
(2010) 10 AHC CK 0312
In the Allahabad High Court
Case No : C.M.W.P. No. 25888 of 2009

Vinod Chandra Verma

APPELLANT

Vs

Prescribed Authority (Judge, Small Causes Court) and Others

RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 4 AWC 3428

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Praveen Kumar Srivastava and Pradeep Chandra, for the Appellant;
Shyamal Narain, C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. Considering the submission on behalf of the parties backdrop of the case is being given for just and proper appreciation of the facts of the case.

3. House No. 18/17/13, Krishna Nagar, Kydganj, Allahabad (hereinafter referred to as "the house in dispute") was initially owned by Sri Guru Prasad son of Kallu. It was purchased by Sri Saroj Chandra Verma from its previous owner vide registered sale deed dated 8.1.1953. Sri Lalit Mohan Verma-father of the Petitioner filed Original Suit No. 557 of 1965, Lalit Mohan Verma v. Saroj Chandra Verma, in the court of Munsif Garvi praying for a declaration of the sale deed dated 8.1.1953 executed in favour of Saroj Chandra Verma as benami. It was alleged that the property in dispute was purchased with the money provided by the Plaintiff, Lalit Mohan Verma and that Sri Saroj Chandra Verma had no concern with the house. The suit was dismissed by the trial court with costs vide judgment and decree dated 31.3.1967 holding that the sale deed dated 8.1.1953 was valid and not benami and that Saroj Chandra Verma was the owner of the house in dispute. The judgment dated 31.3.1967 is on record of the court below

from which the present writ petition arises.

4. Lalit Mohan Verma, father of the Petitioner preferred Civil Appeal No. 169 of 1967, Lalit Mohan Verma v. Saroj Chandra Verma before the District Judge, Allahabad challenging the validity and correctness of the judgment dated 31.3.1967 aforesaid, which too was dismissed with costs vide judgment and order dated 23.11.1967, confirming and upholding the judgment and order passed by the trial court. The appellate court's judgment was further not appealed and attained finality. This appellate court judgment and order dated 23.11.1967 was also brought on record in the proceedings before the court below from which the present writ petition arises. Having failed to sustain his claim to the house in dispute upto the appellate court, the Petitioner's father late Lalit Mohan Verma unauthorisely and illegally executed a sale deed dated 8.1.1953 in respect of the house in dispute in favour of his wife Smt. Rajeshwari Devi and his son Vinod Chandra Verma who is Petitioner in the present writ petition. Meanwhile Saroj Chandra Verma sold the house in dispute to one Navratan Singh on 4.6.1968 with the condition that if the vendor Saroj Chandra Verma so desires, he could, within period of 3 years repurchase the house from the vendee Navratan Singh. Subsequently on 11.8.1970 Saroj Chandra Verma and Sri Navratan Singh jointly sold away one half portion of the house in dispute to one Sri Kailash Nath and the other half of the said house to one Sri Purshottam Das. About 11 years thereafter, Sri Purshottam Das sold off his portion of the house to one Ram Anugrah Tiwari, (Respondent No. 2 in the present writ petition) vide sale deed dated 7.7.1981 and in this way the name of Sri Kailash Nath and Ram Anugrah Tiwari came to be recorded /mutated in the relevant records as joint owner of the house in dispute. However, on the strength of the unauthorised sale deed executed by Sri Lalit Mohan Verma dated 8.1.1953 referred to above, the present Petitioner and his mother jointly filed Civil Suit No. 886 of 1980, Rajeshwari Devi and Anr. v. Kailash Nath and Ors., claiming themselves to be the owners of the house in dispute for the relief that Kailash Nath and Purshottam Das be injuncted from selling the house in dispute to Sri Ram Anugrah Tiwari. Completely suppressing and concealing the fact that the earlier suit filed by Lalit Mohan Verma had been dismissed which dismissal order has been confirmed upto the appellate court.

5. The claim of the Petitioner and his mother as set up in Suit No. 886 of 1980, was contested by the Defendants/predecessor-in-interest and finally said suit was dismissed by the concerned Court with costs vide judgment and order dated 12.8.1983. The trial court in its judgment and order dated 12.8.1983, recorded a categorical finding of fact to the effect that the Plaintiff/Petitioner was not having any title to the house in dispute and that the alleged sale deed said to have been executed in their favour by Lalit Mohan Verma was a void document. It was further held by the Court that the Defendants/ predecessor-in-interest of the present Respondents were the owners of the house in dispute and, as such, the suit for injunction filed by the Plaintiffs was not liable to be decreed. It was also observed by the trial court in its judgment and order dated 12.8.1983 that the

Defendants had accepted that the Plaintiffs were in possession over the house in dispute in the capacity of tenants and, accordingly, it was directed that the Plaintiffs should not be dispossessed except in accordance with law.

6. Aggrieved by the judgment and decree dated 12.8.1983, passed by the trial court in Civil Suit No. 886 of 1980, the Petitioner and his mother Smt. Rajeshwari Devi preferred Civil Appeal No. 705 of 1985, Smt. Rajeshwari Devi and Anr. v. Kailash Nath and Ors., challenging the validity and correctness of the judgment and decree dated 12.8.1983 before the District Judge, Allahabad which was also dismissed vide judgment dated 14.5.1984 (Annexure-CA 2) with costs. It may be stated here that the appellate court had also imposed special and compensatory cost of Rs. 1,500 on the Plaintiffs/Appellants apart from the usual costs. Thereafter, the Petitioner and his mother had preferred Second Appeal No. 2370 of 1984, Smt. Rajeshwari Devi and Anr. v. Kailash Nath and Ors., before the High Court arising out from the judgment and decree dated 14.5.1985, passed in Civil Appeal No. 705 of 1983. The said second appeal was also dismissed summarily by this Hon"ble Court vide judgment and order dated 16.11.1987 appended as Annexure-CA 3.

7. The Petitioner and his late father through whom he claims title to the house in dispute had failed all the way upto the High Court in separate proceedings set up by them to establish their claim of ownership over the said property. It is now not in dispute that the Petitioner or his father never had any title or proprietary right over the house in question. It may be mentioned at this stage that Kailash Nath had executed an agreement for sale dated 11.11.1980 in favour of Ram Anugrah Tiwari in respect of the half portion owned by him, but he passed away before any sale deed could be executed. His widow, Smt. Vimla Devi therefore executed sale deed in favour of Ram Anugrah Tiwari on 1.3.1995 in compliance of the aforesaid agreement of sale in the capacity of his being legal heir and representative and in this manner Respondent No. 2 Ram Anugrah Tiwari became the sole and undisputed owner of the house in dispute vide sale deed dated 7.7.1981 and 1.3.1995.

8. Having failed to secure any relief from the Courts on the question of title, the Petitioner had requested the Respondent No. 2 to permit him to continue as tenant in the house against payment of rent upon condition that he would vacate the house whenever asked to do so. Subsequently, Respondent No. 2 got the house in dispute vacated from the occupation and possession of the Petitioner on 9.8.2003, in pursuance of the release order dated 16.6.2003, passed in P.A. Case No. 10 of 2001 and M.G.A. No. 22/2003 and thereafter executed a sale deed in respect of the house in dispute in favour of Respondent No. 3 Sanjai Chaurasiya and his wife Smt.. Rekha Chaurasiya, Respondent No. 4 jointly on 11.12.2003. Since then these Respondents are in continued occupation of the property in dispute as its owners. It is stated that neither any injunction suit was filed by the Petitioner to prevent the sale of the house in dispute by Respondent No. 2 nor has the sale deed executed by him in favour of Respondent Nos. 3 and 4 been

challenged by the Petitioner before any Court of law till date no where. A recall application moved by the Petitioner on 16.8.2003, before the prescribed authority by which recall of the release order dated 16.6.2003 was sought. Even though the application for recall was moved on 16.8.2003, the same was not persuaded by the Petitioner for a long period of time though he was aware of the facts that in the interregnum the grounds realities had changed considerably. During this time the property had come to be purchased by the Respondents and after razing and ramshackle structures to the ground after obtaining the necessary permission from Allahabad Development Authority and taking loan from I.C.I.C.I. Bank Limited, they had built up a new house on the land in question. Yet he did not implead the Respondents as parties in the recall application moved by him. Ultimately in absence of any contest from Respondent No. 3 for the reason that having sold the house to the Respondent Nos. 3 and 4, he had no interest remaining in the property, the recall application of the Petitioner was allowed ex parte on 15.1.2005 by the prescribed authority, and the order for re-entry/repossession dated 30.7.2005 also came to be passed ex parte in favour of the Petitioner. It is stated that it was not the case of the Petitioner that he was not aware of the Respondents having purchased the house in question. In fact he was already contesting the mutation case against them in the Nagar Nigam, Allahabad which was decided in favour of the Respondents by order dated 20.4.2004 appended as annexure to the counter-affidavit. Thus, the orders dated 15.1.2005 and 30.7.2005 were passed in favour of the Petitioner ex parte due to suppression and concealment of the material fact from the court below that the house in dispute had already been sold to the present Respondents. It is submitted that under the aforesaid circumstances Respondent Nos. 3 and 4 moved applications for impleadment and for recall of the ex parte orders dated 15.1.2005 and 30.7.2005 passed by the court below in favour of the Petitioner. The court below allowed the impleadment application of the Respondents and recalled the ex parte order of re-entry and repossession dated 30.7.2005, passed in favour of the Petitioner earlier. It is against the aforesaid order dated 7.11.2008 the Petitioners have filed the present writ petition.

9. In the aforesaid backdrop the contention of the counsel for the Petitioner is that the writ petition has been filed concealing the entire history of litigation by the Petitioner and his father unsuccessfully right upto the High Court in respect of their claim to the title and ownership of the house in dispute, and merely on the basis of dismissal, in default, of an inconsequential suit instituted by the predecessor-in-interest of the present Respondent Nos. 3 and 4 which cannot, by any stretch of imagination be considered as having conferred any right or title in favour of the Petitioner. It is vehemently argued that the Petitioner is guilty of having approached the High Court with unclean hands and the writ petition deserves to be dismissed with exemplary costs, on this ground alone.

10. It is argued by the counsel for the Respondent/predecessor-in-interest is that the Respondent No. 2, Ram Anugrah Tiwari and the persons from whom he had purchased the house in dispute have been held by the courts below, to be its

undisputed owners and, as such the Respondent Nos. 3 and 4 who have purchased the property in dispute from the lawful and rightful owners cannot be described as "strangers" as has been alleged by the Petitioner.

11. The counsel for the Respondent has argued that the Petitioner deliberately in a clever manner, with malicious and ulterior motives, did not disclose his status in the writ petition as to whether he is a tenant or owner of the house in question. It is stated that the court below has therefore rightly recorded a findings of fact that the Petitioner is not seeking possession as tenant which is a mandatory requirement of Rule 22 (f) of the Rules under U.P. Act No. 13 of 1972. Thus, the very application of the Petitioner before the prescribed authority was not maintainable. It is urged that the Petitioner had obtained the ex parte orders dated 15.1.2005 and 30.7.2005 by concealing material facts and actively misleading the court below as well as the prescribed authority hence the court below has not committed any error on face of law in recalling the ex parte order of reentry and repossession passed by it earlier. The Respondent Nos. 3 and 4 have purchased the house in question from Ram Anugrah Tiwari, Respondent No. 2 by means of a valid sale deed which has not been challenged by the Petitioner before any Court. As such the Respondents are necessary and proper parties to the proceedings of the case pending before the prescribed authority and have rightly been allowed to be impleaded vide order dated 7.11.2008, which is perfectly legal and valid and calls for no interference by this Court in exercise of its equitable jurisdiction under Article 226 of the Constitution of India. The Petitioner has denied the title of the landlord and as such stands wholly disentitled for grant of any indulgence or relief by the Court.

12. It is apparent from the facts narrated above and from the arguments of the counsel for the parties as well as from the records that father of the Petitioner had not challenged the validity and correctness of the judgment dated 31.3.1967, passed in Criminal Appeal No. 169/67, Lalit Mohan Verma v. Saroj Chandra and allowed its findings to become final. His claim to the house was defeated yet he transferred the same illegally in the name of his wife Smt. Rajeshwari Devi and his son Vinod Chandra Verma the Petitioner. Further, transactions by the members of the family of Lalit Mohan Verma were thus illegal, without authority of law and void. The subsequent purchasers of the house in dispute therefore had no legal right in that house of which the Respondent is the rightful owner through the judgments of the Courts.

13. In the second innings of litigation by the Petitioner and his mother in Suit No. 886/1980 also the sale deed executed by Lalit Mohan Verma dated 8.1.1953, was held to be void categorically refusing a finding of fact that Petitioner and his mother had no title to the house in dispute and that Defendant predecessor-in-interest were the rightful owners of it. The suit was dismissed also holding that Plaintiffs (Petitioner in the present case) were living therein in the capacity of tenant hence should not be evicted except in accordance with law. The proceedings arising from the Suit No. 886/80 aforesaid culminated in judgment

dated 16.11.1987 in second appeal by the High Court. The father of the Petitioner as well as he and his mother utterly failed to establish their claim in the house in dispute in two separate set of proceedings in Courts. The title of the house was thus finally established in favour of the Respondents.

14. In the circumstances the Petitioner himself requested to permit him to let him remain as tenant in the house in dispute on payment of rent on condition that he will vacate the house whenever the Respondent landlord desired him to do so. The house was vacated by him on 9.8.2003, pursuance to release order in P.A. Case No. 10/2001. The Petitioner did not challenge the sale deed dated 11.12.2003, executed by the Respondent in favour of Sanjai Chaurasiya and his wife Rekha Chaurasia jointly who are in possession since then. It is evident that no resistance whatsoever was made by the Petitioner to the sale deed either by way of injunction or other legal proceedings for preventing the sale of the house.

15. In the third innings the Petitioner moved recall application on 16.8.2003 for recall of release order dated 16.6.2003, without impleading the Respondents 3 and 4 who had purchased the house in dispute and did not pursue it. The Respondents No. 3 and 4 in the meantime had demolished the house in dispute after permission was granted by the competent authority and reconstructed the house. In this situation the recall application filed by the Petitioner was allowed ex parte by order dated 15.1.2005 almost after about 21/2 years as Respondent No. 2 had no interest remaining in the house in dispute and Respondents No. 3 and 4 were not impleaded in the proceedings though he was fully aware of the sale of the house in dispute by Respondent No. 2 to Respondent Nos. 3 and 4 and was also contesting mutation case against them in Nagar Nigam which had been decided in favour of Respondents on 20.4.2004, since recall application for recall of order of release was allowed on 15.1.2005, the non-impleadment of Respondent Nos. 3 and 4 by the Petitioner was deliberate and unfair. He had not approached the prescribed authority with clean hands. He has obtained the order of recall and reentry by concealment of facts from the authority in malicious manner.

16. Since the Petitioner had vacated the accommodation on 9.8.2003 in pursuance of a Judicial order of release in P.A. No. 10 of 2001, there was no question of his exercising rights of re-entry; but concealing these facts and without impleading Respondent Nos. 3 and 4 he succeeded in getting the order of a re-entry. It may be noted that the Petitioner and his father had lost from both the Courts upto the High Court in separate proceedings and thereafter the house having been purchased by Respondent Nos. 3 and 4 also made new constructions by demolishing the old house, hence for this reason also no right of re-entry could have been exercised by the Petitioner in the accommodation which did not exercise.

17. For all the reasons stated above, I am of the considered view that neither any illegality has been committed by prescribed authority nor there is any error in the order impugned dated 7.11.2008 by which the impleadment of

Respondents has been allowed. There is no merit in the argument of the Petitioner that Respondent Nos. 3 and 4 are strangers to the litigation in release application. In the circumstances the order impugned passed by the prescribed authority is upheld. The writ petition is dismissed with cost, in view of the judgment of the Apex Court in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), . The cost on the Petitioner is assessed to Rs. 50,000 payable to Respondent Nos. 3 and 4 within three weeks from today. In case of failure of the Petitioner to pay cost within the time allowed by the Court the same shall be recovered as land revenue from the Petitioner within a month thereafter and shall be paid to him forthwith.