

Narendra Singh Vs. Sardar Swarn Singh

Narendra Singh Vs. Sardar Swarn Singh

SooperKanoon Citation : sooperkanoon.com/477943

Court : Allahabad

Decided On : Feb-01-2008

Reported in : 2008(2)AWC1525

Judge : Shiv Charan, J.

Appellant : Narendra Singh

Respondent : Sardar Swarn Singh

Judgement :

Shiv Charan, J.

1. Heard learned Counsel for the parties and perused the judgment of the courts below as well as the pleading of the parties and other documents present on the record. Both the learned Counsel for the parties agreed that this appeal may be decided finally at the stage of admission after framing the substantial question of law if involved. The second appeal has been instituted against the judgment and decree passed in Civil Appeal No. 16 of 2007, Narendra Singh v. Sardar Swarn Singh dated 3.12.2007. By this judgment and decree the learned appellate court dismissed the appeal of the appellant/defendant. The respondent Sardar Swarn Singh instituted O. S. No. 53 of 1993, in the Court of Civil Judge (S.D.) for permanent injunction regarding the land of plot No. 6522/2 measuring 0.30 acre situated at Mohalla Ravtyanapura, tehsil, pargana and district Lalitpur fully described at the foot of the plaint. And the trial court decreed the suit of the

plaintiff/ respondent. Being aggrieved from the judgment of the appellate court this second appeal has been instituted.

2. It has been alleged in the plaint that the plaintiff/respondent who is exclusive owner in possession and recorded as bhumidhar Khata Khatauni No. 1516 and plot No. 6522/2. This plot was purchased vide sale deed dated 15th July, 1965. And the name of the plaintiff was also recorded in the revenue records. That in order to construct the house over this plot, permission was obtained from the District Magistrate, Lalitpur under the provision of U.P. Road Side Control Act. The map was also sanctioned by the Nagarpalika. But due to the death of father of the plaintiff the house could not be constructed over this plot but a Tappara was constructed over this land and the defendant has got no right from the property in dispute and illegally interfering in the possession of plaintiff. The defendant-appellant contested the suit, filed written statement and denied the plaint allegation specifically. It has further been alleged that the boundary of the property shown at the foot of the plaint is not the property of plot No. 6522/2 measuring 0.3 acres. But this land is of the ownership and possession of the appellant. That a tappara is existing over this land besides lying other articles also. The plaintiff had never been in the possession of the property in dispute. That the property in dispute was not identifiable on the spot with the boundary as mentioned in the plaint. The plot No. 6522/2 has also not been shown in the map. That on the basis of this description no relief can be granted to the plaintiff. That one case was contested by the respondent-plaintiff in the Court of S.D.O., Lalitpur under Section 41 of Land Revenue Act. The case was instituted by the respondent for demarcation of the land of plot No. 6522/2. But the S.D.O. dismissed the proceeding of Section 41 of the Land Revenue Act with the observation that defendant is in possession of the property. The Court had also held that no termimi map was prepared. The order was challenged in the Court of the Commissioner and the Commissioner, Jhansi Division Jhansi also dismissed the Appeal No. 16/3 of 73-74, Sardar Swaran Singh v. Brij Behari Pandey and Ors. on 16.5.1975. That the appellant contested the proceedings and as there was no sub-division of plot, hence the proceedings of demarcation was dismissed. As no such plot was existing on the property hence the plaintiff was not entitled for relief. Further alleged that the property in dispute of the boundary shown in the W.S. was purchased in consideration of Rs. 1,000 from

Nirbhan Singh, Kamta Prasad and others. That the suit has been instituted wrongly. The evidence was produced by both the parties in the trial court. The trial court as well as appellate court considering that the respondent/ plaintiff is recorded tenure holder hence entitled for the relief of permanent prohibitory injunction. Being aggrieved from the judgment of appellate court this second appeal has been instituted.

3. It has been argued by learned Counsel for the appellant that the finding recorded by the courts below to the effect that plaintiff/respondent is the owner in possession of the property described at the foot of the plaint and part of the plot No. 6522/2 is perverse and as there is no demarcation of plot No. 6522/2 in the khasra and khatauni and in the map also. Hence, no relief could have been granted to the plaintiff. That the proceeding for demarcation under Section 41 of U.P. Land Revenue Act had been dismissed against the plaintiff/respondent and thereafter the remedy available to the respondent was by filing a suit for declaration before the competent revenue court. And after the judgment in the proceeding under Section 41 of the Land Revenue Act the civil court was not justified in decreeing the suit merely on the basis of fictitious and forged revenue entries. And the civil court has got no jurisdiction to adjudicate the matter.

4. The learned Counsel for the respondent argued that as respondent/plaintiff was the recorded tenure holder of plot No. 6522/2 measuring 0.30 acres hence it is the civil court alone who was competent to grant the relief of injunction. That in view of several pronouncement of Apex Court and this Court a suit for injunction is maintainable before the civil court of recorded tenure holder and as the plaintiff was the recorded tenure holder. Hence, the judgment of the courts below is perfectly justified and there is concurrent finding of fact and that no question of law is involved in this case. He also argued that even the defendant purchased the property in dispute with the specific boundary as mentioned in the written statement. Hence, the defendant also cannot say that he purchased the property by the registered sale deed and even the name of the defendant/appellant has not been mutated in the revenue records. And as no question of law is involved hence the appeal is liable to be dismissed.

5. I have considered the pleadings and evidence as well as the submissions of the counsel for the appellant and respondents. And in my opinion substantial question of law is involved in this appeal. Undisputedly earlier proceedings were initiated under Section 41 of the U.P. Land Revenue Act for demarcation of property of plot No. 6522/2 and also of the boundary mentioned in the plaint. And the proceedings under Section 41 of the U.P. Land Revenue Act was dismissed with the observation that the land in dispute was not demarcated on the spot and also in the Sejara hence the proceeding under Section 41 of U.P. Land Revenue Act is not maintainable. And even the appeal filed in the Court of Additional Commissioner, Jhansi Division was also dismissed vide judgment and order dated 16.5.1975. Hence, the following substantial question of law is involved:

(1) Whether the civil court has got the jurisdiction to grant the relief of permanent prohibitory injunction to a recorded tenure holder of a property without demarcation of plot No. 6522/2 and even after dismissal of proceeding under Section 41 of the U.P. Land Revenue Act?

(2) And what is the remedy available to a recorded tenure holder after dismissal of proceedings under Section 41 of U.P. Land Revenue Act?

6. As I have stated above, that this is an undisputed fact that plaintiff-respondent initiated proceedings under Section 41 of Land Revenue Act before the S.D.O. Lalitpur and the S.D.O., Lalitpur dismissed the Case No. 118/1972-73 under Section 41 of the U.P. Land Revenue Act vide order dated 21.12.1973 and against the judgment of the S.D.O. Appeal No. 16/3 of 1973-74 Sardar Swarna Singh v. Brij Behari Pandey and Ors. was instituted in the Court of Commissioner, Jhansi Division, Jhansi and this appeal was decided vide judgment and order dated 16.5.1975 and even the appeal was also dismissed. A categorical finding was also recorded by the Additional Commissioner to the effect that:

In khatauni 1377/79 fasli Sardar Swaran Singh is recorded bhoomidhar from 1373 fasli and in Khasra 1380 F Sardar Swaran Singh is recorded in column of tenant.' There is no entry in the name of any body else. The land is recorded as barjar. In khatauni 1381 fasli Gabdu and Badri are recorded as bhumidhars from before 1360 fasli on 6522/1 and 6522/6. In survey map there are no batta numbers.

Under the provisions of Land Revenue Act demarcation could be made either on the basis of survey map or on the basis of possession. In the survey map there is no batta number. Demarcation could not be made on the basis of Tarmimi map. Possession by the appellant should have been proved by producing the Lekhpal as witness who could have given his statement that he found the appellant in the possession and indicated the area by making a tarmim in the survey map then alone it could be evidence of possession of the appellant. The appellant has failed to prove his possession and the demarcation was rightly rejected.

7. The above judgment of the Additional Commissioner shows that in the survey map no batta number was put up. It may be correct that respondents purchased the land of plot No. 6522/2. But where plot No. 6522 is existing on this plot. The map maintained in the Revenue Department can be the evidence of this fact but as is evident from the judgment of the Additional Commissioner that there was no batta number in the survey map. Hence, the land could not be demarcated. The learned Counsel for the appellant stated that even the Lekhpal of the area has stated that there are as many as 43 tenure-holders of plot No. 6522 and this plot is a big plot but in the survey map it has not been demarcated showing the possession of each of the occupants. A question answer was also obtained paper No. 99 from the Tehsildar. Lalitpur regarding the Tarmim in plot No. 6522 in the settlement and whether plot No. 6522/2 is identifiable in the map and the answer was given that till date no tarmim took place and that the plot was not identifiable on the spot. Paper No. 101 is also the certificate issued in favour of the appellant by the Lekhpal that there is no tarmim in plot No. 6522M. And on the basis of these circumstances the learned Counsel for the appellant argued that as the property in dispute was not identifiable on the spot. Hence no relief of injunction could be granted in favour of the respondent merely on the basis of entry in the revenue record. The learned Counsel for the appellant also cited *Smt. Leelavati v. Soosa Ram* 1985 ALJ 984 (All) and it has been held in this judgment that:

A mere look at Section 41 of U.P. Land Revenue Act, 1901 shall go to disclose that such settlement of boundary dispute was within the exclusive domain of the revenue court and not the civil court. As the land lay within the municipal limits, so Section 41 of the aforesaid Act was fully applicable and the jurisdiction of revenue

court could not be ousted merely by modulating the relief for injunction. The pith and substance of the allegations made in the plaint is such in respect of which an adequate relief can be granted by a revenue court. Courts below have erred on this legal point.

8. Hence, in view of the judgment of this Court that settlement of boundary dispute is within the domain of revenue court. Learned Counsel also argued that this judgment was delivered in a second appeal. The learned Counsel for the appellant further cited *Smt. Swarni v. Smt. Inder Kaur and Ors.* : AIR 1996 SC2823 , it has been held by Hon'ble Apex Court:

The appellate court could not reverse the decree of the trial court merely on ground of mutation entry in favour of the defendant. Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. Mutation entry in favour of the defendant did not convey any title in her favour.

9. On the basis of this judgment learned Counsel for the appellant argued that mutation of a property in revenue records does not create or extinguish title. But it is only relevant that the person in whose favour the mutation ordered is required to pay the land revenue. The same principle has been followed by Hon'ble Apex Court in *Sura) Bhan and Ors. v. Financial Commissioner and Ors.* 2007 (103) RD J16 : 2007 (3) AWC 2329 (SC) and Hon'ble Supreme Court in *Jattu Ram v. Hakam Singh and Ors.* : AIR 1994 SC1653 . In this judgment the Hon'ble Supreme Court held-that:

The sole entry on which the appellate court placed implicit reliance is by Patwari in Jamabandi. It is settled law that the Jamabandi entries are only for fiscal purpose and they create no title. It is not the case that the appellant had any knowledge and acquiesced to it. Therefore, it is a classic instance of fabrication of false entries made by the Patwari, contrary to the contract made by the parties, though oral.

10. Hence, it is definite and established law of the land that the entries made in the revenue record do not create or extinguish any title in favour of the person in whose favour it is recorded. Hence, it is only relevant for fiscal purpose. And on the basis of this ruling the learned Counsel for the appellant argued that in the circumstances of the case, the entry in the revenue record in favour of the respondent cannot create any right in his favour. And it has been established from the evidence and circumstances that there is no demarcation in the revenue record of plot No. 6522/2 and even the proceeding under Section 41 of U.P. Land Revenue Act was dismissed against the respondent. Hence, the civil court was not justified in decreeing the suit of the respondent/ plaintiff merely on the basis of revenue entry. And in these circumstances the proper course for the respondent/plaintiff was to approach the revenue court for demarcation and declaration of title and civil court was not the competent court to grant this relief of injunction when there was no demarcation of plot No. 6522/2 on the spot.

11. Learned Counsel for the respondent opposed the argument of learned Counsel for the appellant and it has further been argued that as respondent is recorded as tenure holder of the land of plot No. 6522/2 and it is the civil court which is the competent court to grant the relief of injunction. That the revenue court has no Jurisdiction and power to grant the relief of injunction. In this context learned Counsel for the respondent cited numerous judgments of the High Court and Hon'ble Apex Court.

12. The learned Counsel for the respondent cited Uttaranchal High Court decision in Kulwant Kaut Sidhu v. Smt. Rahiman Bai Guddi 2006 (2) AWC 1806 (UHC); Allahabad High Court decision in Shyam Dhar v. XIth Additional District Judge, Allahabad and Ors. 2004 (3) AWC 1889, Sobha Singh v. Udai Bhan Singh and Ors. 2005 (2) AWC 1743, Rameshwar and Brajesh v. VIIth Additional District and Sessions Judge, Deoria and Ors. 2002 (2) AWC 1137. In all these rulings it has been held that suit for permanent Injunction is maintainable before the civil court even regarding the agricultural land and the suit shall not be barred under Section 331 of U.P.Z.A. and L.R. Act.

13. I agree with this established position of law that it is only civil court which has got the right and power to grant the relief of injunction and the revenue court has no power and jurisdiction to entertain or to grant the relief of injunction. Further if a suit is instituted under Section 229B of the U.P.Z.A. and L.R. Act then the revenue court can grant the relief of injunction alongwith declaration. But purely the suit for injunction is maintainable before the civil court only. But the facts of the case are material in order to ascertain whether the plaintiff/respondent must have approached the revenue court for seeking declaration under Section 229B of the Act and in the same suit the relief could be claimed for injunction also. In the present case it is material to mention that the plaintiff/respondent is claiming himself owner in possession over the property in dispute on the basis of entry in the revenue record over the plot No. 6522/2. It is also an undisputed fact that plot No. 6522 is a very big plot occupied and possessed by numerous persons. But in the khasra and sejra no batta number has been marked. Hence, material question is that wherein plot No. 6522 the plot No. 6522/2 of the. plaintiff is existing. And as there was a dispute in between the parties over the identity of the land of plot No. 6522/2. Hence the plaintiff approached the revenue court under Section 41 of the U.P. Land Revenue Act for demarcation of the plot. And the S.D.O. concerned as well as the Additional Commissioner, Jhansi recorded a concurrent finding that the land of plot No. 6522/2 is not identifiable on the spot. And that no batta number has been marked over this plot No. 6522 and without survey the property in dispute cannot be demarcated and accordingly proceedings under Section 41 of the Land Revenue Act was dismissed. I have stated above that in view of the judgment of the Hon'ble Apex Court entry of revenue record does not create or extinguish the title over the land. But the entry of the revenue record is relevant only for fiscal purpose. And the meaning of this entry is that the persons who is recorded tenure holder of a plot is required to pay the land revenue. And when the competent revenue court was of the opinion that the property of plot No. 6522/2 was not identifiable and it is not the case of the plaintiff that afterwards the land of this plot was demarcated by the competent court. In my opinion in the peculiar circumstance of the case the relief for injunction could have not been granted to the plaintiff/respondent merely on the basis of entry in the revenue record. Where this land of plot No. 6522/2 is existing is uncertain. On the basis of the entry in

favour of the respondent only presumption could be drawn that he is co-tenure holder of plot No. 6522. But the plaintiff instituted the suit for permanent prohibitory injunction for specific portion of the plot which was described at the foot of the plaint alleging that this land is part of plot No. 6522/2. And the courts below without getting the land of plot No. 6522/2 demarcated and located decreed the suit of plaintiff/ respondent merely on the basis of entry of the revenue record. This was not justified in the circumstance of the case.

14. Learned Counsel for the respondent/plaintiff also cited Ramesh Pal Singh and Ors. v. Board of Revenue and Ors. 2002 (2) AWC 948. And it has been held in this Judgment that:

The aforesaid section clearly provides that any order passed by the revenue courts under Sections 33, 35, 39, 40, 41 or 54 shall be subject to the decision of a competent court on the regular side where the suit is filed on the basis of a right in a holding.

Further held 'Proceedings under Section 41 of L.R. Act are only summary proceedings and they are meant only to facilitate the work of the revenue courts. They are not conditions precedent for the maintainability of a suit under Section 209.

15. Hence, in view of this judgment also the order passed under Section 41 of the Land Revenue Act is subject to the decision of a competent court of a regular side. And the learned Counsel for the respondent tried to persuade me to draw the inference that after the decision of revenue court under Section 41 of the Land Revenue Act the competent court is the civil court to grant the relief of injunction. But this is wrong conception of the learned Counsel for the respondent, that after the decision of Section 41 of L.R. Act the competent court is the civil court. In my opinion the competent court is the revenue court which has got a right and authority to adjudicate about the title also. Civil court is competent only to grant the relief for injunction merely on the basis of entry of the revenue record without going beyond the entry of the revenue. Whereas when the order has been passed under Section 41 of the Land Revenue Act then it means that the property in dispute is not identifiable and then it required that the property must be properly

demarcated by the competent court and not by the civil court. The appellant/defendant is not alien to this land in dispute. But he is also claiming the land as part of the plot No. 6522 which was purchased from the recorded tenure holder and when two persons are claiming the property in dispute and it has been shown that both have got bona fide claim over the land then the mere entry of the revenue record is not sufficient to adjudicate the matter. Then it is required to enquire that where is the land of plot No. 6522/2 existing must be ascertained and this can only be ascertained by the revenue court and not by the civil court. The present case was not such case in which the relief to the plaintiff could have been granted merely on the basis of revenue entry. Because other parties are also claiming ownership of the property alleging that this is a part of the land of plot No. 6522. It has been established in the proceedings under Section 41 of the Land Revenue Act that the property of plot No. 6522/2 is not identifiable. In these circumstances in my opinion the proper remedy available to the plaintiff was to approach the revenue court for declaration as well as demarcation of plot No. 6522/2. Instead of approaching civil court for obtaining a decree of permanent prohibitory injunction over the land fully described at the foot of the plaint alleged that this property is the land of plot No. 6522/2. The appellant is not a trespasser but he is also claiming the property on the basis of sale deed executed by the tenure holder of plot No. 6522. It is immaterial that the name of the appellant has not been mutated over the land in pursuance of the sale deed. But dispute is not with the seller of the defendant appellant but dispute is with a third person of the sale deed and undisputedly seller was also recorded as tenure holder of plot No. 6522/2. In these circumstances, I fully disagree with argument of the learned Counsel for the respondent that it is the civil court alone which is competent to grant the relief of injunction. I am also of the opinion that in the circumstances of the case, it was not the civil court which was competent court but it was the revenue court which should have adjudicated.

16. Learned Counsel for the respondent also cited *State of Andhra Pradesh v. Majeti Laxmi Kantha Rao and Ors.* AIR 2002 SC 2220, it has been held by the Apex Court that:

The test adopted in examining such a question is (i) whether the legislative intent to exclude arises explicitly or by necessary implication, and (ii) whether the statute in question provides for adequate and satisfactory alternative remedy to a party aggrieved by an order made under it.

17. Learned Counsel for the respondent further cited Subhaga and Ors. v. Shobha and Ors. : (2006)5SCC466 , it has been held by the Apex Court that:

a property can be identified either by boundaries or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail.

18. I have considered the judgments of Hon'ble Apex Court and I am of the opinion that no benefit can be given to the appellant on the basis of these judgments.

19. In order to ascertain the jurisdiction of the civil court, it has been provided by the Hon'ble Apex Court that the facts of the case and the intent of Legislature is more material. In the facts of the present case the adequate and satisfactory alternative remedy was available to the aggrieved person by approaching the revenue court under Section 229B of U.P.Z.A. and L.R. Act. Where there was a dispute regarding the location and existence of a specific land of specific plot even the competent revenue court was not in a position to demarcate the land of that part then proper remedy is by filing a suit for declaration and not filing a civil suit before the civil court. Moreover in Subhaga and Ors. v. Sobha and Ors. the matter in controversy was regarding the boundary of property and survey was conducted of the land but in the present case no survey took place of the land in order to demarcate the property. But the civil court granted injunction purely and merely on the basis of revenue record and revenue entry. And as the Hon'ble Apex Court has held that revenue entry is relevant only for fiscal purpose and it does not create or extinguish the title. Both the courts below have committed a gross illegality and error in decreeing the suit of the plaintiff-respondent merely on the basis of revenue entries.

20. On the basis of above discussions and reasons, I am of the opinion that in the circumstances of the case, civil court is not competent court to grant the relief for permanent prohibitory injunction merely on the basis of revenue entry in his favour specially in the circumstances when the proceeding under Section 41 of the Land Revenue Act for demarcation of land for plot No. 6522/2 was dismissed. After dismissal of the proceedings under Section 41 of the Land Revenue Act the proper course and remedy available to the plaintiff-respondent was to approach the revenue court and not to seek the relief for injunction from the civil court. The above substantial question of law are answered accordingly against the respondent-plaintiff.

21. On the basis of above reason, I am of the opinion that the courts below committed gross illegality and error in decreeing the suit for injunction of the plaintiff-respondent. The suit in the circumstance of the case was not maintainable before the civil court. In the fact of the case, revenue entry was not sufficient to decree the suit. The second appeal deserves to be allowed. The second appeal is allowed at the stage of admission and the judgment and decree passed by the courts below are set aside. The suit of the plaintiff-respondent is accordingly dismissed.