(2004) 02 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9360 of 1984

Sandeep Kumar minor, through his next friend Smt. Sarla Devi his own mother	APPELLANT
Vs	
Addl. Civil Judge and Others	RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Specific Relief Act, 1963 — Section 31
Transfer of Property Act, 1882 — Section 41
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331

Citation : (2005) 98 RD 756 : (2005) 1 RD 756

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : A.B.L. Gaur and K.B.L. Gaur, for the Appellant; R.N. Singh and S.N. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This writ petition arises out of the proceedings in suit No. 53 of 1980 filed by the petitioner for permanent injunction to restrain defendant No. 5, their father from executing a sale-deed of the land in dispute in favour of defendant Nos. 1 to 4. The Munsif, Hawaii, Sabaranpur ordered the return of the plaint on the ground that the Revenue Court could grant a declaration and as such, the Revenue Court had jurisdiction in the matter The petitioner filed a revision against the said judgment which was dismissed vide order dated 22.2.84.

3. It is urged by the counsel for the petitioner that every injunction will be preceded by some declaration and the Courts below have erred in not considering that the main relief was not declaration but injunction could! not be granted by the Revenue Court. He further submits that the orders and judgments of the Courts below are erroneous apparent on the face of the record. At the time of admission this Court by an interim order dated 12.7.84 directed that until

further orders, further proceedings before the lower Court shall remain stayed.

4. It is submitted by the counsel for the respondents that the learned Munsif decided the controversy in accordance with law and has rightly held that on the plaint allegations the relief can be granted by the Revenue Court and therefore, he rightly ordered the return of the plaint so that the plaintiff could present the plaint in the Revenue Court.

5. The counsel for the petitioner has rebutted the contention of the counsel for the respondents on the ground that the suit was triable by the civil Court. The solitary name being recorded, the sale-deed could only be avoided after the title had been proved by a suit and then the suit would have to be filed for cancellation of the sale-deed, which would also lie in the civil court. The preventive injunction could not be granted by Revenue Court which is the basic relief at the stage, though every injunction will follow only after some sort of declaration as already alleged in the original affidavit.

6. There are numerous decisions of this Court on the point i.e. whether the Revenue Court or the Civil Court in such circumstance will have the jurisdiction.

7. The main contention of the counsel for the respondents is that in the present set of circumstance, the suit will be only tried by the Revenue Court and not by the Civil Court. Since on the allegations made in the plaint, the transfer would be void. The declaration could be granted by the Revenue Court. The real relief in the present case is declaration and in case the plaintiff is not found in possession, this relief can also be- granted by the Revenue Court. Simply couching the plaint in seeking the relief of injunction, it can not be said that the suit would lie before the Civil Court on correct interpretation of Section 331 of the U.P. Zamindari Abolition and Land Reforms Act. The present suit filed by the petitioner is dearly barred and it is Revenue Court which has the jurisdiction to decide the suit filed by the petitioner.

8. This Court in 2001(45) ALR579, Jai Singh v. IInd Addl. District Judge, Muzaffarnagar and Ors. has considered Section 331 of the U.P.Z.A.& L.R. Act, Section 31 Specific Relief Act and Section 41 of the Transfer of Property Act and also the case law on the point including Full Bench case Ram Padarth v. 2nd Addl. District Judge, 1989 RD-21 held that:

"In view of the aforesaid analysis, in respect to all the questions, (i) (ii), (iii) and (iv) posed above, it is being held that the suit will lie in the civil Court. If a plaintiff comes to the civil court for seeking cancellation of deed which may be void or voidable whether the name of the plaintiff is recorded or not, the jurisdiction of the civil court not having been expressly barred to try such suits, the suit will be maintainable in the civil Court.

In all the three writ petitions, the courts below have taken view that the suit will lie in the civil court as it has been filed for cancellation deed and for its declaration to be void, in which, I do not find any infirmity and therefore, no interference is called for by this Court in these writ petitions.

In view of the discussions as made above, all the three writ petitions fail and are accordingly dismissed without any orders as to costs."

9. This Court while allowing the appeal and reversing the finding of the District Judge, in the decision reported in 1982 ALJ 1308 held as follows:

"A survey of the aforesaid decisions shows that the consistent view of this Court is that the cause of action in a suit for cancellation of sale deed is not the denial of plaintiff''s title which may be said to be implicit in the execution of the sale-deed by the defendant but is the execution of the deed itself."

10. The Full Bench in Ram Padarth (supra) while approving the said judgment in para 41 held that:

"We are of the view that the case of Indra Dev v. Smt. Ram Pyari has been correctly decided and the said decision required no consideration, while the Division Bench case, Dr. Ayodhya Prasad v. Gangotri, is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void document will lie in Revenue Court, it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right of status of a tenure holder is necessarily needed in which even relief for cancellation will be surplusages and redundant. A recorded tenure holder having prima facie title in his favour can hardly be directed to approach the Revenue Court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the Revenue Court."

The aforesaid decision as has been given in Indra Deo v. Smt. Ram Pyari, (supra) and in the Full Bench Ram Padarath (supra) have been taken note of by the Hon''ble Apex Court in the decision Smt. Bismilla v. Janeshwar Prasad and have been duly approved.

Otherwise, also if a deed is executed in respect to agricultural land, even though if the plaintiff is not recorded in revenue papers, it do not appeal that why if the plaintiff only intends to get the sale deed cancelled why he cannot come to civil court asking that relief. By remaining the deed in favour of the opposite party, the records of the registration office will demonstrate that fact and that may create problem to the plaintiff in many ways in his practical life. In normal life, at various places if the party is not able to produce the revenue entry and if a deed is presented showing the transaction in favour of a particular person, the concerned authorities are expected to accept the ownership of the land of that party in whose favour the deed exists. In view of this, if a plaintiff wishes to get the deed cancelled in order to get any shadow of doubt of a claim by a person holding the deed removed, he can have every right to approach the civil court."

11. It is now settled law that the plaintiff should not be precluded from going to the civil court to get the deed cancelled even though, he is not recorded in the revenue papers as in the event of cancellation of deed, further action about correction of the revenue entry will be just a sheer formality which can be said to be a follow up action and it will be just a ministerial act to be performed by revenue authorities. If the plaintiff after getting declaration in his favour by civil court visits revenue authority and brings this fact to his notice then the revenue authority after finding it out that the name of the defendant came to be recorded only on the basis of the deed in question, which having been cancelled, will have no option but to restore the entry. In such a situation, the revenue authorities are not required to go into any adjudication. There is another aspect of the matter why the civil suit is maintainable in civil court. If there is no specific bar in maintaining the suit in the civil court for the relief for which the plaintiff has come i.e. cancellation of the deed, then irrespective of availability of availability or the claim for another relief which might be available in the revenue Court or consolidation court, why the civil court is not cometent to grant the relief of cancellation of deed for which the plaintiffs have come to the civil Court. In Jai Singh case (Supra) the Court was of the opinion that as a deed, if remains in existence, it causes or may cause the mischief in various manners which may not be foreseen today but that may create a situation in future and therefore, why that be permitted to remain if its existence can be taken away by competent forum of the civil court.

12. For the reasons stated above, the writ petition is allowed.

13. This is an old case, and proceedings before the courts below are stayed, it would be expedient to give a direction to the Court below to decide the suit expeditiously, preferably, within a period of 4 months from the date of production of a certified copy of this order.

14. No order as to cost.

