

(2003) 10 AHC CK 0048
In the Allahabad High Court
Case No : C.M.W.P. No. 7988 of 1981

Smt. Gainda Kali Devi and Another

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 10-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 168A

Citation : (2004) 1 AWC 247 : (2004) 96 RD 19 : (2004) 1 RD 19

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : A.K. Goyal, R.K. Mishra, N.K. Srivastava and Neeraj Agrawal, for the Appellant; Ajit Kumar, Triliki Nath and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned counsel for the parties.

2. The petitioners have challenged the order dated 17.5.1980 passed by Addl. Munsif (III), Pilibhit dismissing the objection of the petitioners filed u/s 47. C.P.C. and the revision was dismissed by the District Judge, Pilibhit on 24.3.1981.

3. It appears that respondent Nos. 3 to 10 to the writ petition filed a Suit No. 180 of 1968 for specific performance of a contract to sell plot No 141, area 10 bighas, out of 18 bighas to the plaintiffs on 10.2.1976. The suit was decreed and application for execution was filed, which was numbered as Execution Case No. 71 of 1977. The judgment debtor filed objection, inter alia, stating that execution of sale will result in fragmentation of holding and is void u/s 168A of the U. P. Zamindari Abolition and Land Reforms Act.

4. The execution court rejected the objections holding that this plea was not taken in suit, hence it is barred by principles of res-judicata and sale in execution is not covered by Section 168A of the Zamindari Abolition and Land Reforms Act. The petitioners filed revision against the said judgment and order, which was also

dismissed.

5. In the counter-affidavit it is stated that only 10 bighas out of 18 bighas of plot No. 141 was being sold, hence it will not result in fragmentation, as contemplated in Section 168A of the Act. Rebutting the averments of the counter-affidavit in Para 4 of the rejoinder-affidavit it is stated that in village Deoni Bahadurganj, where land is situate, 1 acre of land is equal to 6.15 bighas as such 2.97 acres of land is equal to 18 bighas and Section 168A of the Act applies.

6. So far as the question that objection of Section 168A can be raised at the time of execution is concerned, both courts have wrongly held that it cannot be raised in execution proceedings. Section 168A (2) of the Act provides that any transaction, which results in fragmentation below prescribed area of land, will be void. The voidness of decree can be raised at any time, even in execution proceedings. The Apex Court in Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another, in the case of Urban Improvement Trust in para 15 held thus :

"15. The question then is ; whether the objections can be raised in execution? This controversy is no longer res integra. In Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., a three Judge Bench of this Court was to consider whether the nullity of a decree can be raised in execution. Under the Haryana Urban (Control of Rent and Eviction) Act, 1973 the building was governed by the provisions of the said Act. The civil court granted decree of eviction. When objection was raised in execution the executing Court rejected the same. On appeal, this Court had held that a decree passed by a Court without jurisdiction over the subject matter or on any other ground which goes to the root of its exercise of Jurisdiction or inherent jurisdiction, is a nullity. A decree passed by such a Court is a nullity and is non-est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the authority of the Court to pass a decree, which cannot be cured by consent or waiver of the party. If the Court has jurisdiction but there is any defect in its exercise of jurisdiction it does not go to the root of its authority. Such a defect like territorial Jurisdiction could be waived by the party, which could be corrected only by way of an appeal of revision. In that case it was held that since the decree was a nullity the validity was upheld in execution."

7. In view of the above law that objection about nullity of decree raised is illegal, has to be set aside.

8. The two courts below have not considered the plea of fragmentation in the light of objection about area and whether sale will result in fragmentation or not. hence the case has to be remanded to the execution court to decide the case on merits, as this Court cannot go in such a question.

9. At the time of admission of the case in 1981 execution of decree had been ordered to remain stayed on 26.11.1981.

10. The writ petition is allowed. The case is remanded back to execution court to decide the objections on merits. The stay order is vacated. No order as to costs.