

(2016) 04 AHC CK 0218

In the Allahabad High Court

Case No : Matters Under Article 227 No. 2912 Of 2016

Smt. Mithilesh Sharma

APPELLANT

Vs

Ram Khiladi and 2 Others

RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2016) 4 AllWC 3332

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Sumit Daga, Advocate, for the Appellant; Anil Kumar Shukla, Bhupendra Kumar Tripathi, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Ram Surat Ram (Maurya), J.— Heard Sri Sumit Daga for the petitioner and Sri Bhupendra Kumar Tripathi for respondents- 2 and 3.

2. This petition has been filed against the order of Civil Judge, (Junior Division) dated 25.2.2016 by which the interim injunction application has been rejected and the order of District Judge dated 5.3.2016 dismissing the appeal filed against the aforesaid order.

3. Admittedly the land in dispute belongs to one Ghure. The petitioner derives her title over the land in dispute on the basis of sale deed dated 28.11.2013 allegedly executed by Ram Khiladi, respondent-1 who derives his title on the basis of Will dated 28.10.1987 allegedly executed by Ghure in his favour. On the other hand respondents - 2 and 3 derive their title on the basis of sale deed dated 3.5.2014 executed by Munna Lal in their favour. Munna Lal is claiming to be son of Ghure. The court below found that after death of Ghure name of Ram Khiladi came to be recorded on the basis of report of PA -11 which has been set aside by the revenue authorities and at present name of Munna Lal has been recorded over the land in dispute. Thus it has been found that since Munna Lal is recorded

owner of the land in dispute, therefore, no interim injunction can be granted against the transferees of Munna Lal. On this finding, the appeal has been dismissed and order of trial court rejecting the application for interim injunction has been upheld.

4. The counsel for the petitioner submits that Munna Lal by making forgery in various records now trying to prove himself to be son of Ghure. The school leaving certificate produced by him to prove the parentage of Munna Lal has been issued by an institution which is not in existence at that time. Munna Lal in his affidavit filed in Case No. 1834 of 2014 shows himself as son of Bhairu Lal and his address was shown as Ujjain. Munna Lal in his statement recorded in the proceeding under Section 34 of UP Land Revenue Act, has stated that he had gone to Ujjain 20 to 30 years ago and used to give the land in dispute on batai to Ram Khiladi. In khasra filed from the year 1412 F to 1421 F, name of Ram Khiladi was recorded as owner of the land in dispute. Thus at least possession of Ram Khiladi over the land in dispute is proved. In such circumstances, the order rejecting the application for interim injunction is illegal and liable to be set aside.

5. I have considered the arguments of the counsel for the petitioner.

6. So far as khasra is concerned, a perusal of khasra shows that name of Ram Khiladi was recorded in the owner's column and not in the column of occupier. The court below found that in khatauni name of defendant Munna Lal was recorded. Thus there has been contradiction between the entry of khatauni and khasra and in case of contradiction, the khatauni will prevail as there is presumption regarding the correctness of khatauni and not khasra.

7. So far as the affidavit as well as school leaving certificate of Munna Lal are concerned, the court below found that it will be examined at the stage of suit. For the purposes of injunction, claim of Ram Khiladi is based upon an unregistered Will which has never seen in the light of the day till today. The will is not admissible in evidence unless it is proved according to Section 68 of Evidence Act. Thus I do not find any justification to interfere in the impugned orders in exercise of powers under Article 227 of the Constitution. However, since there is serious dispute between the parties, it is appropriate that no third party interest or any charge shall be created by any of the parties during pendency of the suit over disputed property.

8. The trial court shall proceed to hear the suit and try to conclude it expeditiously without granting any unnecessary adjournment to either of the parties.

9. With the aforesaid observation, petition is disposed of.