

Prashant Kumar Dabral and Others Vs. Digvijay Singh and Another

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Court : Uttaranchal

Decided On : Dec-04-2012

Judge : V.K. Bist

Appeal No. : Appeal from Order No. 128 of 2012

Appellant : Prashant Kumar Dabral and Others

Respondent : Digvijay Singh and Another

Judgement :

V.K. Bist, J.

This appeal has been filed by the plaintiff/ appellants against the order dated 03.03.2012 passed by Addl. District Judge/7th F.T.C., Dehradun in Original Suit No. 223 of 2011 whereby the Court below has dismissed the temporary injunction application paper no. 6c-2 moved by the plaintiff/appellants and the temporary injunction application paper no.25c-2 moved by the defendant/respondents. Simultaneously, the order dated 27.07.2011 was set-aside whereby the parties were directed to maintain status-quo.

2. As per the plaint version, it revealed out that father of the appellants, namely, Sri Krishan was the owner of land total measuring .3840 hectares situate at Mauja Mothrowala, Pargana Parwadoon, Tehsil Sadar, District Dehradun. His name was duly recorded in the revenue records. The plaintiff/ appellants are the sons of Sri Krishan. The name of the father of the appellants continued to be recorded in the

revenue records but after his death, the appellants could not get the same muted in their names. It is asserted that somehow, while forwarding the entries in the Khatauni of the subsequent years, the name of the father of the appellants, namely Sri Krishan S/o Sri Gopi Ram, got changed to Sri Srishan S/o Gopal. It is asserted that this change in the revenue record was purely a clerical mistake at the hands of revenue authorities. It is further asserted that some person impersonating himself to be the said Sri Krishan (father of the appellants) had sold the land to defendant no.1. Said sale deed was executed on 6th October, 2009, which is registered in the office of Sub-Registrar, Dehradun. Furthermore, the said imposter had not made his signature over the sale deed, but had placed his thumb impression over the same, whereas father of appellants was an educated man and knew how to read and write, as he was working as a Clerk at Guru Ram Rai Darbar Sahib, Jhanda Mohalla, Dehradun, who had died on 22nd September, 1987 i.e. much before the execution of the said sale deed dated 6th October, 2009. It is alleged that the respondent no.1 further sold the property to defendant no.2 vide sale deed dated 24th May, 2010. It is alleged that the defendants had full knowledge of the forgery and they may be part and parcel of the forgery. The possession of the property is still with the plaintiff/appellants. It is further alleged that the defendant/respondents were trying to take forceful possession over the said property, therefore, the plaintiff/appellants filed O.S. No. 223 of 2011 before the Court below for cancellation of sale deeds dated 6th October, 2009 and 24th May, 2010 and for restraining the defendants from interfering in the peaceful possession of the plaintiff/appellants over the property in dispute. Alongwith the suit, an application under Order XXXIX Rule 1 C.P.C. for interim injunction was also moved and the defendant/respondent no.2 filed objection against the temporary injunction application and also filed his written statement with the counter claim praying for grant of a decree of declaration that the death certificate of Sri Krishan Dabral be declared as sham and bogus document and not binding upon him. The respondent no.2 also filed application no. 25c-2 for grant of temporary injunction in his favour. The respondent no.2 also disclosed that earlier a Suit No. 519 of 2010 was instituted by him. It is alleged that during pendency of O.S. No. 223 of 2011 and during continuation of interim order dated 27.07.2011 to maintain status-quo, the defendant/ respondents tried to interfere into the

possession of the appellants. The learned Court below vide order dated 03.03.2012 dismissed the temporary injunction application moved by the plaintiff/appellants as well as by respondent no.2.

3. The respondent no.1 came up with the case that he purchased the said land from Srikrishan S/o Gopal, resident of Jhanda Mohall, Dehradun vide registered sale deed dated 06.10.2009 after due diligence i.e. thorough inspection of revenue record of suit property as well as on gathering enquiry from the local villagers of Mothrowala. The record of more than 30 years was checked and it was found that the property was in the name of Srikrishan S/o Gopal, and the same person also delivered the possession of the land in question to respondent no.1. It is asserted by respondent no.1 that as per Section 34 of Land Revenue Act, 1901, mutation proceeding of the aforesaid property was carried out by the Tehsildar, Sadar, Dehradun and since no one has objected sale of the said property, even after publication, the Tehsildar ordered mutation of the property in the name of respondent no.1. Thereafter, on 24.04.2010 the respondent no.1 sold the said property to respondent no.2 almost after eight months, and also handed over its possession to him.

4. The respondent no.2 filed separate counter affidavit with the averment that the respondent no.2 purchased the land in question from defendant/appellant no.1 vide registered sale deed dated 24.04.2010 for a total consideration of ` 21,12,000/- and defendant no.1 purchased the said land on 06.10.2009 from Sri Krishan S/o Shri Gopal, resident of Jhanda Mohalla Dehradun. After taking possession of the property in dispute he started construction over there. It is asserted that the appellant got a death certificate of Sri Krishan from the office of Registrar, Lansdown, District Pauri Garhwal after 24 years of his death and filed complaint with the police on 15.02.2011. Another complaint was filed on 18.02.2011 in which, after investigation, final report was submitted by the police. Thereafter, Shashikant Dabral, in order to create evidence, moved application before the Revenue Authorities seeking correction of his grandfathers name from Gopal to Gopiram, and thereafter, filed Civil Suit no. 223 of 2011 before the Court below. The appellants filed an application under Section 156 (3) Cr.P.C. against the respondent no.2, which was rejected by the Chief Judicial Magistrate and in

the revision filed by the appellant, the Session Judge, Dehradun directed the police to register FIR against respondent no.2. FIR No. 63 of 2011 was lodged against respondent no.2, which was challenged before this Court and this Court stayed arrest of the respondent. It is asserted that after thorough investigation, a final report was submitted by the police in FIR No. 63 of 2011. During the course of investigation and on enquiry regarding the existence of Srikrishan, who has sold the suit property to respondent no.1, it came to know that Srikrishan S/o Gopal is resident of Jhanda Mohalla, Dehradun who died on 20.10.2010 at Haridwar.

5. I have heard Mr. Piyush Garg, Advocate for the appellants and Mr. Rajesh Rai, Mr. Varun Singh and Mr. Pooran Singh Rawat, Advocates for the respondents and perused the record.

6. Learned counsel for the appellants submitted that the temporary injunction application of the plaintiff/ appellants has been rejected only on the score that the appellants did not get their names mutated after the death of their father in the year 1987. It is contended that the trial Court has wrongly held the defendant/ respondent no.2 in physical possession of the property in dispute and while doing so, the trial Court failed to consider the commission report. He contended that the trial Court failed to consider that the appellants have not sought declaration of ownership of the property but have rather prayed for cancellation of sale deed, which can be granted only by a Civil Court not by a Revenue Court as for the purpose of jurisdiction, the main relief prayed for is to be seen and not the consequential relief. The trial Court also failed to appreciate that the entries in the revenue records, which are based on fraud, can never be relied upon. The trial Court has overlooked that the respondent nos. 1 and 2 both are in hand in gloves in collusion with each other, therefore it was wrongly held that the respondent no.2 is bonafide purchaser. He contended that the trial Court has wrongly swayed itself with the sham sale deed executed in favour of respondent no.2. He then contended that the trial Court has wrongly held that the appellants were not aware of their rights for last 25 years, but the plaintiff/appellants on getting aware of the forgery, filed FIR and civil suit for protection of their property and rights, however even if it is assumed that the appellants remained negligent in not getting their names mutated after the death of their father, this does not entitle the respondents

to execute a false sale deed by impersonating the deceased father of the appellants. It is pleaded that respondent no.2 cannot get better title than what respondent no.1 had, hence the respondent no.2 is not entitled for any relief. He further contended that the trial Court could not appreciate that the initial ownership of the father of appellants has not been denied. It is submitted that father of appellants died in the year 1987, thus no sale deed could have been executed by him in the year 2009, thus the defendant/respondents could not get any right on the basis of such false sale deed.

7. Learned counsel for the appellants further submitted that defendants have not produced any document to show that they conducted any enquiry before purchasing the land in question and in such view of the matter, they cannot be granted benefit being bonafide purchaser as claimed by them. He relied on A 1965 SC 295, A 1982 All. 92. He further submitted that when a suit for cancellation of sale deed obtained by fraud is filed, a person without being recorded owner can maintain the suit. In support of this submission, reliance was placed on 2004 (2) AWC 1274, 2005 (2) AWC 1673. Learned counsel for the appellants argued that the respondent no. 2 first got the sale deed executed in favour of respondent no.1 and thereafter in his favour, so as to make out a case in order to generate documents. He submitted that the defendants have not produced any evidence in support of their possession before the Court below even then the Court below wrongly came to the conclusion that the defendant no.2 is bonafide purchaser of the property. In the instant case, the Court below has merely considered the sale deeds alone as the proof of possession and prima-facie case in favour of the defendants. He submitted that since the land in dispute is a vacant land, no evidence of possession could be given and the person who is the owner would be deemed to be in possession. Since, appellants father's name continued to be recorded since the year, 1951, it should be assumed possession over the plot is of the appellants. He placed reliance on 2008 (4) SCC 594. He also contended that the Court below failed to take note that though property was not mutated in the names of the appellants from their father, yet nobody else apart from the appellants has claimed ownership over the property in between 1987 to 2009. He contended that the Court below has held that the appellant could not give any evidence in support of their possession, but the Court below ignored that no such

evidence has been produced by the defendants also. So far the balance of convenience is concerned, learned counsel for the appellants submitted that in the entire written statement the defendant no.2, there is no averment that the defendant is raising any construction or is about to raise but the Court below on its own have recorded that the defendants could raise construction. Thus, when the defendants themselves have not prayed for permitting them to raise construction and no emergent need of raising constructions and extraordinary circumstances for raising construction have been stated, the same cannot be allowed in order to change the nature of property during pendency of suit. In this regard learned counsel for the appellants relied on 2010 (1) SCC 379 and 2004 (8) SCC 488.

8. So far the irreparable loss and injury is concerned, learned counsel for the appellants submitted that once the nature of property is changed, the appellants will suffer irreparable loss and injury because despite spending money, the nature of the property once changed, cannot be restored back.

9. Learned counsel for the respondents contended that as per records since 1372 Fasli i.e. since 1965 show that Srikrishan is son of Gopal and not Gopiram Dabral. As per Section 90 of Indian Evidence Act, the entry being for more than 30 years shall be presumed to be true. He contended that even assuming that the said entries are incorrect, the appellants have right to approach the Revenue Court under Section 229 B of U.P.Z.A. and L.R. Act for correction and declaring them as recorded owners. Thus, jurisdiction of Civil Court is barred under Section 330 and 331 and schedule II of U.P.Z.A. and L.R. Act for seeking relief of declaration. He contended that the appellants have not annexed any document as to how the property came to the father of the appellants, as the appellants are not the recorded Bhumidhar, therefore they have no locus to file the present suit. The suit cannot be maintained even on the basis of their claim of possession, as no proof of possession/document is annexed with the plaint. He contended that prima-facie case ought to be considered to the available relevant material on record in order to examine the probability of appellants ultimate success in the suit. It is contended that the death certificate annexed with the plaint is illegal and made without any basis and in contravention to Section 13 (3) of Registration of birth and death Act, 1969, as if the birth or death which has not been registered within one year of its

occurrence, shall be registered only on an order passed by a Magistrate First Class or a Presidency Magistrate.

10. Learned counsel appearing for the respondents further contended that while passing interim order, only those documents could be taken into account, which are part of pleading, unambiguous and undisputed by the parties. Learned counsel for the respondents submitted that how the property came to the plaintiff/appellants father, is nowhere averred in the suit; the appellants have not produced any document/instrument to establish that the suit property is transferred to their father by Guru Ram Rai Darbar Sahib Trust, where appellants father was said to have been working as a Clerk. He contended that the appellants aver that the property is in the name of their father since Fasli year 1359 and in the Fasli year 1372 their grandfathers name changed by mistake in Khatauni and they applied for its correction to Tehsildar on 27.03.2011, but what happened thereafter and whether the said application is disposed of is nowhere stated. It is contended that the appellants have not applied for mutation till date, though they aver that their father died in 1987. The reason for not applying for mutation, is not averred in the plaint and the trial Court has rightly relied on the Khatauni, wherein name of Srikrishan S/o Gopal is recorded in the revenue records. He contended that under Section 229D of U.P.Z.A. and L.R. Act, the revenue Court can also pass the injunction order and the Civil Court, though have the jurisdiction to pass an order for cancellation of sale deed, however, in the present case, there is no reason to restrain the defendants as their name is recorded by the Revenue Court.

11. It is further contended that the appellants are not in possession of the suit property, because the same is mutated in the name of the respondents under the proceedings in Section 34 of L.R. Act, however the appellants made no objection; the appellants are not paying any revenue; demarcation of suit property was carried on an application of respondent no.2 however the appellants never objected to said demarcation; revenue record and report of Patwari state the possession of respondent no.2; registered sale deed is made in favour of respondent no.2 and the appellants have not produced a single document to show their possession.

12. A party may have a very good case in his favour, but that alone is not sufficient to grant injunction during the pendency of suit. While considering an application for grant of injunction, the Court is not only required to take into consideration the basic elements in relation thereto viz. existence of a prima facie case, balance of convenience and irreparable loss, it is also required to consider the conduct of the parties. In the present case, the father of the appellants died in the year of 1987. The appellants did not take care for a period more than twenty years and took no steps for mutation. The land in dispute was sold by Sri Krishan to defendant no.1/respondent no.1 on 06.10.2009 vide registered sale deed. Though it is said by the appellants that same was sold by impersonating himself to be Srikrishna (father of the appellants) but at the time of sale and transfer of name, they did not object. Thereafter, defendant no.1/respondent no.1 sold the same to defendant no.2/respondent no.2 vide sale deed dated 24.05.2010. The appellants who kept quiet for a long time and allowed others to deal with the property, is not entitled to interim relief, as grant of injunction is equitable relief. The conduct of respondents will be seen by the trial Court while dealing with the argument regarding forgery in getting the sale deed dated 24.05.2010 executed. Court will also consider whether any fraud was played by anybody at the time of execution of sale deed dated 24.05.2010. Trial Court will consider and decide all the points raised by the appellants and in case appellants succeed, they will get the relief. I do not think that appellants could prove prima facie case and balance of convenience in their favour. Even no irreparable loss would be caused to them in the event of non-grant of interim injunction. The trial Court has rightly rejected their application for interim injunction.

13. Judgments cited by the learned counsel for the appellants do not help the appellants in view of facts of the present case. In AIR 1965 SC 295 the Honble Supreme Court has held that Transferee of a co-sharer should prove that the Transferor was the ostensible owner of the property with the consent of his co-sharers and besides that he took reasonable care to ascertain whether the transferor had the power to make a transfer of the full interest. In AIR 1982 All. 92, the Allahabad High Court held that mere fact that sellers name was recorded in revenue record does not establish the bonafides of purchaser. In the present case the respondent no.1 came up with the case that disputed land was purchased after

due diligence as record of more than 30 years was checked. Moreover, the fact that transferor was the ostensible owner or not has yet to be seen by trial Court.

14. In 2004 (2) AWC 1274, the Allahabad High Court, while referring the decisions reported in 1989 AWC 290 and 1982 ALJ 63 held that jurisdiction of the civil Court to entertain a suit for declaration that the plaintiff never executed the sale deed in question is not barred. In 2005 (2) AWC 1673 the Allahabad High Court held that civil Court has jurisdiction to entertain suit for cancellation of sale deed in respect of agricultural land where it was pleaded that widow having remarried had no right to execute sale deed. These case law are not relevant as this court is not examining the question of maintainability of suit.

15. In (2010) 1 SCC 379, the Honble Supreme Court rejected the argument of the learned counsel for the respondent that appellant Trust could be compensated in term of money by observing that if suit property is allowed to be commercially exploited by raising multi-storeyed structure thereupon the entire object of the suit filed by the appellant Trust will be rendered meaningless and the purpose for which the suit had been filed would be completely defeated. In (2004) 8 SCC 488, the Honble Supreme Court held that unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court shall not permit the nature of the property being changed which also include alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. These case laws are not applicable in the case in hand in view of different facts.

16. In view of above discussion, the appeal is dismissed. However, the trial Court is directed to decide the suit before 1st January, 2014.

17. No order as to costs.

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