
(1966) 01 AHC CK 0029
In the Allahabad High Court
Case No : C.M. Writ No. 584 of 1960

Smt. Lal Kumari Dev and Others	Vs	APPELLANT
Addl. Commissioner Varanasi Division and Others		RESPONDENT

Date of Decision : 10-01-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 21
Uttar Pradesh Agricultural Tenants (Acquisition of Privileges) Act, 1949 — Section 12(1)
(c)

Citation : (1967) 37 AWR 52

Hon'ble Judges : D.D. Seth, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary, for the Appellant;

Final Decision : Allowed

Judgement

D.D. Seth, J.—This petition Under Article 226 of the Constitution arises out of the following circumstances. One Mahabir Prasad, father of Smt. Lal Kumari Devi deceased, was the occupancy tenant of the plots in dispute which are situate in the district of Ballia. After Mahabir Prasad's death in 1928 he was succeeded by his widow Smt. Bhagwati Kunwar who also died in 1946 leaving three daughters, namely Smt. Barmati Devi, Smt. Lal Kumari Devi and Smt. Prem Kumari Devi. Smt. Barmati Devi executed a deed of gift in favour of Petitioner No. 2 Sri Chitranjan Prasad Varma and others and divested herself of the interest in the plots. After the death of Bhagwati Kunwar, widow of Mahabir Prasad, Smt. Lalita Kumari and Smt. Ramanandi Devi, co-widows of one Gajadhar Prasad, pre-deceased son of Mahabir Prasad, took possession of the plots in dispute left by Smt. Bhagwati Kunwar allegedly under the deed of gift dated 5-2-1946. Smt. Lal Kumari Devi; thereupon, filed a suit in the court of the Sub Judge, Arrah, Bihar for a declaration that the deed of gift dated 5-2-1946 alleged to have been executed by Smt. Bhagwati Devi in favour of Smt. Lalita Kumari and Smt. Ramanandi Devi was a forged document. Smt. Lal Kumari Devi also prayed for possession over the properties in dispute. It may be stated here that a major-

portion of the properties belonging to Mahabir Prasad are situate within the territorial jurisdiction of the Sub-Judge, Arrah.

2. The suit filed by Smt. Lal Kumari Devi was decreed by the 2nd Additional Sub-Judge, Arrah on 31-7-1954. The decree included property situate in Bihar as well as in district Ballia. The learned Additional Sub-Judge, while passing the decree in favour of Smt. Lal Kumari Devi, further; ordered that Smt. Lalita Kumari and Smt. Ramanandi Devi could be ejected till the Praman Patrias granted under the UP Agricultural Tenants (Acquisition of Privileges) Act, 1949, hereinafter called the Act, were cancelled by a competent court. No appeal was filed against the decree passed by the Additional Sub-Judge, Arrah. After the decree of the Arrah Court the Petitioners filed an application u/s 12 of the Act and prayed for cancellation of five Bhumidhari Sanads obtained by Smt. Lalita Kumari Devi and Smt. Ramanandi Devi. The learned Tahsildar of Ballia by his order dated 30-9-1958 held that the decision of the 2nd Additional Sub-Judge, Arrah was not res judicata between the parties and succession to the occupancy tenancy of Mahabir Prasad was governed by the provisions of the UP Tenancy Act and dismissed the Petitioner's application.

3. Against the decision of the Tahsildar the Petitioners preferred an appeal which was dismissed by the Additional Commissioner, Varanasi in November 1959.

4. Feeling aggrieved the Petitioners came to this Court Under Article 226 of the Constitution and prayed that certiorari be issued and the orders passed by the Additional Commissioner and the Tahsildar, Ballia be quashed. It is, further prayed that the Additional Commissioner and the Tahsildar, Ballia be ordered to cancel the five Bhumidhari Sanads by allowing Petitioner's application u/s 12 of the Act.

5. Smt. Lal Kumari Devi, who was Petitioner No. 1, died and her heirs and legal representatives have been substituted.

6. Counter-affidavits and rejoinder-affidavit have been filed.

7. I have heard Sri V.K.S. Chaudhary, the learned Counsel for the Petitioners and Sri Chaturbhuj Sahai, the, learned Counsel appearing for opposite parties Nos. 3 and 4.

8. Shri V.K.S. Chaudhary submitted that there is an error of law apparent on the face of the record in the orders passed by opposite parties Nos. 1 and 2 in as much as they erred in holding that the 2nd Additional Sub-Judge, Arrah, had no jurisdiction to entertain a suit involving properties situate in district Ballia. The learned Counsel next submitted that the decision "of the Arrah Court was res judicata between the parties and that the revenue Courts were bound to cancel the Bhumidhari Sanads on the basis of the decree of the Arrah Court.

There is force in these submissions.

9. Section 17 of the GPC is relevant and reads as follows:

Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject matter of the suit, the entire claim is cognizable by such Court.

10. It has already been mentioned above that the bulk of property belonging to Mahabir Prasad was situate within the territorial jurisdiction of Arrah Court. Smt. Bhagwati Devi had executed only one deed of gift and hence a suit for setting aside that deed lay only in one court and the deed could not be challenged piece meal in different courts. In any case opposite parties Nos. 3 and 4 should have raised the question of jurisdiction before the Additional Sub-Judge Arrah. In the absence of any objection on the part of opposite parties 3 and 4 the decree of the Arrah Court became final.

11. Section 21 of the CPC deals with objections to jurisdiction and says:

No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been a consequent failure of justice.

In the absence of an objection regarding jurisdiction being raised in the Arrah Court the view of law taken by the Additional Commissioner and the Tahsildar, Ballia is wrong. It was held in AIR 1941 347 (Lahore) that property situated in British India, though outside the jurisdiction of a court, can be included in a suit with property situated within such court's jurisdiction.

12. It must, therefore, be held that the Arrah Court had jurisdiction to entertain the suit instituted by Smt. Lal Kumari Devi and the learned Addl. Commissioner and the Tahsildar, Ballia were wrong in taking a contrary view.

13. Since opposite parties Nos. 3 and 4 did not raise the question of jurisdiction before the Arrah Court and the decree of the Arrah Court having become final the decision is res judicata between the parties. Section 11 of CPC deals with res judicata and says:

No Court shall try any suit or issue in which the matter directly and substantially in issues has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been consequently raised and has been heard and finally decided by such court.

Explanation I....

Explanation II....

Explanation III....

Explanation IV--Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V....

Explanation VI....

14. It must be assumed that the Arrah Court decided that it had jurisdiction to entertain the suit instituted by Smt. Lal Kumari Devi and therefore, under Explanation IV to Section 11 CPC the matter is res judicata between the parties.

15. Section 12 of the Act deals with cancellation of the declaration granted u/s 6 of the Act and says:

(1) A declaration granted u/s 6 may, on the application of any person interested, be cancelled or modified by the Assistant Collector for any of the following reasons namely:

(a)....

(b)....

(c) that a decree or order passed by a competent court in a suit or other proceeding with respect to the holding for which the declaration has been granted shows that the Applicant Under Sections 3, 3A, 3B and 3C was not entitled to the declaration u/s 6.

(2)....

Provided that....

16. A competent court having given a decision in a suit instituted by Smt. Lal Kumari in her favour the revenue courts were bound u/s 12(1)(c) of the Act to order cancellation of the Praman Patras granted in favour of opposite parties Nos. 3 and 4.

17. No other contentions were raised by the learned Counsel for the parties.

18. The result is that this petition is allowed with costs and the orders passed by the Tahsildar, Ballia dated 30-9-1958 and the learned Addl. Commissioner, Varanasi dated 26-11-1959 are quashed. The Tahshildar, Ballia is directed to entertain the Petitioner's application u/s 12 of the Act and to cancel the five Bhumidhari Sanads in favour of opposite parties Nos. 3 and 4.