
(2013) 02 AHC CK 0220

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1535 of 2012

Sanjay Jhunjhunwala and Others

APPELLANT

Vs

Smt. Savitri Singh and Others

RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 10

Citation : (2013) 4 ADJ 76 : (2013) 97 ALR 569 : (2013) 3 AWC 3014 : (2013) 121 RD 665

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Shashi Nandan and Saurabh Raj Srivastava, for the Appellant; S.C. Pandey and J.C. Pandey, for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.—Heard Sri Shashinandan, learned senior counsel assisted by Sri Saurabh Rai Srivastava, learned counsel for the petitioner and Sri J.C. Pandey, learned counsel for respondents. Learned standing counsel has also filed some objections even though State is not a party in the writ petition. Through this writ petition, a prayer for issuing writ of prohibition has been made seeking to restrain Civil Judge (Senior Division), Allahabad from proceeding further with Original Suit No. 499 of 2009, Smt. Savitri Singh and others v. Smt. Kamla Jha and others and to restrain Civil Judge (Junior Division), Allahabad from proceeding further with Original Suit No. 130 of 1999, Smt. Shanker Lata Jha v. Piyush Enclave Ltd. Smt. Shanker Lata Jha, plaintiff No. 1 in the suit of 1999 is the same woman, who is defendant No. 1, i.e. Smt. Kamla Jha in the suit of 2009. At several places she has been described as Smt. Kamla Jha @ Smt. Shanker Lata Jha.

2. It has also been stated that in the suit of 2009, application under Order VII Rule 11, C.P.C. has also been filed.

3. An amendment application has been filed seeking addition of certain parties. Certain paragraphs number as paras 12-A, 12-B and 12-C have also been sought to be added mentioning therein that those disputed plots, which are situate at Kolkata were purchased by 14 companies, which merged together to form a company named as Diamond Empire Estate Ltd. through order dated 18.3.2009 passed by company Judge of Kolkata High Court. It has further been stated that on 16.11.2011 name of Diamond Empire Estate was changed to Chowranghee Residency Private Ltd. of which petitioners were directors. Amendment application is allowed.

4. The dispute in this writ petition is confined to property Nos. 42-A, 42-B and 42/1 situate at Jawahar Lal, Nehru Road, Kolkata. In the second suit (O.S. No. 499 of 2009), which was initially confined to properties situate at Allahabad through amendment, the above properties situate at Kolkata were also added and present petitioners were also added as defendants.

5. Originally Maharaja Kameshwar Singh was owner of the properties in dispute and other properties. He executed a will in the year 1961, which was probated by the Kolkata High Court in 1963. Thereafter, dispute arose and matter reached to the Supreme Court in the form of Civil Appeal No. 3964-65 of 1985. Before the Supreme Court a compromise was entered into on 27.3.1987. The Supreme Court passed the decree in terms of compromise on 15.10.1987. The properties mentioned in Schedule-6 in the compromise were directed to be sold for meeting tax liabilities. Schedule-6 had several properties including the properties in dispute in this writ petition situate at Kolkata.

6. One Ram Prasad Mohanti filed O.S. No. 156 of 1989 at Kolkata claiming that late Sri Kameshwar Singh had executed a gift deed in his favour on 30.5.1946, however Kolkata High Court found that the gift deed was forged and fabricated through judgment dated 15.2.1992. Ultimately, the trustees of the properties of Late Sri Kameshwar Singh entered into compromise to sell the properties of Schedule-6 of the agreement, which was approved by the Kolkata High Court on 11.6.1993 with some modification and the said order was affirmed by the Supreme Court. Thereafter the 14 companies, which ultimately merged and formed Chowranghee Residency Pvt. Ltd. purchased the three properties situate in Kolkata and in dispute in this writ petition through registered sale-deed dated 3.10.1997.

7. As far as litigation at Allahabad is concerned, it started with O.S. No. 26 of 1995 instituted by Shanker Jha, husband of Kamla Jha @ Shanker Lata Jha before Civil Judge, Allahabad seeking a declaration on the basis of unregistered gift deed alleged to have been executed by late Sri Kameshwar Singh in favour of Kanhaiya Jha, father of Shanker Jha on 2.2.1954. The suit was dismissed in default on 13.9.1999 and restoration application is stated to be pending.

8. Thereafter, Smt. Shanker Lata Jha @ Kamla Jha filed O.S. No. 130 of 1999. Copy of the said plaint is Annexure-3 to the writ petition. The 14 companies,

which purchased the properties through sale-deed dated 3.10.1997, or their directors are parties in the said suit. In the said suit, it was stated that O.S. No. 112 of 1955 had been instituted by Kanhaiya Jha (father-in-law of the defendant) in which he had been declared to be the owner through decree passed in 1959. Plaintiff claimed that Kanhaiya Jha executed a will deed in her favour. Properties in the said suit (of 1999) are house No. 12, Park Road, Allahabad, 8 biswas 11 biswansis, one Plot No. 22, Chainthem Lines, Allahabad and the three properties situate at Kolkata are in dispute in this writ petition. The relief claimed is for permanent prohibitory injunction.

9. There is raging dispute between the parties as to whether the decree alleged to have been passed in 1959 is genuine or forged. Inquiry is also going on.

10. Proceedings of O.S. No. 130 of 1999 are stayed u/s 10, C.P.C. probably on the ground of pendency of O.S. No. 26 of 1995 or restoration application therein. Smt. Kamla Jha also filed O.S. No. 147 of 1999 against M/s Diamond Group claiming that a will had been executed by her father-in-law in her favour on 17.5.1970. The suit was dismissed on merit on 9.12.2009.

11. Smt. Kamla Jha also filed testamentary Case No. 25 of 2007 regarding alleged will executed by her father-in-law in her favour in this High Court, which was dismissed as withdrawn on 22.3.2010.

12. It is strange that in O.S. No. 130 of 1999, the lady described herself as Smt. Shanker Lata Jha and in O.S. No. 147 of 1999 as by Smt. Kamla Jha.

13. The last suit (O.S. No. 499 of 2009) was filed by Smt. Savitri Singh and Sundaram Muraly against Smt. Kamla Jha. In the suit, initially only Smt. Kamla Jha was impleaded as defendant and as she did not appear hence ex parte interim injunction was granted on 18.5.2009. Thereafter, through amendment in the said suit, petitioners were also impleaded as defendants. The amendment was allowed on 17.2.2011. Copy of the original plaint has been filed as Annexure-7 to the writ petition and copy of amended plaint is Annexure-9 to the writ petition. However the injunction order dated 18.5.2009 has been vacated by the trial Court. In the suit of 2009, the basis of the claim is an alleged composition/assignment deed dated 24.5.1997 (unregistered). Valuation of the suit is Rs. 25 crores and the Court fees paid is Rs. 500/-.

14. Through amendment in the plaint of 2009, it was added that plaintiff came to know that defendant Smt. Kamla Jha had entered into oral hidden agreement with the petitioners (added as defendant Nos. 2 to 4), however property No. 42/B at Kolkata, they had no right.

15. Paras 10 and 11 of the suit of 2009 are quoted below:

10. That in consideration of the plaintiffs becoming sureties for the defendant for the payment of the amount of said composition and of the covenant by the sureties with the creditors, the defendants executed an assignment in favour of the plaintiffs on 24.5.1997 through a composition deed.

11. That in consideration of promises and of the covenants by the sureties i.e. present plaintiffs contained in the composition deed dated 24.5.1997, the defendant as beneficial owner of the immovable properties situated at i) 42/A, 42/B and 42/1 Jawahar Lal Nehru Road, Calcutta formerly 42, Chowringhee Road, Calcutta, ii) 22, Chaitham Lines, Allahabad and iii) 12, Park Road, Allahabad as declared by the Additional Civil Judge (S.D.), Allahabad covenanted and agreed to share 50% of the sale proceeds of the said properties with the plaintiffs and in case the said properties remain unsold for 10 year commencing from the date of execution of the composition deed then after that completion of 10 year half of the share in each of the said properties stood assigned and transferred unto the sureties, that is the present plaintiffs, to hold the same absolutely by virtue of the terms of the aforementioned composition deed.

16. In none of the suits anything has been stated about earlier litigation upto the Supreme Court or the sale-deed dated 3.10.1997 through which petitioners purchased the property under order of the Supreme Court. Immovable property cannot be transferred through oral unregistered composition or assignment deed. Petitioners are purchasers of the property through registered sale-deed dated 3.10.1997 executed in pursuance of the order of the Supreme Court. Absolutely no relief has been claimed for cancellation of the sale-deed dated 3.10.1997 or its declaration as null and void. No relief has been claimed for cancellation of the order of the Supreme Court or declaration that the order is void (as it cannot be claimed anywhere else except the Supreme Court). As Smt. Kamla Jha did not appear hence collusion is writ large on the face of record. The suit of 2009 has actually been filed by Smt. Kamla Jha, using the plaintiffs of the suit as her dummies. Unless the order of the Supreme Court, passing the decree in terms of the compromise and the subsequent sale-deed are set aside or declared as void no relief can be granted against the petitioners in respect of the property purchased by them through registered sale-deed dated 3.10.1997. Accordingly, suits are not maintainable. Writ Petition is allowed. Writ of prohibition is issued to the Courts concerned not to proceed with the suits i.e. O.S. No. 130 of 1999 and O.S. No. 499 of 2009.