
(1991) 12 AHC CK 0059

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 9710 of 1988

Sheo Murat Singh

APPELLANT

Vs

Addl. District Judge IV and Others

RESPONDENT

Date of Decision : 04-12-1991

Acts Referred:

Citation : (1992) 1 AWC 246

Hon'ble Judges : S.C. Verma, J

Bench : Single Bench

**Advocate : V.V. Misra, Yatindra Singh and V.K.S. Chaudhari, for the Appellant;
S.K. Verma, for the Respondent**

Final Decision : Dismissed

Judgement

S.C. Verma, J.—The present petition is directed against the order of IV Additional District Judge, Ghazipur dated 21-4-1988 and the order dated 17-9-1987 passed in Original Suit No. 81 of 1985 holding that the Civil Court has jurisdiction to adjudicate upon the present dispute and grant relief for cancellation of the sale deed dated 9th May 1985 and for permanent injunction to restrain the Defendants from interfering in possession of the disputed land.

2. An issue relating to the jurisdiction of the Civil Court to try the suit was framed by the learned Civil Judge and it was held by the trial court that the relief for cancellation of the sale deed could be granted by the Civil Court. The learned IVth Additional District Judge in Civil Revision No. 158 of 1987 upheld the view taken by the learned Civil Judge.

3. Learned Counsel for the Petitioner has challenged the impugned orders mainly on the grounds that as the name of the Petitioner had already been mutated in the revenue records in pursuance of the disputed sale deed, the Revenue court alone has jurisdiction to correct the revenue records and the disputed sale deed being void, the relief for declaration and injunction can also be granted by the revenue court. In support of his contention Learned Counsel for the Petitioner

placed reliance on Ram Padarath v. II Additional District Judge Sultanpur 1989 AWC 290 (FB), which is being quoted below:

We are of the view that the case of Indra Deo v. Smt. Ram Piari 1982 (8) ALR 517, has been correctly decided and the said decision requires no consideration while the Division Bench case. Dr. Ajodhya Prasad Vs. Gangotri Prasad, , is regarding the jurisdiction of consolidation authorities but so far as it holds that suit in respect of void document will lie in the 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 or status of a tenure-holder is necessarily needed in which event relief for cancellation will be surplusage 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 cancellary relief even though the same can be granted by the revenue court.

Learned Counsel for the Petitioner placed strong reliance on the law with regard to exception laid down that when declaration of right or status of a tenure holder is necessarily needed in which event relief for cancellation will be surplusage and redundant, suit is necessarily to be filed before the revenue court. According to the Learned Counsel for the Petitioner in the present case also, since the sale deed being a void document, suit for declaration is necessary as mutation of the names has taken place in the revenue records.

4. In my opinion the arguments of the Learned Counsel for the Petitioner in the present set of facts and the circumstances cannot be accepted. In the plaint it has been pleaded that without the knowledge of the Plaintiff a fictitious sale deed dated 7th May 1985 has been created and was got registered and on that basis the names of the vendee had been mutated in the revenue records. The Plaintiff claimed to be still in possession and claimed following relief:

Aa--Basdoor degree bahak madduai khilaph mudaleh kabala jahira. nabista mudduai bahak mudaleh dinank 7-5-85 jo registry daftar sub-registrar Saidpur men bahi No. gild No. 869 prista 105-106 par No. 972 par tarikh 9-5-85 ko hui hai, mansookh pharmai javey aur iski suchana daftar Sub Registrar Saidpur ko bheg de jawe.

Ba--Mudaleh ko dabao ke liye mana kar diya jawe ke we kabja dakhil muddai upar aarji nijai wa fasal men kishi taur par pana wa muja-him na ho.

The Petitioner claimed that the mutation of the name in revenue record was in pursuance of the sale deed and thus the title to the disputed property has been claimed only on the basis of disputed sale deed. There is no dispute with regard to the Plaintiff's title prior to the execution of the sale deed. Therefore, the only cloud on the title of the Plaintiff was the sale deed.

5. In these circumstances the simple suit for cancellation of a document or instrument, if the same cast cloud on one's right and title or is likely to cast could over it or affects the same adversely in respect of agricultural property, does not create any difficulty and it does not necessitate any further declaration as to the claimant's right and title over the disputed land. In the present case if the principal relief for cancellation of a void sale deed is granted by the Civil Court, there would be no necessity to claim any further relief with regard to the title or right of the Plaintiff over the disputed land.

In my opinion merely because the name of the vendees have been mutated on the basis of disputed sale deed and there is no other claim of right or title over the disputed land, it would not be necessary at this stage to seek any relief before the revenue court and any declaration of title would not be required as a principal relief. After the validity of the disputed sale deed had been adjudicated by the civil court the Petitioner may seek redress before the revenue court for correction of the revenue records.

6. After the decision in Full bench case of Ram Padarath (supra) Hon. Supreme Court in Smt. Bismillah v. Janeshwar Prasad 1990 1 AWC 359 (SC) also approved the full bench decision and applied the law laid down that the suit for cancellation of the void document will generally lie in Civil Court.

7. The view of the courts below that the present suit is maintainable before the Civil Court, does not suffer from any illegality or infirmity. The petition is devoid of merit and is accordingly dismissed.

8. There shall be no order as to costs.