maintainable before the civil court.

10. Accordingly, both the impugned orders are set aside. Writ petition is allowed.

11. Trial court is required to decide temporary injunction application afresh in the light of observations made above. Until decision of temporary injunction application, property which the petitioner alleges to have purchased through sale deed dated 18.11.2006 shall not be auctioned for realization of dues against Murari Lal and Prahlad Kumar.

12. Petitioner is directed to file application for impleadment of the decree-holders who obtained decrees from the consumer court in execution of which property in dispute was attached within two months from today. Petitioner is also restrained from seeking more than two adjournments in the suit. In case impleadment application is not filed within two months or petitioner seeks more than two adjournments in the suit, the above injunction order shall come to an end automatically.