

(2025) 01 AHC CK 1669
In the Allahabad High Court, Lucknow Bench
Case No : Second Appeal No. 151 Of 2016

Surya Kumar Tripathi Deceased And Ors	APPELLANT
Vs	
Ram Pal	RESPONDENT

Date of Decision : 24-01-2025

Acts Referred:

Constitution of India, 1950 — Article 16(1)(g), 19(6)
Water (Prevention and Control of Pollution) Act, 1974 — Section 4, 25, 25(1)(b), 26
Air (Prevention and Control of Pollution) Act, 1981 — Section 21, 22
Hazardous and other Wastes (Management and Trans boundary Movement) Rules,
2016 — Rule 6(2), 7

Citation : (2025) 01 AHC CK 1669

Hon'ble Judges : Attau Rahman Masoodi, J; Subhash Vidyarthi J

Bench : Single Bench

Advocate : Abhinav Singh, Lalita Prasad Misra, Ashok Kumar Verma

Final Decision : Allowed

Judgement

Rajnish Kumar, J

1. Heard, Shri Sudeep Seth, learned Senior Advocate, assisted by Shri Madhav Chaturvedi, learned counsel for the appellants and Shri Ashok Shukla, learned counsel for the respondent.
2. This Second Appeal under Section 100 of the Civil Procedure Code 1908 has been filed with a prayer to call for the records and after its perusal, this instant second appeal may be allowed and further be pleased to set aside the judgment and decree dated 27.01.2016 passed in Regular Civil Appeal No.310 of 2003 by the Additional District Judge, Court No.17, Lucknow and the judgment and decree dated 12.11.2003 passed in Regular Suit No.156 of 1995 by the VIth Additional Civil Judge (Jr.Div.), Court No.38, Lucknow or pass any other suitable decree which this Hon'ble Court deems just and proper in the interest of justice.
3. Learned counsel for the defendants-appellants submitted that the suit filed by the plaintiff-respondent was barred by Section 331 of the U.P. Zamindari

Abolition and Land Reforms Act, 1950 (here-in-after referred as Act of 1950) as the name of defendant-respondents was recorded in the revenue records, therefore, the suit could have been filed only before the Revenue Court with a prayer for declaration of his rights. He further submitted that the plaintiff-respondent was not in possession of the land in dispute, therefore, also no relief could have been granted by the Civil Court.

4. On the basis of above, learned counsel for the defendant-appellants submitted that the judgment and decrees passed by the courts below are not tenable in the eyes of law and are liable to be set aside. He relied on *Rajni Tandon Versus Dulal Ranjan Ghosh Dastidar and another*; (2009) 14 SCC 782, *Shri Ram and another Versus Ist Addl. Distt. Judge and others*; (2001) 3 SCC 24, *Kamla Prasad and others Versus Kishna Kant Pathak and others*; (2007) 4 SCC 213, *Narendra Kumar Mittal and others Versus Nupur Housing Development Pvt.Ltd. And Another*; 2019 Legal Eagle (SC) 797/ 2019 (7) JT 553 and *Kundan Singh Versus Addl.District Judge, Bijnore and others*; 2008 SCC OnLine All 2050.

5. Per contra, learned counsel for the respondent submitted that the suit was filed only for cancellation of sale deed and no prayer for injunction was made, therefore, the plea of learned counsel for the defendants-appellants that possession was required to be pleaded is misconceived and not tenable as it was not in issue. He further submitted that the suit for cancellation of sale deed was rightly filed before the Civil Court as no declaration of title was required because admittedly the plaintiff-respondent was bhumidhar of the land in dispute and therefore the suit was filed on the ground of fraud. He further submitted that the Power of Attorney was a void document as it was not executed by the plaintiff-respondent and sale deed was got executed on the basis of the said void document, therefore, the sale deed was required to be cancelled considering its veracity. Even otherwise the Power of Attorney does not give any title.

6. On the basis of above learned counsel for the plaintiff-respondent submitted that the courts below have passed the judgment and decrees in accordance with law, which does not require any interference by this court. The appeal has been filed on misconceived and baseless grounds. No substantial question of law arises in this appeal, therefore, it does not require even admission. Thus the appeal is liable to be dismissed. He relied on *Shakeel Ahmed Versus Syed Akhlaq Hussain*; 2023 SCC OnLine SC 1526, *Narendra Kumar Mittal and others Versus Nupur Housing Development Pvt.Ltd. And Another*; 2019 Legal Eagle (SC) 797/ 2019 (7) JT 553 and *Chhanga and others Versus Ist Additional District Judge, Jaunpur*; 1998 Legal Eagle (ALD) 541/1998 (3) AWC 2094.

7. I have considered the submissions of learned counsel for the parties and perused the records.

8. The plaintiff-respondent filed a suit for cancellation of sale deed on the ground that by preparing forged Power of Attorney dated 30.03.1992 in favour of defendant no.1 on behalf of plaintiff-respondent the sale deed has been executed

on 23.05.1992 in favour of defendants no.2 to 6. On coming to know about the same First Information Report was lodged against the defendants. No sale consideration has been paid to the plaintiff-respondent. It was also alleged that no agreement of sale dated 11.10.1991 was executed by the plaintiff-respondent in favour of the defendant-appellants nor the defendant no.1 was authorized to execute the sale deed. The suit was contested by the defendant-appellants by filing written statement and alleging that the agreement to sale was executed by the plaintiff-respondent on 11.10.1991. Thereafter he executed the Power of Attorney in favour of the defendant no.1 for execution of sale deed. On the basis of the said Power of Attorney, the sale deed was executed, the sale consideration of which was paid to the plaintiff-respondent. The names of defendants no.2 to 6 have been recorded in revenue records. The plaintiff-respondent after receiving the sale consideration, gave notice and filed the suit to blackmail the defendants, which is barred by Section 331 of the Act of 1950. On the basis of the pleadings of the parties five issues were framed by the trial court. Thereafter oral as well as documentary evidence was adduced by the parties. Considering the pleadings, evidence and material on record the suit was decreed vide judgment and order dated 12.11.2003 and sale deed dated 23.05.1992 was cancelled. Being aggrieved Civil Appeal bearing Civil Appeal No.310 of 2003 was filed by the defendant-appellants, which has been dismissed by means of the judgment and decree dated 27.01.2016 confirming the order passed by the trial court. Hence this second appeal has been filed.

9. Section 331 of the Act of 1950 provides the cognizance of suits etc. under the Act. According to the Section 331 of the Act of 1950 except as provided by or under the Act no court other than a court mentioned in Column 4 of Schedule II shall, take cognizance of any suit, application, or proceedings mentioned in Column 3 in respect of which any relief could be obtained by means of any such suit or application. On perusal of Schedule II of the Act 1950 it is apparent that no proceedings have been shown under Column 3 which could have been instituted for cancellation of sale deed. However it was argued that since the declaration of rights was required, therefore, the suit should have been instituted under Section 229-B of the Act of 1950. Section 229-B provides declaratory suit by person claiming to be an asami of a holding or part thereof. The provisions would also apply mutatis mutandis to a suit by a person claiming to be a bhumidhar. The suit under Section 229-B can be filed for declaration of rights against the State. However the other person, if any, claiming such rights is also required to be impleaded.

10. The trial court, while considering the issue of bar of Section 331 of the Act of 1950, after considering a Full bench Decision of this Court in the case of Ram Padarath Versus Second ADJ; 1989 RD 21 (All) (FB) relied by defendant-appellants, has held that since indisputably the plaintiff-respondent was bhumidhar of the land in dispute and he is denying the sale of the land in dispute through the impugned sale deed and he wants to get the sale deed cancelled to protect his interest, therefore, he could have filed the suit before the civil court

because if the sale deed in question exits it may be adverse to the interest and rights of the plaintiff-respondent. The learned lower appellate court has upheld the findings recorded by the trial court.

11. The Hon'ble Supreme court, in the case of Shri Ram and another Versus Ist Addl.Distt.Judge and others (Supra), after considering the Full Bench decision of this court in the case of Ram Padarath Versus Second ADJ; 1989 RD 21 (All) (FB) has held that where a recorded tenure holder having a prima facie title and in possession files suit in the civil court for cancellation of sale deed having been obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure holder is not under cloud. The relevant paragraphs 4 and 7 are extracted here-in-below:-

"4. In the present case what we find is that the vendor Smt Vidyawati Devi admitted that she had executed a registered sale deed in favour of the appellants on 12-7-1984. She also admitted that she delivered the possession of the said land to the appellants and the appellants are in possession over the said plot of land. It is also on record that the names of the appellants have been ordered to be recorded as a tenure-holder in the revenue record. The aforesaid facts show that the appellants are the recorded tenure-holders in possession of the plot in dispute in pursuance of the sale deed dated 12-7-1984. The question that now arises for consideration is whether a recorded tenure-holder having prima facie title in his favour and in possession is required to file a suit in the Revenue Court or the civil court has jurisdiction to entertain and decide the suit seeking relief of cancellation of a void document. In Ram Padarath v. Second ADJ [1989 RD 21 (All) (FB)] a Full Bench of the Allahabad High Court considered this aspect of the matter and held thus:

"We are of the view that the case of Indra Dev v. Ram Piari [(1982) 8 ALR 517] has been correctly decided and the said decision requires no consideration, while the Division Bench case, Ayodhya Prasad (Dr) v. Gangotri Prasad [1981 AWC 469] is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void document will lie in the Revenue Court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status and a tenure-holder is necessarily needed in which event relief for cancellation will be surplusage and redundant. A recorded tenure-holder having prima facie title in his favour can hardly be directed to approach the Revenue Court in respect of seeking relief for cancellation of a void document which made him approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the Revenue Court."

7. On analysis of the decisions cited above, we are of the opinion that where a recorded tenure-holder having a prima facie title and in possession files suit in the civil court for cancellation of sale deed having been obtained on the ground

of fraud or impersonation cannot be directed to file a suit for declaration in the Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure-holder is not under cloud. He does not require declaration of his title to the land. The position would be different where a person not being a recorded tenure-holder seeks cancellation of sale deed by filing a suit in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the Revenue Court, as the sale deed being void has to be ignored for giving him relief for declaration and possession."

12. The Hon'ble Supreme Court, in the case of Kamla Prasad and others Versus Kishna Kant Pathak and others (Supra), considered the issue in regard to a suit in which the case of the plaintiff in the plaint was that over and above the plaintiff, defendants 10 to 12 had also right in the agricultural land and after considering the pleadings and evidence and the judgment of the Hon'ble Supreme Court in the case of Shri Ram Versus Ist ADJ (Supra) and the fact that in the mutation proceedings the plaintiff himself appeared as a witness before the mutation court and admitted execution of the sale deed, receipt of sale consideration and the factum of putting vendees into possession of the properties purchased by them, on the basis of which the name of the contesting defendants had been mutated in the records of rights and name of plaintiff was deleted. In the said facts and circumstances, the Hon'ble Supreme Court held that the courts below were wholly right in reaching the conclusions that such a suit can be entertained only by a Revenue Court and civil court had no jurisdiction and in such circumstances declaration of rights was also required. Similar view was taken by a Co-ordinate Bench of this court in the case of Kundan Singh Versus Addl. District Judge, Bijnore and others (Supra), relying on the judgment of the Hon'ble Supreme Court in the case of Kamla Prasad and others Versus Kishna Kant Pathak and others and Shri Ram and another versus Ist Addl. Distt. Judge and others (Supra).

13. The Hon'ble Supreme Court, in the case of Narendra Kumar Mittal and others Versus Nupur Housing Development Pvt.Ltd. and Another (Supra), after considering the aforesaid judgments and the judgment in the Full Bench decision of this court in the case of Ram Padarath Versus Second ADJ, Sultanpur and others (Supra) dismissed the appeal holding that Section 331 of the Act of 1950 does not deprive a party to approach the competent court of law for getting a document cancelled, especially when, prima facie, the title of the recorded tenure holder is not under cloud and revenue court does not have jurisdiction of granting relief of cancellation of a deed on the ground of fraud and misrepresentation. The relevant paragraph 7 is extracted here-in-below:-

7. In the instant case, the plaintiff has pleaded that it had purchased the disputed property under five sale deeds all dated 17.10.1998 from the first defendant. The suit was filed for cancellation of the sale deed dated 15.06.2006 on the ground of fraud and misrepresentation. The plaintiff had not sought any

relief with respect to its own right and title as a tenure holder or declaration of its title or status. As stated above, the only relief sought in the suit filed was for cancellation of the alleged sale deed dated 15.06.2006. We are of the view that Section 331 of the Act does not deprive a party of his right to approach competent court of law for getting a document cancelled, especially when, prima facie, the title of the recorded tenure holder is not under cloud. Revenue Court does not have jurisdiction of granting relief of cancellation of a deed on the ground of fraud and misrepresentation.”

14. In view of above in case a suit for cancellation of sale deed by a person having prima facie title and no cloud on his title can file a suit for cancellation of sale deed before the Civil Court on the ground of fraud and misrepresentation as revenue court does not have jurisdiction for granting relief of cancellation of sale deed on these grounds and in such circumstances no declaration of title is required.

15. In the present case the title of the plaintiff-respondent as bhumidhar of the land in dispute or any cloud on his title could not be raised by the defendants-appellants and it could also not have been raised because the alleged forged sale deed was executed on his behalf. Thus the plea of bar of Section 331 of the Act of 1950 has rightly been considered and decided by the courts below holding that it is not barred by Section 331. This court does not find any illegality or error in the findings so recorded by the courts below.

16. This court, in the case of Chhanga and others Versus Ist Additional District Judge, Jaunpur (Supra), has held that from Section 331 of the Act of 1950, it is explicitly clear that those reliefs which can be had in Column 3 of Schedule II before the authority mentioned in Column 4 cannot be entertained by a civil court. Relevant paragraph 7 is extracted here-in-below:-

“7. Thus the section is explicitly clear that those cause of action in respect of which any proceedings or suit can be specified by the relief provided under the said Act cannot be taken cognizance of by a civil court. It further makes it clear that those reliefs which can be had in Column 3 of Schedule II before the authority mentioned in Column 4 cannot be entertained by a civil court.”

17. Now the question arises whether non challenge to unregistered Power of Attorney, on the basis of which the sale deed was executed by the defendant no.1 in favour of the defendants no.2 to 6, could have been a ground to hold that the suit is not maintainable. The execution of the alleged unregistered Power of Attorney has been denied by the plaintiff-respondent and it has been found forged by the courts below, on the basis of which the registered sale deed has been executed by the defendant no.1 in favour of defendant no.2 to 6, whereas no title or power could have been transferred and conferred on the basis of said unregistered Power of Attorney.

18. The Hon’ble Supreme Court, in the case of Rajni Tandon Versus Dulal Ranjan Ghosh Dastidar and another (Supra), has held that in cases where the person

signing the document cannot present the document before the registration officer and gives a power of attorney to another to present the document, the provisions of Section 33 get attracted and it is only in such a case that the said Power of Attorney has to be necessarily executed and authenticated in the manner provided under Section 33(1)(a) of the Act. However this case is not of any assistance to the appellants because the case of plaintiff-respondent is not attracted by Section 33(1)(a) of the Act. The sale deed was challenged on the ground that the sale deed has been executed on the basis of fraudulent unregistered Power of Attorney, which has not been executed by the defendant-respondent and it has been proved. In view of latest judgment of the Hon'ble Supreme Court in the case of Shakeel Ahmed Versus Syed Akhlaq Hussain (Supra), in which the suit was filed for possession and mesne profits on the basis of Power of Attorney and decree for possession alongwith mesne profits was granted. On being challenged the findings were confirmed by the High Court. However the Hon'ble Supreme Court held that no right, title or interest can be transferred with respect to immovable properties on the basis of an unregistered agreement to sell or on the basis of an unregistered Power of Attorney. Thus even if he who signs the deed could have presented the same, he could not have transferred the title with respect to immovable properties on the basis of unregistered Power of Attorney, which has been found fraudulent, so it cannot be said that the suit was not maintainable and non challenge to same would not vitiate the impugned judgment and decrees as in view of the grounds raised it has been considered. There is no illegality or error in it.

19. In view of above, the courts below have passed the impugned judgment and decrees in accordance with law, which does not call for any interference by this court as no substantial question of law arises in this appeal. The appeal has been filed on baseless and misconceived grounds.

20. The Second Appeal is, accordingly, dismissed at the admission stage. No order as to costs.