

Hari Narain Vs. Ivth Additional District Judge, Azamgarh and Others

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Court : Allahabad

Decided On : Dec-02-1999

Reported in : 2000(1)AWC416

Judge : S.K. Phaujdar, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9; [Specific Relief Act, 1963](#) - Sections 38; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 143, 171, 229, 229B, C and D and 331; [Registration Act, 1908](#) - Sections 17

Appeal No. : C.M.W.P. No. 41526 of 1999

Appellant : Hari Narain

Respondent : ivth Additional District Judge, Azamgarh and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Pradeep Kumar Rai, Adv.

Judgement :

S.K. Phaujdar, J.

1. The petitioner had filed Suit No. 1230 of 1986 for permanent injunction against the present respondents, Kamala and others. It was his case that he was the sole

owner of certain agricultural plot and was in possession thereof. It was stated that previously he was having only one-third share in the suit property, a second one-third belonged to one Rampat Rai and the rest one-third belonged to the respondent Kamala and his brother Subedar. The plaintiff purchased the share of Rampat through a registered instrument and there had been a family settlement through which Kamala and Subedar transferred their share in the suit property in favour of the petitioner through a written instrument dated 24.12.1971. Subsequently, however, Kamala and Subedar transferred their land to other defendants on the basis of which they were trying to interfere in the land in dispute and that gave the cause of action to the plaintiff-petitioner for permanent injunction. The petitioner asserted that for the Fasli year 1389 khatauni was prepared in his name for certain plots and for the Fasli years 1390 and 1395 khatauni was prepared in his name for some other plots. The defendants, however, denied that title of the petitioner on the suit property. The defendant Kamala also contested the suit and asserted that the plaintiff had not been the bhumidhar for one-third share in the suit property and the suit was really one for a relief for a declaration of his right and title to the extent of that one-third share and only the shape of an injunction suit was given although the real relief was of a declaration of title.

2. The trial Judge framed several issues including one touching the jurisdiction of the civil court to take up the matter. The issue was decided by the trial Judge on 1.9.1992 in the affirmative, holding that the civil court had a jurisdiction to entertain the suit as the relief sought for was for permanent Injunction that could have been granted only by the civil court. A revision application, however, was preferred and by an order dated 27.5.1999 the IVth Additional District Judge, Azamgarh, allowed the revision, set aside the order of the trial Judge dated 1.9.1992. This order has given rise to the present writ petition.

3. It was contended on behalf of the petitioner that the jurisdiction of a Court is to be determined from the allegations made in the plaint and from the reliefs claimed therein. When it was a suit for a permanent injunction, none but the civil court could have taken cognizance of the suit. Moreover, the cause of action had arisen only on account of attempts on the part of the defendants to interfere in the

possession of the plaintiff over the suit property. It was submitted that the revisional court had gone beyond its jurisdiction to take up the question of registration or absence of registration of the alleged family settlement.

4. The U. P. Zamindari Abolition and Land Reforms Act. 1950 (in short, the ZA and LR Act) makes certain provision for entertainment of suits by revenue courts to the exclusion of the jurisdiction of the civil court. Section 331 of this Act states that except as provided by or under this Act no Court other than a Court mentioned in column 4 of Schedule 2 shall, notwithstanding anything contained in the C.P.C., take cognizance of any suit, application or proceedings mentioned in column II, thereof or of a suit, application or proceedings based on a cause of action in respect of which any relief would be obtained by means of any suit or application. It further provides that where a declaration has been made under Section 143 in respect of any holding or a part thereof, the provisions of Schedule 2 in so far as they relate to suits under Chapter 8 shall not apply to such holding or part thereof. Chapter 8 of this Act deals with tenure. Section 331 further gives an explanation that if the cause of action is one in respect of which relief may be granted by the revenue court. It is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted.

5. Schedule 2, as spoken of in Section 331 of this Act. gives a table of the nature of the proceedings, the name of the Court of first Instance and the names of the Courts of first and second appeal (where lies). In item No. 34, it speaks of a suit for declaration of rights under Sections 229, 229B and 229C of the Act and the proper forum for a suit is the Court of Assistant Collector, First Class. Section 229B deals with declaratory suits by persons claiming to be asami of a holding or a part thereof. Any person claiming to be a asami of a holding or any part thereof whether exclusively or jointly with any other party, may sue the landlord for a declaration of his rights as asami in such holding or the part as the case may be and any other person claiming to hold as asami is to be impleaded as a defendant. These provisions would apply mutatis mutandis to a suit by a person claiming to be a bhumidhar and in such a suit the word land-holder would mean the State Government and the Gaon Sabha. Section 229-D of the Act also provides for injunction under certain circumstances in suits filed under Section 229-B.

6. Permanent injunctions are reliefs thought of under the Specific Relief Act and perpetual injunctions have been dealt with in chapter 8 of this Act. Section 38 speaks that a perpetual injunction may be granted to the plaintiff to prevent a breach of an obligation existing in his favour, whether expressly or by implication, and when a defendant invades or threatens to invade the plaintiffs right to or enjoyment of a property, the Court may grant a perpetual injunction where the invasion is such that a compensation in money would not afford an adequate relief or where injunction was necessary to prevent a multiplicity of a judicial proceeding. It is, thus, clear that a permanent injunction in the nature of a perpetual restraint on the defendant from doing anything could be issued in favour of the plaintiff only if there is an obligation existing in his favour in respect of the suit property or if there is a threatened invasion to the plaintiffs right to or enjoyment of a property. Thus, there cannot be a mere injunction suit as there is always a built-in implication of an obligation existing in his favour or his right to or enjoyment of a property. Before making a claim for an injunction of a permanent nature, the plaintiff must have that obligation or right in his favour.

7. Admittedly, in the instant case, the plaintiff claims that obligation in his favour or the right to the suit property by dint of a family settlement and the only question that arises for determination is whether in reality, he sought a relief of a declaration of a right over one-third of the suit property by way of family settlement.

8. The plaintiff relied on a decision of the Allahabad High Court in the case of Mangal Lal Chaturvedi, 1998 (89) RD 467. The Hon'ble single Judge held in this case that when it was a suit simply for an injunction and possession, foundation of which was on the transfer by the defendant to the plaintiff, it was not a suit involving an adjudication of right, title or Interest between the parties and the suit did not come within the ambit of Section 331 and the relief lay before the civil court only. On fact, it was held that foundation of the suit was laid on the basis of a sale-deed executed by the defendant-petitioner for the purpose of construction of a house and possession thereof was delivered to the plaintiff. But, subsequently, the defendant had illegally constructed a wall on a part of the land and entered into possession thereof. No question of title was involved in the matter and, as such, there was no question of proving the obligation in favour of the plaintiff or his right

to the plaintiff as required under Section 38 and, as such, no adjudication was necessary on those points. Only under these circumstances, the above decision was given. But the facts in the instant case are not parallel as the one-third share was claimed on the basis of a family settlement which was not registered.

9. A reference may also be made in this regard to a Division Bench decision of the Lucknow Bench of the Allahabad High Court in the case of Dr. Ayodhya Prasad, 1981 AWC 469. Here was a suit filed before the civil court for a relief of certain declarations and possession as also for a relief for cancellation of a sale-deed touching the suit property, and also for an injunction. It was held by the Division Bench that the suit was cognizable by the revenue court and not by the civil court. The plaintiff had alleged in the suit that he was the son of the deceased land-holder. There had been a deed of transfer of the widow of the land-holder, although under Section 171 of the Z.A. and L.R. Act the son was a preferential heir and his widowed mother was down in the list of heirs. The transfer made by the widow was alleged to be void and, as such, it required no cancellation through a decree of the civil court. The High Court found the revenue court to be the proper forum as even the relief for injunction could have been given by the revenue court under the effective relief of a declaration.

10. The Supreme Court had in the case of Abdul Wahid Khan, AIR 1966 SC 1718, had a question before it regarding ouster of the jurisdiction of a civil court under the provisions of the Bhopal State Land Revenue Act. It was held that a statute ousting a jurisdiction of a civil court must be strictly construed. The Court had dealt with different provisions of the concerned State Act of Madhya Pradesh and upon such analysis came to the conclusion that the civil court's jurisdiction had not been ousted for a declaration of title and possession of a khatedar against a trespasser. The provisions of the U.P.Z.A. and L.R. Act have already been indicated and the instant suit is admittedly against a co-sharer and/or his transferees and a right has been claimed through a family settlement which had never been registered. Thus, even with a Strict interpretation of Sections 229B and 331 of the Z.A. and L.R. Act read with Section 38 of the Specific Relief Act, the relief prayed for is one covered by the provisions of the Z.A. and L.R. Act.

11. The learned counsel for the petitioner further relied on another decision of the Allahabad High Court (Lucknow Bench) in the case of Indra Deo v. Ram Pyari, 1982 (8) ALR 517. It was a suit for cancellation of a sale-deed in respect of an agricultural bhumidhari and the civil court had returned the plaint for its presentation before the revenue court. The order was set aside in first appeal. Patently the facts of this case are not at all parallel to the instant matter. It was a mere suit for cancellation of a sale-deed and the civil court's jurisdiction was certainly not ousted under the different provisions of the U.P.Z.A. and L.R. Act.

12. An objection was taken by the petitioner that the appellate court had wrongly given a finding about therequirement of registration of the family settlement by which the plaintiff had allegedly acquired the one-third share of the defendant No. 1. Provisions of Section 17 of the Registration Act are clear on this point. This section speaks of documents for which registration is compulsory. Under this section, a document must be registered if it is a non-testamentary one and purports or operates to create, declare, assign, limit or extinguish right on an immovable property, whether vested or contingent, of the value of Rs. 100. Through the family settlement claimed by the petitioner, the plaintiff-petitioner certainly proposed to extinguish the title of defendant No. 1 and to create a title in his favour. Thus, it was necessary to get that alleged family settlement registered. The Court below had not acted wrongly in opining that the so-called family settlement required registration.

13. From what has been discussed above, it appears that It was not the admitted case of the title of the plaintiff over the suit property, even according to the mere reading of the plaint. Thus, the plaintiff was obliged to allege how he obtained a right on the suit property or what was the obligation in his favour in respect thereof before he could make a prayer for a permanent injunction. That could have been established by a declaration of the right claimed by the plaintiff and once we come to this conclusion, the irresistible inference would be that the suit was really in the nature of one spoken of under section 229B of the U.P.Z.A. and L.R. Act and was, thus, cognizable by the revenue court and as such, the jurisdiction of the civil court stood ousted.

14. In view of the above, there is no reason to interfere with the order impugned, and the writ petition, accordingly, stands dismissed.

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