
(2011) 02 AHC CK 0358

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14489 of 2008

Smt. Sumitra Devi

APPELLANT

Vs

Sushila Devi and Others

RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 3(2)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 11, 168A

Citation : (2011) 4 ADJ 796 : (2011) 4 AWC 3366

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.U. Khan, J.—List revised. No one has appeared for the Respondents. Heard learned Counsel for the Petitioner.

2. Petitioner through registered sale-deed dated 25.9.1984 purchased land ad-measuring 520 Square Meter out of Plot No. 159 Ka total area 0.73 acres from Respondent No. 5 - Shri Pal. Earlier Respondent Nos. 5 to 10 had purchased total Plot No 159 Ka from its previous bhumidhar Sushila Devi, Respondent No. 1 on 27.2.1975. The plot is grove and entered as such in revenue records. Ram Nath, Respondent No. 2 and others purchased plot No. 159 Kha area 0.09 acre from Sushila Devi in 1985. They first challenged the sale-deed dated 25.9.1994 alongwith two other similar sale-deeds through a civil suit only on the ground that the deeds were in violation of and hit by Section 168-A of U.P. Zamindari Abolition & Land Reforms Act (the said Section has been repealed in 2004). The said section prohibited sale of fragment of agricultural land. The suit (Suit No. 621 of 1986) was dismissed on 26.2.1988 by 5th Additional Munsif, Etah. Copy of the said judgment is annexed as Annexure-I to the writ petition. In the said judgment, it was specifically held that in view of the fact that the property in question was grove and not situate in consolidated area, Section 168-A of the Act was not attracted. Against the said judgment, Civil Appeal No. 64 of 1988 was

filed, which was dismissed by 7th Additional District Judge, Etah on 4.8.1990. Copy of the said judgment is annexed as Annexure-II to the writ petition. The appellate Court also held that Section 168-A of the Act was not attracted. It was further held that Plaintiffs had no right to challenge the sale-deed on the ground of violation of Section 168-A and only Collector or Gram Sabha could do that. Learned Counsel for the Petitioner states that against the said judgment and decree, no second appeal was filed.

3. Strangely enough inspite of the decision of civil Court Ram Nath Respondent No. 2 filed case/suit u/s 168-A of U.P. Zamindari Abolition and Land Reforms Act, 1950 before the Additional Collector, Etah. The Petitioner appeared in the said case and filed the judgment of the civil Court and took the plea of res judicata. However, the Additional Collector, Etah even after referring to civil Courts' judgments, by his order dated 25.2.1994 declared that the sale-deed dated 27.2.1975 through which Sushila Devi had sold whole Plot No. 159 Ka to Respondent Nos. . 5 to 10 was void and hit by Section 168-A of the U.P. Z.A. & L.R. Act. Consequently the sale-deed by Respondent No. 5 to the Petitioner dated 25.9.1984 and the other two sale-deeds of 1984 were also held to be void. Against the said judgment and order, revision was filed being Revision No. 123 of 1994 before Additional Commissioner, Agra Division, Agra, who dismissed the revision on 12.12.2007, hence this writ petition.

4. I fully agree with the contention of the learned Counsel for the Petitioner that after dismissal of the civil suit and appeal, it was not permissible for Additional Collector or the revisional authority/Court to take a contrary view and it was an abuse of process of Court by Respondent No. 2 to approach them. Moreover as held by the Appellate Court/A.D. J. plea of sale-deed being hit by Section 168-A of the Act under the facts and circumstances of the case, could be raised only by the State or Gaon sabha and Respondent No. 2 had absolutely no locus standi to agitate the matter. The sale-deed was executed by Respondent No. 5 in favour of Petitioner and both of them were fully satisfied and the Gaon Sabha or the State Government had not challenged the same. In this scenario, no other person had any authority to agitate the matter.

5. The words "consolidated area" have not been defined either under U.P. Consolidation of Holdings Act or U.P. Zamindari Abolition & Land Reforms Act. The definition of "Consolidation area" was irrelevant for the purposes of Section 168-A of U.P. Z.A. & L.R. Act. The word "Consolidation" has been defined u/s 3(2) of U.P. C.H. Act as follows:

[(2) "Consolidation" means re-arrangement of holdings in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact];

Explanation- For the purpose of this clause, holding shall not include the following:

(i) Land which was grove in agricultural year immediately preceding the year in

which the notification u/s 4 was issued:

(ii) to (vii) - not relevant.

6. Accordingly grove is not included in the "Consolidated area" which can only mean rearranged chak.

7. Moreover provisions of Section 168-A were quite harsh. The Section has also been deleted. U.P. Act No. 27 of 2004 which deleted Section 168-A made the previous transactions hit by the said section voidable (in stead of void) and curable (capable of being validated) on payment of some nominal fees within a particular period which has now expired (Section 11). Accordingly, for these two reasons the section shall be interpreted (for the sake of past transactions) liberally, in favour of vendor and vendee.

8. Writ petition is therefore allowed. Impugned orders are set aside.