
(2009) 05 UK CK 0034

In the Uttarakhand High Court

Case No : Writ Petition No. 677 of 2009 (M/S)

Smt. Jameela and Another

APPELLANT

Vs

Smt. Jaitoon and Others

RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1

Citation : (2009) 2 UC 1280

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Advocate : C.K. Sharma, for the Appellant; Alok Singh and Mamta Joshi, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Verma, J.—Learned Counsel for both the parties are ready to argue the writ petition finally today at the admission stage.

2. Heard learned Counsel for the parties and perused the record.

3. By means of this writ petition, the Petitioners have sought a writ of certiorari quashing the impugned order dated 13-5-2008 passed by Civil Judge (Junior Division), Vikas Nagar, Dehradun (Annexure No. 2) and the order dated 23-3-2009 (Annexure No. 4) passed by the appellate court. By the order dated 13-5-2008, the trial court has rejected the temporary injunction application of the Plaintiff-Petitioners moved in Original Suit No. 572 of 2007, but has allowed temporary injunction application of the Respondents Plaintiffs of Original Suit No. 131 of 2008 Smt. Khatoon v. Smt. Jameela and the Petitioners were restrained not to interfere in the disputed property of Khata No. 1359, area 2.5130 hectare during the pendency of the suit as mentioned in the order. Aggrieved, the Petitioners preferred two Miscellaneous Appeals under Order 41, Rule 1(r) of the CPC before the District Judge, Dehradun, which were ultimately heard and dismissed by the Additional District Judge/Fast Track Court V, Dehradun.

4. Relevant facts, giving rise to the present writ petition as emerges out from the record, in brief, according to the Petitioners, are that late Sri Hakim alias Hakim Uddin was the husband of Smt. Jaitoon, who lateron married second time with the consent of his first wife with Smt. Jameela, the Petitioner No. 1. Smt. Khatoon (sic) gave birth to five daughters, namely, Smt. Khatoon, Smt. Khurshida, Smt. Naseema, Smt. Sajida and Km. Sajida (sic). Said Hakim Uddin, who died on 17-2-2007, possessed two houses in village Jiwangarh. In one house, the Petitioner No. 1 is residing, while in the other, Smt. Jaitoon is residing. Hakim Uddin allegedly executed a will in respect of his immovable property on 1-12-2006 thereby certain property was given to the Petitioner No. 1 and the rest to his first wife-Respondent Smt. Jaitoon. According to the Plaintiff-Petitioner No. 1, she came to know that on the basis of a will allegedly executed dated 16-8-2002, name of Smt. Jaitoon has been recorded over the entire land in revenue record left by the deceased husband and the Petitioner No. 1 also came to know that she has no rights over the immovable property of her deceased husband. The Petitioner No. 1 filed Original Suit No. 572 of 2007 for permanent injunction and also to declare the will in question to be null and void. Along with the suit, the Petitioner No. 1 filed an application for temporary injunction (Paper No. 6-C).

5. Respondent No. 2 Smt. Khatoon and others also instituted Original Suit No. 131 of 2008 against Jameela and others. It has been alleged that late Hakim Uddin executed his last will during his life time on 16-8-2002, which was registered in the office the Sub Registrar Vikas Nagar, Dehradun, thereby the entire movable and immovable property were given to his wife Smt. Jaitoon, who has been arrayed as Plaintiff No. 6 in the array of parties in the said suit. The Plaintiffs (Respondents in the present writ petition) has filed the said suit for permanent injunction to restrain the Defendants (Petitioners) from interfering in the peaceful possession of the Plaintiffs. In this suit also, application for grant of temporary injunction was filed by the Plaintiffs (Respondents in this writ petition).

6. The learned trial court after hearing both the parties took up the application for temporary injunction filed in each suit together and by a common order dated 13-5-2008 decided both of them. The learned trial court rejected the temporary injunction application filed by the Petitioners in O.S. No. 572 of 2007, while the application for temporary injunction moved in Original Suit No. 131 of 2008 was allowed. It was observed by the trial court in the order dated 13-5-2008 that the will dated 16-8-2002 is a registered will and on the basis of evidence, it has been held that there is a prima facie case in favour of the Respondents. The trial court found that the Respondent No. 1 Smt. Jaitoon is a recorded tenure holder in the revenue records, while the Petitioner No. 1 is not a recorded tenure holder. Ultimately, the temporary injunction was granted in favour of the Respondents (Plaintiffs of O.S. No. 131 of 2008).

7. The order dated 13-5-2008 passed by the trial court was assailed by the Petitioners in Misc. Civil Appeal No. 129 of 2008, Smt. Jameela v. Smt. Jaitoon

and Misc. Civil Appeal No. 130 of 2008, Smt. Jameela and Ors. v. Smt. Khatoon and Ors. The appellate court also took up both the said Miscellaneous Appeals together for decision and after hearing both the parties and perusing the material placed before him, the learned Additional District Judge/F.T.C. V, by a detailed order dated 23-3-2009 dismissed both the appeals on merits, which gave rise to the present petition.

8. Learned Counsel for the Petitioners has contended that the Petitioner No. 1 and Respondent No. 1 are two widows of late Sri Hakim alias Hakim Uddin and both are claiming rights in the land in dispute by succession on the basis of two separate wills. It is not disputed that the will in favour of the Petitioner No. 1, which was allegedly executed on 1-12-2006, is an unregistered will and the will dated 16-8-2002, allegedly executed in favour of the Respondent No. 1 is a registered one.

9. At the outset, it may be mentioned that it is well settled that the scope of writ court is very limited. The writ court cannot sit like a court of appeal and cannot re-appreciate or re-evaluate the evidence led by the parties so as to arrive at a different conclusion. Only perversity or illegality in the impugned orders can be examined.

10. From a bare perusal of the record, it is obvious that the Petitioner No. 1 as well as the Respondents filed two separate suits before the trial court as referred to hereinabove and in both the suits application for temporary injunction was moved by the respective Plaintiffs. The trial court by order dated 13-5-2008 has rejected the temporary injunction application of the Petitioner No. 1 filed in O.S. No. 572 of 2007 on the ground that the Respondent No. 1 is a recorded tenure holder on the basis of a registered will executed in her favour. The application moved by the Respondent No. 2 Smt. Khatoon (Plaintiff in Original Suit No. 131 of 2008) was allowed.

11. The sole ground of challenge raised by the learned Counsel for the Petitioner that the trial court has not considered legal aspect of the injunction matter and the appellate court has failed to apply judicial mind in deciding the appeals is not at all tenable on the face of record. It has been categorically mentioned in the order dated 13-5-2008 passed by the trial court that the Petitioner No. 1 Smt. Jameela has failed to prove a prima facie case in her favour. The balance of convenience was also not found in favour of the Petitioner No. 1 and by refusal of temporary injunction, no irreparable loss is going to be caused to the Plaintiff-Petitioner No. 1. The appellate court has also discussed the contentions raised in appeals in detail and has upheld the findings recorded by the trial court vide judgment and order dated 23-3-2009.

12. Having heard the submissions of the learned Counsel for the parties at length and having gone through the material placed before the Court, I find that there are concurrent findings recorded by the two courts below on the basis of prima facie appraisal of evidence. The trial court in its order dated 13-5-2008 as well as

the appellate court in the impugned order dated 23-3-2009 has elaborately dealt with all the three essential ingredients for grant of temporary injunction, as referred to in the preceding paragraph. I do not find any perversity in the impugned orders passed by the two courts below. The orders impugned in this writ petition do not call for any interference by this Court. Accordingly, the writ petition deserves to be dismissed outright in limine.

13. The writ petition is dismissed in limine. However, the Civil Judge (Junior Division) Vikas Nagar, Dehradun is directed to decide both the civil suits (O.S. No. 572 of 2007 and O.S. No. 131 of 2008) on merits expeditiously as far as possible.