
(2014) 07 AHC CK 0054
In the Allahabad High Court
Case No : C.M.W.P. No. 34091 of 2014

Shiv Shankar

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (2014) 10 ADJ 42 : (2015) 1 AWC 287 : (2014) 125 RD 153

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Manish and Gajala Srivastava, Advocate for the Appellant; Mahesh Narain Singh, Advocate for the Respondent

Judgement

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Ran Vijai Singh, J.—Heard Sri Manish, learned Counsel for the petitioner and learned Standing Counsel appearing for the State respondents. This writ petition has been filed for issuing a writ of certiorari quashing the orders dated 28.3.2014 passed by the learned Member Board of Revenue in Revision No. 44 of 2013-14 (Shiv Sharker v. State of U.P. and others) and order dated 15.2.2014 passed by the Sub-Divisional Officer in Case No. 98/2004 (Gram Sabha Dhaulana and others v. Shiv Shanker).

2. Vide order dated 15.2.2014, restoration application filed by the Gaon Sabha seeking setting aside the judgment and decree dated 6.6.2005 has been allowed after condoning the delay and the case was restored to its original number. Whereas by the subsequent order dated 28.3.2014, the petitioner's revision filed against the order dated 15.2.2014 has been dismissed.

3. While assailing these orders, learned Counsel for the petitioner contends that the petitioner has filed Suit No. 98 of 2004 (Shiv Shankar v. State of U.P. and others) under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act,

1950 (in short "the Act") impleading State of U.P. as well as Gaon Sabha as defendants and both have filed their written statement. The suit was decreed on 6.6.2005.

4. Aggrieved by the judgment and decree dated 6.6.2005, State of U.P. has filed an appeal, which was numbered as Appeal No. 64 of 2004-05. The appeal too had been dismissed by the Additional Commissioner (III) Meerut Division, Meerut vide judgment and order dated 4.2.2009.

5. It is after seven years, the Gaon Sabha has filed restoration application under Order IX, Rule 13 of Code of Civil Procedure seeking setting aside the judgment and decree dated 6.6.2005 along with an application for condonation of delay. The delay has been condoned and the restoration application has been allowed. It is contended that once the judgment and decree dated 6.6.2005 has attained finality, by dismissal of the appeal, on 4.2.2009, filed by the State, it was not open for the Sub-Divisional Officer to set aside the judgment and decree dated 6.6.2005 and restoring the proceeding of the suit.

6. On the other hand, learned Standing Counsel has invited attention of the Court towards the observation made by the Sub-Divisional Officer while allowing the restoration application wherein it is recorded that with respect to the land in dispute i.e. Khasra No. 1345 measuring about 0.253 hectare, Khasra No. 2204 measuring about 0.089 hectare and Khasra No. 1401 measuring about 0.493 hectare, the petitioner had filed suit under section 229-B of the Act, which was numbered as 14 of 1999 (Shiv Shankar v. State). This suit was dismissed on 26.1.2000. Aggrieved by the judgment and decree dated 26.1.2000, the petitioner had filed Appeal No. 8 of 2000 (Shiv Shankar v. State). The appeal was also dismissed on 14.11.2000. Concealing this fact, the petitioner has filed another suit in the year 2004 with respect to the same land, which was numbered as Suit No. 98 of 2004 (Shiv Shankar v. State), which was decreed on 6.6.2005. Against that, State filed Appeal No. 64 of 2004-05 (State v. Shiv Shankar) which was dismissed on 4.2.2009. Taking shelter of the observation made by the Sub-Divisional Officer, learned Standing Counsel contends that the petitioner has played fraud upon the Courts and after dismissal of the earlier suit on 26.1.2000, no fresh suit for the same cause of action could be maintained.

7. From the perusal of the judgment dated 6.6.2005 passed in the suit filed in the year 2004, it transpires that in the plaint, the petitioner(plaintiff) has not disclosed the filing of the earlier suit and its dismissal for the same cause of action and obtained the decree by playing fraud upon the Court. Therefore, even if the appeal filed by the State Government was dismissed, it will make no difference.

8. It is settled law that fraud and justice cannot live together. If something has been obtained by playing fraud and the factum of fraud is not disputed, then that thing becomes non-est. Here, factum of filing of earlier suit for the same land has not been disputed by the petitioner's Counsel.

In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, the Apex Court has observed as under:--

"5....The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. We are constrained to say that more often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation."

9. In A.V. Papayya Sastry and Others Vs. Government of A.P. and Others, Considering English and Indian cases, one of us (C.K. Thakker, J.) stated: (SCC p. 231, para. 22) while dealing such matter, the Apex Court has observed as under:--

"22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or authority is a nullity and non est in the eye of law. Such a judgment, decree or order--by the first Court or by the final Court--has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings."

The Court defined "fraud" as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam."

10. This view has been reiterated by the Apex Court in the case of K.D. Sharma Vs. Steel Authority of India Ltd. and Others, .

11. In Meghmala and Others Vs. G. Narasimha Reddy and Others, the Supreme Court in paragraphs 33 and 34 has observed as under:--

"33. Fraud is an intrinsic, collateral act, and fraud of an egregious nature would vitiate the most solemn proceedings of Courts of justice. Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. The expression "fraud" involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage. Vide Dr. Vimla Vs. Delhi Administration, Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao, K.D. Sharma Vs. Steel Authority of India Ltd. and Others, and Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and Others, .

34. An act of fraud on Court is always viewed seriously. A collusion or conspiracy

with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the Court. (Vide *Gowrishankar and Another Vs. Joshi Amba Shankar Family Trust and Others*, *Ram Chandra Singh Vs. Savitri Devi and Others*, *Roshan Deen Vs. Preeti Lal*, *Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education and Others*, and *Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another*, "

12. The Apex Court has reiterated the same view in *Inderjit Singh Grewal Vs. State of Punjab and Another*, : *Inderjit Singh Grewal Vs. State of Punjab and Another*, .

13. This Court has also taken the same view in *Smt. Vibha Shukla And Another Vs. Director Of Education (Basic) U.P., Allahabad And Others*, . Otherwise also, the subsequent proceeding was barred by principle of res judicata. In view of foregoing discussions, no relief can be granted to the petitioner. The writ petition is misconceived and it is hereby dismissed. Since the petitioner has abused the process of the Court for the last ten years and also committed fraud upon the Court, a cost of Rs. 25,000/- is imposed upon the petitioner, which is recoverable as arrears of land revenue. The petitioner is directed to deposit the aforesaid amount before the Collector Hapur within a period of six months from today. In case, cost is not deposited within the aforesaid period of six months, the Collector shall realize the same as arrears of land revenue. Learned Standing Counsel is directed to send certified copy of this judgment to the Collector Hapur forthwith.