

(2005) 03 AHC CK 0033
In the Allahabad High Court
Case No : Second Civil Appeal No. 150 of 1987

Smt. Ramdei (deceased) through L.Rs. Parikramadeen Yadav and Others APPELLANT

Vs

Smt. Rampati alias Rupa Devi and Another RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4(2), 49, 5(2), 6(1)

Citation : (2006) 1 AWC 767

Hon'ble Judges : O.P. Srivastava, J

Bench : Single Bench

Advocate : D.K. Trivedi and R.K. Sharma, for the Appellant; P.C. Srimal, P.S. Misra and S.K. Mehrotra, for the Respondent

Judgement

O.P. Srivastava, J.—This is second appeal against the judgment and order dated 10.2.1987, passed by Additional Civil Judge, Sitapur, reversing the judgment and decree dated 12.8.1985, passed by Munsif, Biswa.

2. This appeal stems out of a suit filed by Ram Dei, substituted by her heir plaintiffs-appellants on her death, for cancellation of Will deed dated 4.4.1983. The parties to the suit are related as per pedigree given in the plaint. Gajodhar Prasad deceased was the brother of Ram Dei and defendant-respondents are married daughters of Sarjoo Prasad pre-deceased brother of Gajodhar Prasad.

3. Case of the plaintiff-appellant is that on the death of Sarjoo Prasad his share in the property was inherited by Gajodhar Prasad and on the death of Gajodhar Prasad who was living with Ram Dei the property devolved on her as Gajodhar Prasad was issue-less. The Ram Dei's name was mutated also but later on defendants-respondents set-up a Will allegedly executed by Gajodhar Prasad in their favour.

4. The Will was challenged on the ground that same was not executed by Gajodhar Prasad during his life-time and that after the death of Gajodhar Prasad,

defendants-respondents prepared the said Will in collusion with the witnesses. It was alleged that the Will does not bear signature of Gajodhar Prasad.

5. The suit was contested by defendants-respondents and allegations of the plaintiff-appellant were repelled. Plea of jurisdiction was also taken and it was asserted by defendants-respondents that suit ought to have been filed in revenue court.

6. The suit was decreed by the learned trial court. The same was held also to be cognizable by civil court and not by revenue court. However, on appeal preferred by defendants-respondents, learned appellate court reversed the judgment and decree of the trial court and the suit was dismissed.

7. During pendency of second appeal the consolidation proceedings have commenced in the village. Notification u/s 4(2) of U. P. Consolidation of Holdings Act, 1953 (hereafter referred to as "Act") has been admittedly issued during pendency of appeal. Due to commencement of consolidation proceedings defendants-respondents have made application being C.M.A. No. 1145 (S) of 2003 for abatement of the second appeal u/s 5(2) of the Act. Contention of defendants-respondents in regard to abatement of second appeal and proceedings, has been contested by plaintiff-appellants.

8. I have heard learned Counsel for the parties.

9. Learned Counsel for the appellant although has not disputed publication of the notification u/s 4(2) and commencement of the consolidation proceedings but has stated that since the civil court alone has jurisdiction for cancellation of a Will deed, as has been held by the courts below also, the appeal will not abate. Learned Counsel for the parties on either side cited various judgments in support of their case.

10. Section 5(2) of the Act, for convenience sake, is extracted below :

5. Effect of notification u/s 4(2).--(1)

(2) Upon the said publication of the notification under Sub-section(2) of Section 4 the following further consequences shall ensue in the area to which the notification relates, namely :

(a) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending stand abated :

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard :

Provided further that on the issue of a notification under Sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part, as the case may be, shall stand vacated ;

(b) such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of this Act and the Rules made thereunder.

11. From the above, it is unambiguously clear that upon publication of Notification u/s 4(2) of the Act every suit and proceeding in respect of declaration of rights or interest in any land lying in the area including proceedings for correction of record or for declaration or adjudication of any right pending before any court or authority whether of the first instance or of appeal, etc, shall on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending, shall stand abated.

12. Provision contained in Section 5(2) of the Act is wide enough. Any suit regarding determination of rights or interest pending at any stage initial or appellate, shall stand abated if Court before which the matter is pending, is of opinion that the matter is covered by this section.

13. Now, question is whether the second appeal, which has arisen out of suit for cancellation of Will deed on the ground that the same was not executed by Gajodhar during his life time and the same does not bear his signature but is the result of some fraud played by defendants-respondents in collusion with others, shall stand abated or not. The claim of the plaintiff in suit was that plaintiff had inherited the property on the death of Gajodhar and her name was also mutated while defendants-respondents had set up Will in their favour. Therefore, right or interest of the parties is incidentally involved in the matter. In case the Will deed is found to be forged, the plaintiff will have a right and interest in the property but on her failure to prove her case, it will go to the defendants. The purpose of abatement is that since consolidation proceedings have started therefore the consolidation courts should deal with all the matters in accordance with provisions of Act in regard to right or interest in the property concerned by consolidation authorities.

14. There are two kinds of deeds, whose validity is normally challenged, namely, void and voidable. Hon"ble Supreme Court in Dhurandhar Prasad Singh v. Jai Prakash University and Ors. 2001 (3) AWC 2331 (SC) : 2001 (Suppl) RD 342, has elaborately dealt with distinction in two types of deeds. In Paragraph 20 of the said judgment the expression "void" has been said to have several facets, amongst which one type is of those void acts, transactions, decrees which are wholly without jurisdiction. Such acts and transactions etc are void ab initio and for avoiding them no declaration is necessary as it can be disregarded in collateral proceeding as the law does not take notice of it. Hon"ble Supreme Court has observed that there may be other type of void acts which may not be

nullity but for avoiding the same a declaration has to be made. An example has also been cited. The relevant portion of Para 20 is extracted herebelow for ready reference :

The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab-initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoidable, e.g., if a suit is filed for declaration that a document is fraudulent and/or forged and fabricated. It is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day, it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.

15. On examination of the matter in hand in view of judgment in Dhurandhar Prasad Singh's case (supra), I am of the opinion that on the basis of the allegations in the plaint, the Will deed can safely be said to be a document void ab initio for the reason that as alleged it was never executed by the person who is said to have authored the same. Since the document/deed is forged and not the genuine, it cannot confer any right or title on the person in whose favour the same has been executed. The law does not take any notice of such a document and since it is a waste paper not conferring any right or title on the person in whose favour it has been executed, it can be disregarded in collateral proceedings such as consolidation proceedings.

16. The nature of a deed challenged in civil suit has to be taken on its face value on the basis of the allegations made by person approaching the Court. Therefore, Will deed has to be examined in the light of the plaint allegations. On examination of the matter in hand in the light of what has been stated, it can safely be said on the basis of above judgment of Hon"ble Supreme Court relied upon by appellant itself that the deed is alleged to be void ab initio and for the purpose of collateral proceedings cancellation of such a document is not necessary.

17. Learned Counsel for the appellant argued that the matter of jurisdiction was already decided by trial court and it was held that the suit for cancellation of sale

deed was cognizable by civil courts. Argument of learned Counsel is totally misplaced. The issue framed was in regard to the jurisdiction between civil court and the revenue courts and in regard to this controversy, the Court rightly held that a suit for cancellation of Will deed would lie before civil court. The jurisdiction before the consolidation authorities is much wider than of civil and revenue courts as held by Full Bench of this Court in Ram Padarath and Ors. v. IInd Additional District Judge, Sultanpur 1988 (6) LCD 565 (FB). The consolidation authorities can adjudicate upon the right/title between the parties in the consolidation proceedings and it can ignore a deed which is altogether void and whose cancellation is not necessary at all. Once notification u/s 4(2) has been issued the jurisdiction to determine the right and title between the parties vests in the consolidation authorities and the proceedings in respect of any matter covered by consolidation authorities are barred u/s 49 of the Act and therefore, proceedings in respect of such deed shall stand abated.

18. Learned Counsel for the appellants further relied upon certain other judgments of the Hon''ble Supreme Court but after going through them. I am of the view that they do not help the plaintiff-appellants. In Ram Sakal Singh v. Monako Devi AIR 1998 SC 227, Hon''ble Supreme Court while dealing with the Consolidation Act enforceable in Bihar, has held that the suit based on a void document would abate. The document involved in this case is also a void document as per allegations in the plaint and since it is not a voidable document, there is no necessity of any declaration. The consolidation authorities, which have exclusive jurisdiction to deal with the question relating to the declaration or adjudication of any right/interest in respect of any land in the area, can do the same by ignoring such document. The decision of Supreme Court in the case of Shri Ram and Anr. v. 1st Additional District Judge and Ors. 2001 (1) AWC 862 (SC) : (2001) 19 LCD 737, is not applicable to the facts of the instant case for the simple reason that the question involved in that case was regarding jurisdiction between the civil court and the revenue court. This question had already been dealt with above. Learned Counsel further cited the judgment in Gorakh Nath Dube Vs. Hari Narain Singh and Others, . In the said case also Hon''ble Supreme Court has held that where there is a document, the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed. It is not in respect of a case like in hand where the document is altogether void, as mentioned above, and its cancellation is not necessary. It can be avoided while determining rights/interest of the parties.

19. Case of Gorakh Nath Dube v. Hari Narain Singh and Ors. cited from other side was pending at the stage of second appeal when consolidation operations came into being by publication of Notification u/s 4 and the said suit was abated by Hon''ble Supreme Court, The instant case is also pending at the stage of second appeal. It is, therefore. clear that at whatever stage, as mentioned in Section 5(2) above, the case between the parties may be pending, if consolidation proceedings have commenced and the question involved in the

pending proceedings is in regard to the determination of right or interest of the parties, it would abate. Since the document challenged in suit was void document and the right and interest of the parties is involved in the suit, the second appeal pending in this Court will abate.

20. The application of defendants-respondents is, therefore, allowed and appeal is declared to have abated.