

(1995) 05 AHC CK 0009

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19559 of 1988

Vishram Singh and others

APPELLANT

Vs

District Judge, Etawah and others

RESPONDENT

Date of Decision : 26-05-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Hindu Minority and Guardianship Act, 1956 — Section 8(1), 8(2), 8(3)

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

Citation : AIR 1996 All 90

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : V.K. Goel, for the Appellant; Standing Counsel, for the Respondent

Judgement

1. The question involved in the present writ petition is whether Civil Court has jurisdiction to entertain the suit regarding cancellation of sale deed relating to agricultural land.

2. The facts, in brief, are that Rampal Singh was Bhumidhar of the land in question. He died leaving behind him three sons, namely, Jagpal Singh, Bhopal Singh and Santpal Singh. On 2nd September, 1977, after the death of Rampal Singh, a sale deed was executed by Jagpal Singh, Bhopal Singh and Santpal Singh in favour of Daru Singh. The sale deed on behalf of Santpat Singh was executed by his mother as he was minor at that time. Daru Singh died and thereafter names of the petitioners were substituted in the revenue records.

3. On 20th March 1982 Santpal Singh, respondent No. 3, filed Suit No. 132 of 1982 in the Court of Munsif Etawah for cancellation of the sale deed dated 2nd September, 1977 to the extent of 1/3rd share on the allegation that the plaintiff was minor on the date of execution of the sale deed. The sale deed was executed by his mother without obtaining permission of the District Judge and without any legal necessity.

4. The petitioners contested the suit. In the suit they filed an application for amendment of the written statement taking the plea that the civil court had no jurisdiction to entertain the suit. The amendment application was rejected by the trial court but on appeal the revision was allowed on 26-8-1987. The court, however, took the view that the document was voidable but the petitioner can take the plea of jurisdiction in the suit. The petitioners amended the written statement and took the plea that the Civil Court has no jurisdiction to try the suit and it was barred by Section 331 of U.P. Zamindari Abolition and Land Reforms Act. The trial court held that Civil Court had jurisdiction to try the suit and the said order has been affirmed in revision by respondent No. 1 vide order dated 2-9-1988.

5. Learned counsel for the petitioners submitted that the sale deed was void and the Civil Court has no jurisdiction to try such a suit. It has been submitted that as the document is void it can be ignored and it is the revenue court who can decide the rights of the parties and while considering such rights of the parties can also consider the validity of the sale deed.

6. The controversy as to whether the civil Court has jurisdiction to try a suit where relief of cancellation of sale deed is asked for in the suit, it has been held in a Full Bench decision of this Court in Ram Padarath v. II Addl. District Judge, Sultanpur 1989 All WC 290, that a suit for cancellation of a voidable document is cognizable by Civil Court. The Full Bench affirmed the view taken in Indra Deo v. Smt. Ram Piari 1982 (8) All LR 517 : (1982 All LJ 1308), that suit for cancellation of a void document also lies in the Civil Court. The following observation was made:--

"We are of the view that the case of Indra Deo v. Smt. Ram Piari 1982 (8) All LR 517 : (1982 All LJ 1308), has been correctly decided and the said decision requires no consideration, while the Division Bench case, Dr. Ajodhya Prasad v. Gangotri 1981 All WC 469 : (1981 All LJ 647) 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 of a tenure-holder is necessarily needed in which event relief for cancellation will be surplus-age 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 to 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. This decision was considered by the Supreme Court in Smt. Bismillah Vs. Janeshwar Prasad and Others, and quoted the observation of the Full Bench referred to above. Learned counsel for the petitioner contended that the Supreme Court did not go into the correctness of the view of the Full Bench as it

was not assailed before the Court. It is, however, clear that the Supreme Court relying upon the decision of the Full Bench reversed the decision of the High Court wherein it was held that if the document is a void it does not require cancellation of the sale deed and the suit will be cognizable by the Revenue Court. In *Ajai Kumar Singh v. II Additional District Judge, Ballia* 1992 Rev Dec 386, wherein the suit was filed for cancellation of sale deed on the ground that it was fraudulently executed through some imposter and not by the plaintiff, the court relying upon the decisions referred to above held that Civil Court has jurisdiction to try the suit for cancellation of even a void document.

8. Learned counsel for the petitioner placed reliance upon *Indrapal v. Jagannath* 1992 Rev Dec 231: (1993 All LJ 235), wherein the plaintiff had filed suit for possession on the allegation that property in dispute came to them through a family settlement dated 15-8-1977. It was further alleged that defendant No. 2 had sold the property in dispute to defendant No. 1 and they also prayed for cancellation of sale deed and for injunction. The Court considering the facts of that case held that the suit in substance was for determination of title. The cases of *Smt. Bismillah Vs. Janeshwar Prasad and Others*, and *Ram Padarath* 1989 All WC 290 (FB) (supra) were distinguished. The Court made the following observation (at p. 236 of All LJ) :--

"Since in the present case the real question involved is whether the plaintiffs are the owners of the property in dispute, it is in substance a suit where the main question is of title, and, hence the revenue court alone has jurisdiction. The injunction matter as well as the prayer for cancellation were only incidentally involved. Hence, in my opinion, the orders of the courts below are correct and call for no interference, and the writ petition is accordingly dismissed."

9. The petitioner has further placed reliance upon *Dinesh Kumar Bajpai v. 1st Additional District Judge, Etawah* (1991) 1 CRC 139. In this case it was held that the suit for cancellation of the sale deed and demolition of room etc. comes within the jurisdiction of Civil Court and is not barred by the provisions of Section 331 of U. P. Zamindari Abolition and Land Reforms Act.

10. A perusal of the plaint indicates that the plaintiff has challenged the execution of sale deed on the ground that the sale deed has been executed by his mother without obtaining permission of the District Judge. Subsection (3) of Section 8 of the Hindu Minority and Guardianship Act provides that in disposal of immovable property by natural guardian, in contravention of sub-section (1) or sub-section (2) is voidable at the instance of the minor or any person claiming under him. In view of the said provision the sale deed, at the most, on this ground can be treated only a voidable document and as for voidable document it is only the Civil Court has jurisdiction to grant relief of cancellation of sale deed.

11. Even if the document is treated as void, the suit for cancellation of such deed will lie in civil Court and the civil Court will have jurisdiction to try such suit.

12. In view of the above there is no merit in the writ petition. It is accordingly

dismissed.

13. Petition dismissed.