

(2011) 03 AHC CK 0019
In the Allahabad High Court
Case No : C.M.W.P. No. 10783 of 2009

Yogesh Kumar Paliwal

APPELLANT

Vs

Smt. Somwati and Others

RESPONDENT

Date of Decision : 16-03-2011

Acts Referred:

Citation : (2011) 113 RD 515

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—The Petitioner filed suit for the cancellation of the sale deed on the ground that the Respondents have executed the sale deed in the name of the Petitioner by committing fraud. The plaint has been returned on the ground that the suit was not maintainable and lies before the Revenue Court by the impugned order dated 17.9.2008 passed by Civil Judge (Junior Division), Firozabad. Against the said order, the Petitioner filed appeal, which has been dismissed.

2. Heard Sri K.K. Dubey, learned Counsel for the Petitioner and Sri B.B. Paul, learned Counsel appearing on behalf of the Respondents.

3. Learned Counsel for the Petitioner submitted that the property in dispute is khata No. 294. The Petitioner is co-tenure holder of khata No. 294, which is apparent from the khatauni filed along with the supplementary affidavit dated 26.2.2009, which is not in dispute. It appears that on the basis of the said sale deed, the mutation has been carried on. The Petitioner moved an application before Tehsildar for the recalling of the ex parte order dated 15.1.2007, by which the order for the mutation has been passed. On 18.7.2008, the Tehsildar after hearing both the parties has recalled the ex parte order dated 15.11.2007 and proceeding for the mutation restored to its original number. He submitted that since the Petitioner's name is duly recorded in the revenue record as co-tenure

holder, the civil suit lies in the Civil Court. In support of the contention he relied upon the decision of the Apex Court in the case of Shri Ram and Anr. v. Ist Additional District Judge and Ors. 2001 (92) RD 241 (SC).

4. Learned Counsel for the Respondent submitted that on the basis of the sale deed the name of the Petitioner has been deleted and the name of the purchaser has been mutated and, therefore, the Court below has rightly held that the suit does not lie in the Civil Court and lies in the Revenue Court. In support of the contention he relied upon the decision of Apex Court in the case of Kamla Prasad and Ors. v. Krishna Kant Pathak and Ors. 2007 (102) RD 378 (SC).

5. I have considered the rival submission of learned Counsel for the parties.

6. Perusal of khatauni, filed along with supplementary affidavit, reveals that the Petitioner's name is recorded in the revenue record as co-tenure holder. The order of mutation has already been recalled by the Tehsildar. Since the order of mutation has been recalled, it operates retrospectively and means that the name of the Petitioner still stand recorded in the revenue records.

In the case of Shri Ram and Anr. v. 1st Additional District Judge and Ors. (supra), the Apex Court held that if in the revenue record the name is recorded and prima facie the title is in favour of the party, the suit lies in the Civil Court. The decision of the Apex Court squarely covers the issue. Therefore, I am of the view that the suit lies in the Civil Court.

So far as decision of the Apex Court in the case of Kamla Prasad and Ors. v. Krishna Kant Pathak and Ors. (supra) is concerned, the Apex Court has referred the decision in the case of Shri Ram and Anr. v. Ist Additional District Judge and Ors. (supra). The facts of the case are entirely different. In the said case the name of the person was deleted from the revenue record in mutation proceeding and the possession has already been handed over. While in the present case the name of the Petitioner still exists in the revenue record. Therefore, the said decision is not applicable in the present case.

7. On the facts and circumstances, I am of the view that the order of the Civil Court and the Trial Court as well as Appellate Court are illegal and liable to be set aside.

8. In the result, the writ petition is allowed. The order of the Trial Court dated 17.9.2008 in case No. 192 of 2008 and the order of the Court concerned dated 17.1.2008 in appeal No. 727 of 2008 are set aside and the Trial Court is directed to entertain the plaint and proceed in accordance to law.