
(2013) 03 AHC CK 0029
In the Allahabad High Court
Case No : C.M.W.P. No. 13962 of 2013

Swatantra Prakash Verma and Others	APPELLANT
Vs	
Ramesh Chand	RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Citation : (2013) 98 ALR 97 : (2013) 119 RD 668

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : Ashish Agrawal, for the Appellant; Rakesh Pathak, Dinesh Pathak and Swapnil Kumar, for the Respondent

Final Decision : Allowed

Judgement

Sibghat Ullah Khan, J.—Heard Sri Ashish Agrawal, learned Counsel for the petitioners and Sri D. Pathak and Sri Swapnil Kumar, learned Counsel for respondent. O.S. No. 368 of 1992 instituted by Ram Narain since deceased and survived by petitioners against Prem Babu since deceased and survived by respondent for specific performance of agreement for sale dated 29.6.1989 was decreed by Munsif, Etawah on 29.10.1994. Agreed sale consideration was Rs. 20,000/-. Thereafter, execution application was filed in the form of Execution Case No. 23 of 1998 and the Presiding Officer of the Executing Court executed the sale-deed on 5.3.2010 in favour of petitioners. An objection was filed by the respondent that 100 times more land than mentioned in the agreement for sale had been sold. Number of the plot is 1493. The Executing Court/Civil Judge (J.D.), Etawah allowed the application of judgment debtor through order dated 3.3.2011 and directed that the sale-deed executed by the Court must be corrected and the area shown in the sale-deed as 0.299 hectare (equivalent to 0.74 acres) should be corrected as 0.74 decimal. In common parlance, 100 decimal = 1 acre. Against order dated 3.3.2011, petitioners filed Misc. Civil Appeal No. 10 of 2011. A.D.J., Court No. 7, Etawah dismissed the misc. civil appeal on 2.1.2013, hence this writ petition.

2. In the agreement for sale, property in dispute is described as Plot No. 1493, area 0.74 decimal. 0.74 decimal comes to 0.0074 acre. 1 acre = 4840 square yard. Accordingly, 0.74 decimal will come to about 35 square yard. It is inconceivable that such a small part of land will be sold for agricultural purposes. It is not sufficient even for constructing a house. Only a small room or shop may be constructed over such a small area provided that it abuts a road. It is not mentioned in the agreement that there was road on any side. The first sentence of the agreement for sale states that the first party is complete owner in possession of agricultural land bearing No. 1493, area 0.74 decimal. It is undisputed that Plot No. 1493 has got an area of 0.74 acres and the entire plot was owned by Prem Babu, defendant in the suit, executant of the agreement. If the intention was to transfer only 1/100th part of the said plot, then in the agreement it should have been shown that 1/100th part of the plot was being sold. In the entire agreement there was no such mention. Through the agreement whole plot was sold. Wrong description of area was merely inadvertent error of typing. No much can be made out of it.

3. It was not the case of respondents that the entire plot in dispute was situate within commercial or residential area and surrounded on all the sides by commercial or residential buildings. If the area shown in the agreement for sale is taken literally and on its face value then the market value of 0.74 acres agricultural land would come to Rs. 20/- lacs. It is inconceivable that in 1989, 0.74 acre of agricultural land in Etawah District would have been so valuable. Even today it is not any where near that. In the agreement, land is shown to be situate in Mauza Pratapner Pargana and District Etawah.

4. In the agreement the property was repeatedly described as agricultural property. Such error can very well be corrected in execution under sections 47 and 152, C.P.C. vide Pratibha Singh and Another Vs. Shanti Devi Prasad and Another, Accordingly, writ petition is allowed. Both the impugned orders are set aside. The sale which has been executed by the Court is perfectly valid. It does not require any correction or rectification.