

Smt. Chunni Devi and anr. Vs. Additional District Judge and ors.

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SooperKanoon Citation : sooperkanoon.com/453527

Court : Allahabad

Decided On : Feb-23-2004

Reported in : 2004(2)AWC1532

Judge : Rakesh Tiwari, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9

Appeal No. : C.M.W.P. No. 12847 of 1984

Appellant : Smt. Chunni Devi and anr.

Respondent : Additional District Judge and ors.

Advocate for Def. : R.P. Srivastava, S.C.

Advocate for Pet/Ap. : N.P. Singh and ;B.K. Singh, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.

2. This writ petition is directed against the orders passed by the courts below deciding a preliminary issue that civil court has jurisdiction to try the suit for cancellation of a void sale deed dated 10.9.1979 and permanent injunction in respect of agricultural plots for consideration of Rs. 20,000 measuring 6 bigha 16 biswa situate in village Khaneha, Pargana and Tahsil Mau, district Ballia.

3. Sheo Murat, respondent No. 3 filed a suit in the Court of Munsif, Karvi which was registered as Original Suit No. 47 of 1980 against the petitioners and respondent Nos. 4 to 7 for cancellation of the aforesaid sale deed executed in favour of petitioner No. 1 and permanent injunction restraining the petitioners and respondent No. 5 from interfering with the land in dispute on the allegations that sale deed in question in favour of Smt. Chunni Devi is fictitious and she did not affix her thumb impressions on it and no consideration passed to her. The plaint allegations were denied by the petitioners and respondent Nos. 4 to 7 by filing their separate written statements. It was further alleged on behalf of petitioner No. 1 that the possession of the land in dispute was handed over to her immediately after execution of the aforesaid sale deed and the name of petitioner No. 1 had been entered in the revenue records by the revenue authorities after contest by respondent No. 3. The counsel for the petitioners submits that the civil court has no jurisdiction to try the suit and it is barred by Section 34 of the Specific Relief Act and that the Munsif has no jurisdiction to try the suit. Following issues were framed by the court below :

'(1) Whether sale deed dated 10.9.1979 is liable to be cancelled on the allegations made in paragraph 6 of the plaint?

(2) Whether this Court has jurisdiction to try the suit?'

4. The court below decided issue No. 2 as preliminary issue and held that this Court had jurisdiction to try the suit. Aggrieved by the said order the petitioners filed revision before Additional District Judge, Kalvi, which was registered as Civil Revision No. 25 of 1984, Smt. Chunni Devi and Anr. v. Sheo Murat and Ors. The revision was dismissed vide order dated 1.8.1984.

5. Aggrieved by the order dated 1.8.1984, the present writ petition has been filed.

6. It is urged by the counsel for the petitioners that the courts below have committed error in law in holding that it had jurisdiction to try the suit. Since it appears from the plaint allegations that the plaintiff did not execute the sale deed and some other person had executed the sale deed impersonating her. The sale deed in question was invalid and no consideration was passed to her.

7. The question of jurisdiction of civil court and revenue court in cases of cancellation of sale deeds have been considered by this Court in case of Jai Singh v. Additional District Judge, Muzaffarnagar, 2001 (4) AWC 2826 : 2001 (45) ALR 579. After considering all the cases on this subject the learned Judge Hon'ble S.K. Singh, J., has concluded in para 22 of the judgment as under :

'In view of the aforesaid analysis, in respect to all the questions, (i), (ii), (iii) and (iv) posed above, it is being held that the suit will lie in the civil court. If a plaintiff comes to the civil court for seeking cancellation of deed which may be void or voidable whether the name of the plaintiff is recorded or not, the jurisdiction of the civil court not having been expressly barred to try such suits, the suit will be maintainable in the civil court.'

8. I have followed this statement of law in earlier case and I agree with it.

9. The writ petition is dismissed.

No order as to costs.