
(2012) 11 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58448 of 2012

Smt. Brijbala

APPELLANT

Vs

Additional District Judge and Others

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Citation : (2013) 4 ADJ 326 : (2013) 3 ALJ 375

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Kshitij Shailendra, for the Appellant; D.C. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard learned counsel for the petitioner and Sri Mishra for the caveator respondent. The dispute relates to the cancellation of a sale-deed dated 7.8.1992 and a relief for permanent injunction in a suit filed by the respondent Omwati. The dispute related to an agricultural holding and therefore the trial Court held the suit to be not maintainable before the writ Court.

The plaintiff went up in revision and the revisional Court has reversed the order of the trial Court on the finding that the relief claimed can only be granted by the Civil Court. The Court below has relied on several decisions and has accordingly remitted the matter back to the trial Court for proceeding with the suit. Learned counsel has relied on the following decisions to advance his submissions:

Ram Padarath and Others Vs. Second Addl. District Judge and Others, ; M/s Swatantra Bharat Paper Mills Put. Ltd. and another v. State of U.P. and others, 2008 (9) ADJ 135 (DB); Kundan Singh v. 1st Additional District Judge, Bijnore and others, 2009 (4) ADJ 145; Kamla Prasad and Others Vs. Sri Krishna Kant Pathak and Others, ; Parucham v. Ram Gen and others, 2010 (2) ALJ 581; Shri Ram and Another Vs. Ist Addl. District Judge and Others, ; Ram Kunwar Singh and others v. Promod Kumar and another, 2007 (8) ADJ 174; Barkhu and Others Vs. Vth Additional District Judge and Others, ; Nand Lal v. Dew Prasad Singh

decided on 20.8.2010.

2. The facts are that one Bal Mukund is said to have executed a sale-deed on 7.8.1992. He died in 1996. Before his death he said to have executed a will on 5.9.1992 on the basis whereof the respondent Omwati claimed title over the land in dispute. There is nothing on record to point out as to why the name of the petitioner did not come to be mutated in the revenue records when she had purchased the property under the sale-deed dated 7.8.1992.

3. The petitioner claims to be in possession over the land. On the other hand the name of the plaintiff respondent came to be mutated in the revenue record on the basis of the will on 2.11.1996. After the name was mutated the plaintiff filed the suit in December, 1996 for cancellation of the sale-deed dated 7.8.1992 on the ground that the sale-deed is forged and is a result of manipulation. Paragraph 7 of the plaint copy whereof is Annexure 1 to the writ petition categorically makes this allegation. Thus the name of the plaintiff was in the revenue record on the date when the suit was instituted.

4. Sri Shailendra, learned counsel for the petitioner contends that the said mutation order was stayed by an interim order on 26.11.1996 and therefore it was in abeyance and in such circumstances the suit could have only be filed for declaration before the revenue Court and not the Civil Court. He further submits that the order of mutation of the plaintiffs name in the revenue record has been Finally set aside in 1999 and therefore this subsequent event should be taken into account to non-suit the respondent from proceeding to continue the suit before the Civil Court. He therefore submits that in view of the judgments as relied on and referred to hereinabove the impugned order is unsustainable and the respondent plaintiff should be commanded to approach the revenue Court for declaration of any such rights which she claims under a will over the property in dispute.

5. Learned counsel for the respondent opposing the said motion contends that the Court below has rightly reversed the order of the trial Court, inasmuch as, once the name of the plaintiff had been entered in the revenue record then she did not require any declaration as the revenue entry was in her favour. In such circumstances, the correct remedy was to file a suit for cancellation of the sale-deed and the learned counsel has relied on the decisions referred to hereinabove to contend that had the name of the plaintiff not been there in the revenue record, she could have been relegated to the revenue Court.

6. Having considered the aforesaid submissions and the long line of decisions that have been referred to hereinabove, it is clear that where the name of a party is entered in the revenue record and a suit is for cancellation of a sale-deed executed in favour of another person, then the name of the person which finds entry in the revenue record, can file a civil suit for cancellation of the sale-deed, and such a person need not approach the revenue Court for declaration. It is only where the revenue entry is sought to be varied, in the absence of any entry

in favour of the plaintiff, that the suit has to be filed before the revenue Court. This is clear from the ratio of the judgments noted above. In the instant case the matter is just the opposite where the plaintiffs name already stood mutated even though there was a stay order against the same. It is settled principle that the stay of an order does not wipe out the effect of an order as held in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, . Thus the entry in favour of plaintiff as on the date of the filing of the suit in December, 1996 was intact and had not been set aside. In the aforesaid background the suit for cancellation of the sale-deed before the Civil Court was very much maintainable and therefore the Court below has not committed any error in reversing the order of the trial Court and remitting the matter back for decision in accordance with law.

There is no merit in the petition. The writ petition is dismissed.