
(2004) 05 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7020 of 1986

Sheo Prasad Misra

APPELLANT

Vs

IVth Addl. District Judge, Ist Addl. Munsif and Smt. Kalindi
Devi

RESPONDENT

Date of Decision : 06-05-2004

Acts Referred:

Specific Relief Act, 1963 — Section 31
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 45(A)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 331

Citation : (2005) 3 AWC 2293 : (2005) 2 RD 35

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ram Niwas Singh and V.K. Chandel, for the Appellant; Umesh Narain Sharma, P.R. Ganguly and Raj Deo Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri R.N. Singh Advocate on behalf of the petitioner and Standing Counsel on behalf of the Respondent.

2. Original Suit No. 77 of 1984 was filed by Smt. K. Devi against the petitioner Sheo Prasad Mishra. The relief prayed for in the said suit is only one namely, cancellation of a registered sale deed executed on 19.11.1983. In the said suit it was alleged that the plaintiff is the recorded tenure holder and an imposter has executed said sale deed, which has been registered in the office of Sub Registrar on 19th November, 1989. It was, therefore, prayed that the said sale deed may be cancelled.

3. On behalf of the defendant objection was raised that the suit as filed by the plaintiff was not maintainable and was barred by provisions of Section 331 of the U.P.Z.A. & L.R. Act. The issue framed in that regard was decided against the defendant and the Munsif by means of the order dated 31st January, 1985 held that the suit filed by the plaintiff was maintainable before the Civil Court.

4. Feeling aggrieved by the said order of the Munsif, the defendant filed a revision, being Civil Revision No. 17 of 1985, which has also been dismissed by the IV Additional District Judge, Ghazipur by means of order dated 3rd January, 1986. Hence the present writ petition.

5. On behalf of the petitioner it is contended that the suit filed by the plaintiff was in respect of an agricultural holding's Sale deed, which was sought to be cancelled was alleged to have been executed by an Imposter and as such is a void document and therefore, the suit as filed by the plaintiff was liable to be dismissed as not maintainable in view of the Section 331 of the U.P.Z.A. & L.R. Act. In support of the said version, the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court reported in 1973 SC 24511990 SC 1173 as also upon the three judgments of Hon'ble Single Judge's of this Court, reported in 1989 RD 149 1999 RD 655 and 2001 RD 422. It is contended that a suit for cancellation of a void sale deed is not maintainable before the Civil Court and the appropriate forum in that regard is the Revenue Court.

6. I have heard counsel for the parties and have done through the judgment relied upon by the Counsel for the parties.

7. The contention raised on behalf of the petitioner has no merit, I Admittedly, the suit as filed by the plaintiff was confined to a single relief namely for cancellation of the sale deed. The relief for cancellation of the sale deed can be granted u/s 31 of the Specific Relief Act by the Civil Court only. It may be noted that in the said suit the plaintiff has not claimed any other relief.

8. The full Bench of this Court, in the judgment reported in 1989 RD 21, while considering the jurisdiction of the Civil/Revenue Court in respect of the void sale deed, has Specifically held as follows:-

"These cases in substance lay down that suit for cancellation of void deed is cognizable by civil court and Section 331 does not deprive a party from a right to approach competent court of law for getting a document cancelled and instead drives a party to revenue court claiming a different relief and that of cancellation which a revenue court cannot grant holding the deed to be void."

9. Suit for cancellation of a void document will generally lie in the Civil Court and party cannot be deprived of his right for getting this relief under the law except when a declaration of title or status of a tenure holder is necessarily involved where relief of cancellation of sale deed is surplus. In the plaintiff's allegation it is contended that plaintiff was recorded tenure holder in possession of land in dispute and an imposter has executed the sale deed of the land belonging to the plaintiff. Full Bench, referred to above on page 30 of the said judgment, has been held that in case of void document said to have been executed by a plaintiff during his disability or by some one impersonating him or said to have been executed by his predecessor whom he succeeds, the relief of cancellation of the document is more appropriate relief for clearing the deck of title and burying deep any dispute or controversy on its basis in presents or

which may take place in future. The document after its cancellation would bear such an endorsement in: Sub-Registrar's register and would be the basis for correction of any paper and revenue record including record of register.

10. Reference may also be had to the judgment of Hon''ble Supreme Court reported in Shri Ram and Another Vs. Ist Addl. District Judge and Others, , wherein it has been held as follows:

On the nullity of the documents we are of the opinion that where a recorded tenure holder having prima facie title and in possess, files a suit in the Civil Court for cancellation of sale deed having obtained by some fraud or impersonation cannot be permitted to file a suit for cancellation in Revenue Court reasons have been in said case the prima facie title of the tenure holder is not in question.

11. Reference may also be had to the judgment reported in AIR 1990 SC 540; Smt. Bismillalh v. Janeshwar Prasad and Ors., as also to Full Bench Judgment of this High Court reported in 1989 AWC 290; Ram Padarath v. Second Addl., Dist. Judge, Sultanpur, in para 41 it has been held -

"We are of the view that the case of Indra Deo v. Smt. Ram Pyari 1982 ALJ 1308 has been correctly decided and the said decision requires no consideration, while the Division Bench case, Dr. Ayodhya Prasad v. Gangotri 1981 ALJ 647 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 and 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 ancillary relief even though the same can be granted by the Revenue Court."

12. In view of the aforesaid settled legal position, so far as the suit for only cancellation of void sale deed are concerned, It has repeatedly been held that in such cases the suit as filed before the Civil Court is legally maintainable specifically in view of the Section 31 of the Specific Relief Act, which declares that relief for cancellation of the sale deed can be granted by the Civil Court only.

13. So far as the judgments cited by the Counsel for the petitioner are concerned, the judgment reported in 1973 SC 251 is a case where the uncle of the plaintiff had transferred the share of the plaintiff in excess of his share. In the said case the Hon''ble Supreme Court held that; for deciding as to whether transfer of in excess of share it is necessary to adjudicate upon the representative share of the parties and in such circumstances it was held that the suit before the Revenue Court was the appropriate remedy.

14. Similarly, in the judgment reported in Smt. Dularia Devi Vs. Janardan Singh and others, , the thumb impression of a lady who was the recorded tenure holder, has been obtained by misleading her with regard to correctness of the document. The Hon''ble Supreme Court in such circumstances held that it was necessary for the lady to establish her title over the property in question, therefore, the remedy available to her by way of proceedings before the Revenue Court.

15. In view of the aforesaid facts, the judgments relied upon by the Counsel for the petitioner are clearly distinguishable. In none of the aforesaid cases recorded tenure holder in possession of land has filed suit for cancellation of the sale deed simpliciter with no other relief. The legal position as has been held by the Hon''ble Supreme Court in the judgment reported in 2001 RD 241, is squarely attracted in the facts of the present case.

16. So far as the judgments of the Single Judge of this Court, cited by the Counsel for the petitioner, is concerned, the same are clearly distinguishable and do not have any application now in view of the judgment of the Hon''ble Supreme Court, reported in Shri Ram and Another Vs. Ist Addl. District Judge and Others, , wherein qua a recorded tenure holder in possession of land, it has specifically been declared that suit for cancellation of sale deed before Civil Court is appropriate remedy. In such circumstances the Munsif as well as Revisional Court have not committed any error of law in holding that the suit filed by the plaintiff is maintainable.

17. It is lastly contended that it has been stated in the plaint that permission of Consolidation Authorities was not obtained i before executing the sale deed and thus u/s 45(A) of the U.P. Consolidation of Holdings Act, the sale deed is void and therefore the Consolidation Authorities had jurisdiction to decide the said issue exclusively.

18. The said contention of the petitioner does not in any way I affect the legal position as laid down in the judgment by the Hon''ble Supreme Court in the case of Sri Ram v. Additional District Judge, referred to above, nor it can be said that because of the provisions of Section 45(A), the jurisdiction of the Civil Court for the relief of cancellation of the sale deed simpliciter is ousted.

19. The writ petition is devoid of merit and is accordingly dismissed. Interim order, if any, stands discharged.