

(2005) 03 AHC CK 0095

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15171 of 1998

Smt. Saraswati Devi

APPELLANT

Vs

The Commissioner, Gorakhpur Region, The Sub Divisional
Magistrate, Radheyshyam and Jogi

RESPONDENT

Date of Decision : 01-03-2005

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 164, 331

Citation : (2005) 3 AWC 2407 : (2005) 98 RD 578 : (2005) 1 RD 578

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : R.K. Ojha, for the Appellant; R.S. Mishra and A.K. Tripathi and S.C.,
for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Present petition has been instituted assailing the orders dated 29.6.1996, 30.6.1997 and 20.3.1998 passed by Sub Divisional Officer, Sadar Maharaj Ganj, and the Commissioner Gorakhpur Division Gorakhpur.

2. The dispute in the petition in hand revolves round plot No. 347 admeasuring .025 acres situated in village Mednipur Soha Sonari Patti Tappa Biraicha Pargana Haveli Sadar District Maharajganj. From the materials on record it would appear that originally the land in question belonged to one Jogi who sold his share in favour of petitioner vide sale deed dated 28.8.1995 and on the basis of which, the petitioner was delivered possession. Subsequently, Radhey Shyam who is arrayed as respondent No. 3 in the instant petition wrote some letter on 30.8.1994 for recording his name as Bhumidhar in the revenue record against property Plot No. 347 in view of the provisions of Section 164 of the U.P.Z.A. & L.R.Act. The grounds urged were that he got possession over the property from Jogi on the basis of mortgage and by this reckoning, acquired Bhumidhari rights u/s 164 of the U.P.Z.A. & L.R. Act. It would further appear that on the basis of application/letter made by Radhey Shyam, a case being case No. 1/18 of 1995

came to be registered by means of order dated 29.6.1996, the Sub Divisional officer passed the offending order directing to record the name of Radhey Shyam alongwith Radhey son of Ram Baran as co-tenure holder of the property in question. It would further appear that on coming to know of order, the petitioner preferred an application for recalling of the order on the ground that Jogi son of Ram Baran had already executed a sale deed in favour of petitioner on 28.8.1995 and therefore, she was the owner of the property in question. It was further stated in the application that she came to know of the order on 20.2.1997 and immediately filed the application for recall. The said application came to be rejected by means of order dated 30.6.1996 passed by Sub Divisional Officer. Subsequently, the petitioner preferred a revision against the said order which also came to be rejected by means of the impugned order.

3. Learned counsel for the petitioner premised his submission on the ground that impugned order passed by the Sub Divisional officer dated 29.6.1996 registering the case on the basis of a letter of respondent No. 3 is wholly without jurisdiction inasmuch as the authority is competent to entertain any suit, application or initiate any proceeding under the provisions of Section 164 of the U.P.Z.A. & L.R.Act. The learned counsel also drew attention to Schedule II appended to the U.P.Z.A. & L.R.Act that envisaged procedure, forum and authority who could entertain any such suit, proceeding or application. The learned counsel also canvassed that there is no provision under the Act to entertain any such application u/s 164 of the U.P.Z.A. & L.R.Act for declaring a person as Bhumidhar who claims rights u/s 164 of the Act. The learned counsel also referred to the sale deed dated 28th August 1995 executed by Jogi in favour of petitioner and on the basis of said sale deed, proceeds the submission, the petitioner has been in actual physical possession over the land in dispute. The learned counsel also stated across the bar that the petitioner being the real owner of the petitioner was not impleaded in the proceeding and as such impugned order is liable to be dismissed. The learned counsel also attacked the genuineness of mortgage deed and submitted that proceeding commenced on the letter of Radhey Shyam and on the basis of mortgage deed is vitiated in law. Per contra, Sri R.S. Misra appearing for respondent No. 3 propped up the impugned order and contended that the order impugned was rightly passed and it was passed in accordance with law inasmuch as Jogi had mortgaged the property to respondent No. 3 on a consideration of Rs. 17000/- which amounted to sale u/s 164 of the U.P.Z.A. & L.R.Act.

4. In connection with the argument that mortgage deed was executed in favour of respondent No. 3 on a consideration of Rs. 17000/- which amounted to sale under the provisions of Section 164 of the U.P.Z.A. & L.R.Act, and also upon regard being had to the arguments made across the bar by the learned counsel for the parties and after careful scrutiny of the materials on record, I feel called to refer to the provisions of Section 331 of the U.P.Z.A. & L.R.Act which may be reproduced below.

"331. Cognizance of suits, etc. under this Act.- (1) Except as provided by or under this Act no court other than a court mentioned in column 4 of the Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application."

5. From a bare perusal of Schedule II, it would crystallise that it does not contemplate cognizance of application or proceedings u/s 164 of the U.P.Z.A. & L.R.Act by the Sub Divisional officer. It is clearly provided in this section that no court other than a court mentioned in Column 4 of Schedule II shall take cognizance of any suit, application or proceeding. In the circumstances, it is clearly borne out that the Sub Divisional officer was not vested with the authority to entertain the application made by respondent No. 3 who, it would appear, made application purporting to be u/s 164 of the Act and it would further transpire that the respondent No. 3 did not implead the petitioner who in the facts and circumstances of the case was the necessary party by reason of the fact that sale deed was executed by Jogi in her favour prior to alleged mortgage deed which the respondent No. 3 claims to have been executed by Jogi on consideration of Rs. 17000/-. The respondent No. 3 claims benefits of Section 164 on the ground that he shall be deemed to be in possession as Bhumidhar as the property in question was given to his possession as a security. The requirement of the Section is that the onus is on mortgagee to establish positively that as a result of mortgage executed in his favour, he got into possession. In the instant case, the sale deed executed in favour of petitioner is prior in point of time and she also claimed to have been in possession prior to alleged mortgage. Besides, as stated supra, provisions of Section 164 can be invoked according to Schedule II while according to Schedule II any forum for moving any such application to the Sub Divisional officer is not provided for. It would further appear that the Sub Divisional Officer entertained the application without authority as no such application could be entertained by the authority u/s 164 of the U.P.Z.A. & L.R.Act. In the circumstances, the application made by the respondent No. 3 purporting to be u/s 164 of the U.P.Z.A. & L.R.Act was not maintainable before the Sub Divisional officer and the order passed on such application was without jurisdiction inasmuch as Sub Divisional officer was wholly incompetent to entertain any such application u/s 164 of the Act. It is also worthy of notice that prior to moving application u/s 164 of the Act, the property in question had already been sold off to the petitioner by means of sale deed dated 28.8.1995. The application made by respondent No. 3 appears to be collusive and it seems that respondents 3 and 4 leagued together and contrived against the petitioner's interest by setting up the case of mortgage and by moving application immediately after two days of execution of the sale deed. A rather disquieting aspect arousing suspicion is that the petitioner was not impleaded and it appears to me with the avowed object of keeping the petitioner

at bay and obtaining ex parte orders behind her back or else the petitioner would have taken in challenge the impugned orders passed by the Sub Divisional officer. As Sub Divisional Officer is wholly incompetent to register case u/s 164 of the U.P.Z.A. & L.R.Act, impugned orders cannot be sustained.

6. As a result of foregoing discussion, I am of the view that the impugned order passed by Sub Divisional officer and all subsequent orders are unsustainable and are liable to be quashed.

7. In the result, the petition succeeds and is allowed and in consequence, the impugned orders are quashed accordingly. In the facts and circumstances of the case, there will be no order as to costs.