

Smt. Sharda Devi Vs. Additional District Judge, (Special Judge), Gorakhpur and Others

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SooperKanoon Citation : sooperkanoon.com/466393

Court : Allahabad

Decided On : Dec-16-1997

Reported in : 1998(2)AWC919

Judge : S.H.A. Raza, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9 - Order 43, Rule 1; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 229B, 229B(1) and (2) and 331; Uttar Pradesh Consolidation of Holdings Act - Sections 4 and 5(2); [Specific Relief Act, 1963](#) - Sections 31 and 331

Appeal No. : C.M.W.P. No. 5547 of 1983

Appellant : Smt. Sharda Devi

Respondent : Additional District Judge, (Special Judge), Gorakhpur and Others

Advocate for Def. : S.C. and ;Wazid Ali, Adv.

Advocate for Pet/Ap. : H.S.N. Tripathi, Adv.

Judgement :

S.H.A. Raza, J.

1. By means of the present writ petition, the petitioner has prayed for the issuance of writ in the nature of certiorari quashing the judgments and orders dated 1.2.1983 and 7.4.1982 passed by the Additional District Judge, Gorakhpur and Munsif IInd, Gorakhpur. A writ in the nature of mandamus has also been prayed for directing the respondent No. 2 to entertain the suit to its original number to be decided on merit.

2. The brief facts giving rise to this writ petition is that the petitioner filed a civil suit bearing No. 67/1980 for injunction and cancellation of the sale deed dated 17.11.1979 on the ground that she was bhumidhar in possession, as heir of her father, over the land in dispute and her name was also mutated on 28.12.1979 after the death of her father. After the said mutation proceedings one Chhotey Lal, who was the Pradhan of the village, obtained a fraudulent sale deed on 17.11.1979 by impersonation as the father of the petitioner late Phagu had expired before the execution of the sale deed.

3. The suit was contested by the defendant-respondent on the ground that plaintiff-petitioner had no cause of action as the sale deed dated 17.11.1979 was executed by late Phagu. In the additional written statement the jurisdiction of the Court was also challenged.

4. Section 331 of the U. P. Zamindari Abolition and Land Reforms Act provides that except as provided or under this Act, no Court other than a Court mentioned at column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908, take cognizance of any suit, application or proceeding mentioned in column 3 thereof (of suit application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such application).

5. The Explanation further provides 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.

6. Section 229B (1) of the U. P. Zamindari Abolition and Land Reforms Act provides that any person claiming to be Asami of a holding may sue to the land holder for declaration of his rights as Asami. While sub-section (2) thereof provides that the provisions of sub-section (1) and (2) shall mutatis mutandis apply to a suit by a person claiming to be a bhumidhar with the amendment that for the word 'land holder' the word 'State Government' and the (Gaon Sabha) are substituted therein.

7. A preliminary issue No. 8 pertaining to jurisdiction was framed by the civil court. The Court below was of the view that the Court had no jurisdiction to try the suit and directed the return of the plaint for presentation before the proper Court by its order dated 7.4.1982. The petitioner preferred an appeal under Order XLIII, Rule 1, C.P.C. before the lower appellate court, which was dismissed on 1.2.1983.

8. The thrust of the petitioner in this writ petition is that the petitioner prayed for a grant of injunction and cancellation of the sale deed on the ground of fraud, was cognizable by civil court and not by the revenue court. The Courts below failed to exercise the jurisdiction vested in them in not taking cognizance of the suit by giving a finding that the instant suit was of a declaratory in nature, as the sale deed was a fraudulent transaction. It was a voidable document, and a suit in the competent civil court of jurisdiction would lie, and the same was not barred by Section 331 of U. P. Zamindari Abolition and Land Reforms Act. It was also submitted that the Courts below committed the manifest error of law in relying upon the provisions of Section 229B as the plaintiff did not seek any declaratory relief of Bhumidhari right, as Phagu and thereafter the plaintiff claiming under him, were admittedly Bhumidhars of land in suit and there existed no dispute about the same in between the petitioner and the State Government as well as Gaon Sabha. The Courts below committed an error apparent on the face of the record by returning the suit for presentation before the revenue court.

9. It is not in dispute that one half of the share in Bhumldhari land in question belongs to late Phagu whose only Issue is his daughter, Smt. Sharda Devi, the petitioner. It is also not in dispute that late Phagu died in the month of November, 1979. The petitioner contended that Phagu expired on 10.11.1979 and the

defendant averred that Phagu expired on 18.11.1979, after executing the sale deed in favour of the defendant on 17.11.1979. Thus, it is evident that the case of the plaintiff-petitioner is that when the alleged sale deed, dated 17.11.1979, was executed by a person other than Phagu, who had expired on 10.11.1979. Thus, according to the petitioner, the said sale deed was not executed by late Phagu as he had expired on 10.11.1979 and the same was executed by an imposter.

10. It is well-settled that the jurisdiction of the revenue court and civil court depend upon the substance of allegation. If the sale deed is void, it requires no cancellation or declaration as being void, the revenue court in such a case can proceed to determine the rights of the parties, but when a sale deed is not void and it becomes void only on proof of certain facts, the Intervention of the civil court is necessary for declaring the sale deed as void.

11. In the case of Gorakh Nath Dubey, AIR 1973 SC 2451, a question arose as to whether the civil proceedings would abate under the provisions of Section 5 (2) of the U. P. Consolidation of Holdings Act after publication of the notification under Section 4 of the said Act. The civil proceeding was in the nature of a suit for cancellation of a sale deed. The Supreme Court made a distinction between a case where a document was wholly or partially invalid so that it could be disregarded by any Court or authority and one where it has to be actually set aside before it ceases to have legal effect. It was observed that an alienation made in excess of power to transfer would be to the extent of the excess of power, invalid. An adjudication on the effect of such a purported alienation would be necessary in the decision of a dispute involving conflicting claims to rights or interest in lands which are subject-matter of consolidation proceedings. The existence and quantum of rights claimed or denied will have to be declared by the consolidation authorities which would be deemed to be invested with jurisdiction, by necessary implication of their statutory powers, to adjudicate upon such rights and interests in land, to declare such document effective or ineffective, but where there is a document, the legal effect of which can only be taken away by setting it aside or its cancellation, authorities have no power to cancel the sale deed and, therefore. It must be held to be binding on them so long as it is not cancelled by a Court having the power to cancel it.

12. Thus, it is evident that substance of the claim and not its form which is decisive, as there is no general rule that whenever a suit for cancellation of a sale deed is filed, it should be cognizable by a revenue court or it should be taken up by a civil court. The jurisdiction of the revenue court or the civil court depends on the substance of the allegation and if the deed is void, on the face of it, it requires no cancellation or declaration as being void, hence the revenue court, in such a case, could proceed to determine the right of the parties. But when a deed is not void and it becomes void only on proof of certain facts, the intervention of the civil court is necessary as a decision declaring it void could be made by the civil court only.

13. In the present case, the petitioner has sought a relief for the cancellation of the sale deed dated 17.11.1979 and a decree for injunction, if the petitioner would not be found to be in possession over the land in question. According to the petitioner, the cause of action arose to the petitioner on 17.11.1979 when the alleged sale deed was executed and on 11.12.1979 when she came to know about the said sale deed. The petitioner has categorically averred in the plaint that she inherited the land in question after the death of her father and after due enquiry, the land in question was mutated in her favour on 28.12.1979. Thus, it is evident that the petitioner has not sought a relief for declaration that she should be declared as Bhumidhar of the land in question as she stepped into the shoes of her late father and her name was recorded as Bhumidhar on the land in question.

14. The Courts below relying upon the observations of the judgment of a Division Bench of this Court in *Dr. Ajodhya Prasad v. Gangotri*, 1981 ALJ 647, returned the suit for presentation before the revenue court. The Courts below ignored to consider that the plaintiff in *Ajodhya Prasad v. Gangotri Prasad* (supra), instituted a suit in the civil court for a relief of declaration that he was the sirdar of the land in dispute and for possession in case he was found to be out of possession. The plaintiff had also claimed relief for cancellation of a sale deed executed by defendant No. 1 in favour of defendant No. 2 in respect of the holding in dispute and for an injunction. A defence was taken to the effect that the civil court had no jurisdiction and the suit was cognizable by the revenue court.

15. After much litigation the matter came up before this Court and a learned single Judge, had taken the view that once the relief of cancellation of sale deed is claimed and injunction is prayed for, the suit can be cognizable by the civil court. Thereafter the matter has come up before the Division Bench of this Court in *Ajodhya Prasad v. Gangotri Prasad* (supra), wherein it was observed :

'A sale deed cannot be said to create a cause of action and it needs to be avoided when the Instrument referred to in the plaint is a void document and it creates no title ab initio.'

It was further averred :

'Where the plaintiff alleged that he was the son of the deceased landlord and claimed declaration of his sirdari in the disputed land and instituted a suit in civil court and claimed reliefs of cancellation of sale deed in respect of disputed land executed by his mother and for injunction, the jurisdiction of civil court would be barred as the plaintiff being a preferential heir under Section 171 and his mother being no heir, the sale deed would not require cancellation by a civil court and in respect of cause of action of threatened invasion of plaintiff's right, relief could be given by a revenue court.'

16. Thus, it is evident that the Courts below committed a manifest error of law in relying upon the observations of the Division Bench in *Ajodhya Prasad v. Gangotri Prasad*, on the facts of the present case. In the present case, the petitioner has not sought the relief for declaring herself as the bhumidhar. She only staked the claim for the cancellation of the sale deed on the ground of fraud because according to her, the sale deed was executed by an Imposter and not by her father who had already expired.

17. In *Ram Awalamb v. Jata Shanker*, 1968 AWR 731, the Full Bench of this Court while resolving the conflicting judgments of the Division Bench of this Court observed :

'Where in a suit, from a perusal only of the relief claimed, one or more of them are ostensibly cognizable only by civil court and at least one relief is cognizable by the

revenue court, further questions which arise are whether all the reliefs are based on the same cause of action and if so, (a) whether the main relief asked for on the basis of the cause of action is such as can be granted only by a revenue court or (b) whether any real or substantial relief, though it may not be identical, with that claimed by the plaintiff, could be granted by the revenue court. There can be no doubt that in all cases contemplated under (a) and (b) above, the jurisdiction shall vest in the revenue court and not in the civil court.'

It was further observed :

'A document which the plaintiff shows also purports to have been transferred by a person not authorised to do so can be cancelled through Court to the extent of the plaintiffs share and after a decree has been passed in his favour. Information of the same has to be sent to Registration ', Department for making a note in their register. To have a document adjudged void or voidable cannot be considered to be altogether necessary because after a lapse of several years the unchallenged existence of such document can cause serious difficulties to the plaintiff.....In short the relief for declaration or partition cannot be said to be effective alternate relief for cancellation of sale deed in respect of whose holding or part of holding.'

18. In *Ram Padarath and others v. IInd Additional District Judge, Sultanpur and others*, 1989 AWC 290 (FB), the controversy regarding the jurisdiction of the civil court and revenue court in entertaining a suit regarding agricultural land again cropped up. In that regard, *Ram Awalamb v. Jata Shanker* (supra) was reconsidered by the Full Bench of this Court, wherein it was observed :

'The Full Bench did not keep any distinction in this behalf in respect of void or voidable sale deeds and according to its observation, if cause of action for cancellation of a deed arises, the effective relief of cancellation under Section 331 of the Specific Relief Act would be in civil court and a suit in revenue court will not be an effective substitute.'

19. After considering almost all the judgments delivered by learned single Judges and Division Benches, the controversy was set at rest by the Full Bench in *Ram Padarath v. Second Additional District Judge* (supra), wherein it was observed:

'In the case of void document said to have been executed by a plaintiff during his disability or by some one impersonating him or said to have been executed by his predecessor whom he succeeds, the relief of cancellation of the document is more appropriate relief for clearing the deck of title and burying deep any dispute or controversy on its basis in presenti or which may take place in future. The document after its cancellation would bear such an endorsement in Sub-Registrar's register and would be the basis for correction of any paper and revenue record including record of register. Section 31 of the Specific Relief Act itself prescribes as to who can seek relief of cancellation. A third person cannot file a suit for cancellation of a void document. If in fact no decree for cancellation was needed and real and effective relief could be granted by the revenue court only, the civil court decree would even then be valid and not void if no objection to the same was taken before the trial court. If such an objection was taken before the trial court before framing of issues and objection continued to be taken before appellate and revisional court and there has been failure of justice because of change of forum then the civil court decree could be said to be without jurisdiction.'

In Para 7 of the report the Full Bench observed :

'So far as voidable document like those obtained by practising coercion, fraud, misrepresentation, undue influence etc., are concerned, their legal effect cannot be put to an end without its cancellation. But a void document is not required to be cancelled necessarily. Its legal effect if any can be put to an end by declaring it to be void and granting some other relief instead of cancelling it. Once it is held to be void it can be ignored by any Court or authority being of no legal effect or consequence. A document executed without free consent or one which is without consideration or the object of which is unlawful or executed by a person not competent to contract like a minor or in excess of authority would be a void document. In case it is in excess of authority it would be void to that extent only. There is presumption of due registration of a document and correctness of the facts mentioned in the same, but the said presumption is not conclusive and be dislodged.'

20. It is really unfortunate that when the first appellate court dismissed the appeal preferred by the petitioner in the year 1983, the Full Bench in Ram Awalamb v. Jata Shanker (supra), had already laid down the law, but that was not at all considered by the Courts below. The decision in Ram Awalamb v. Jata Shanker (supra), was amplified and expanded later on by the Full Bench in Ram Padarath (supra).

21. The first appellate court heavily relied upon the decision of the Division Bench in Ajodhya Prasad (supra), which pertains to determination regarding the jurisdiction of the consolidation authority. But in Ram Padarath (supra), the Full Bench observed :

'So far as it (Dr. Ajodhya Prasad v. Gangotri Prasad), holds that suit in respect of void document will lie in the revenue court. It does not lay down good law.'

It was further observed :

'Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status of a tenure holder is necessarily needed in which event relief for cancellation will be surplusage and redundant. A recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the Court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court.'

22. As stated in the foregoing paragraphs, the petitioner is a recorded tenure-holder having a prima facie title in her favour. She has not claimed that she should be declared as Bhumidhar because she has already been recorded as such after the death of her father. Thus, she cannot be directed to approach the revenue court for seeking the relief of cancellation of the sale deed even if it could be said to be a void document.

23. As stated earlier, the controversy in the present suit is as to on which date the petitioner's father had expired and whether the sale deed was executed by petitioner's father during his life time or was executed by an imposter after the death of the petitioner's father. This question can only be decided on the basis of the evidence, by the civil court.

24. In view of the observations made by the Full Bench in Para 7 of the report in Ram Padarath (supra), such a document would be a voidable document and hence only the civil court shall have the Jurisdiction to decide the same even if the ancillary relief claimed in the suit can be decided by the revenue court.

25. In view of what has been stated above, the writ petition succeeds and is allowed. A writ in the nature of certiorari quashing the judgments and orders dated 1.2.1983 and 7.4.1982 passed by, the respondent Nos. 1 and 2 respectively, is issued. A writ in the nature of mandamus is also issued commanding the respondent No. 2 to register the suit to its original number and decide it on merit in accordance with law.