

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Ram Suchit and anr. Vs. 1st Additional District Judge, Gorakhpur and ors.

Ram Suchit and anr. Vs. 1st Additional District Judge, Gorakhpur and ors.

SooperKanoon Citation : sooperkanoon.com/466302

Court : Allahabad

Decided On : Oct-23-1984

Reported in : AIR1986All149

Judge : B.N. Saprū, J.

Acts : [Specific Relief Act, 1963](#) - Sections 26(2)

Appeal No. : Civil Misc. Writ Petn. No. 9859 of 1981

Appellant : Ram Suchit and anr.

Respondent : 1st Additional District Judge, Gorakhpur and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : V.B. Khare, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B.N. Saprū, J.

1. This writ petition has been filed by Ram Suchit and Ram Sumer sons of Baldeo and is directed against an order of the I Additional District Judge, Gorakhpur, whereby he has allowed Civil Revision No. 44 of 1981, Chhedi v. Basdeo and 2

others, and as a result of the revisional order, the petitioners' application for being impleaded as parties in Suit No. 153 of 1979 stood dismissed.

2. The short facts of the case are that Basdeo, the respondent No. 3, was the owner of the half share, of Plot No. 256 having a total area of 1.88 Acres. According to the petitioners, Basdeo executed a sale deed in their favour on 26-11-1977 for .03 decimal land. Thereafter on 5-12-1977 he executed a sale deed of another .03 decimal of land in favour of Chhedi.

3. Chhedi instituted Suit No. 153 of 1979 for rectification of the sale deed dated 5-12-1977 executed by Basdeo in favour of the respondent Chhedi, inter alia, on the ground that the reference to .03 decimal of the area should be deleted from the sale deed, the sale consideration should be mentioned as 15,000 rupees and another area of land possessed by Basdeo in plot No. 256 which was half of 1.88 Acres, shall be deemed to be sold in favour of Chhedi.

4. During the pendency of the civil suit, the petitioners applied to be impleaded as parties as they said that the rectification of the sale deed would adversely affect their right which they had acquired under the sale deed executed by Basdeo on 26-11-1977.

5. The trial court allowed the application. The revisional court has allowed the revision on the ground that the petitioners are neither necessary nor proper parties to the suit.

6. Aggrieved the petitioners have come up in the writ petition.

7. It is obvious that in the suit filed by the respondent, Chhedi, for rectification of the sale deed dated 5-12-1977, the petitioners are not necessary parties. The Court can adjudicate the dispute in the absence of the petitioners. However, the question remains that whether the petitioners are proper parties to the suit. The petitioners claimed to be the transferees of .03 decimal of land of plot No. 256 from Basdeo. If the suit is decreed, a dispute will unnecessarily arise between the petitioners and Chhedi as Chhedi would claim the entire share of Basdeo in the land including .03 decimal of land transferred by Basdeo in favour of the

petitioners was covered by his sale deed and consequently belonged to him. In these circumstances the decision in the said suit would adversely affect the petitioners and, therefore, they must be held to be proper parties to the suit.

8. Section 26, Sub-section (2) of the Specific Relief Act provides as follows : --

'(2) If, any suit in which a contract or other instrument is sought to be rectified under Sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.'

9. It is, thus, clear that where rights have accrued in favour of a third person who has acted in good faith and has paid value, rectification may be refused. The petitioners claim to be such third persons and they are entitled to bring relevant facts to the notice of the Court.

10. In the result the writ petition is allowed, the impugned order of the revision court dated 9-7-1981 is quashed and the order of the trial court dated 31-1-1981 is restored. The petitioners are entitled to their costs from the respondent No. 2, Chhedi.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com