

Devendra Shankar Chaudhary Vs. Varun Kumar Chaudhary and Others

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Court : Allahabad

Decided On : May-01-2000

Reported in : 2000(3)AWC2339

Judge : D.K. Seth, J.

Acts : [Specific Relief Act, 1963](#) - Sections 41; Uttar Pradesh Land Revenue Act, 1901 - Sections 34; [Indian Succession Act, 1925](#) - Sections 278; Allahabad High Court Rules 1952 - Rule 1

Appeal No. : First Appeal From order No. 766 of 1995

Appellant : Devendra Shankar Chaudhary

Respondent : Varun Kumar Chaudhary and Others

Advocate for Def. : Dilip Gupta, Adv.

Advocate for Pet/Ap. : M.C. Tiwari, Adv.

Judgement :

D.K. Seth, J.

1. By an order dated 31.3.1995, an Injunction was granted restraining the revisionist from prosecuting the proceeding in Case No. T.249/29.10.1993 under Section 34 of the U. P. Act No. 3 of 1991 pending in the Court of Tehsildar,

Chandausi and in mutation Case No. 291/1.1.1994 pending in the Court of Naib-Tehsildar. Chandausi till the disposal of the suit pending in the Court of learned Civil Judge. Moradabad in Suit No. 115 of 1994 filed under Section 278 of the Indian Succession Act. This appeal has been preferred against the said order.

2. The appeal was admitted on 29.8.1995 and an interim order was also passed to the extent that the appellant shall not take advantage of the order dated 31.3.1995 and prosecute the cases mentioned hereinabove pending in the Court of Tehsildar, Chandausi. Thus, the fact remains that the injunction was virtually stayed.

3. Be that as it may, though the appeal was admitted but the records have not been called for by the Court. Chapter XII, Rule 1 of the Allahabad High Court Rules, provides that in an appeal from order or a revision directed against an interlocutory order, the record shall not be summoned unless the Court directs otherwise.

4. In the present case, the Court did not call for the record. On the other hand, it appears that though the appellant had moved an application for summoning of the record before the Court, but an order was passed by the Additional Registrar for summoning the record. Learned counsel for the appellant is not able to explain as to how the Additional Registrar could pass such an order under Chapter XII. Second proviso to Rule 1 of the Chapter XII clearly provides that unless the Court directs, the record shall not be called in connection with appeal from order. It is not known how such an application can be moved by the appellant before the Additional Registrar and obtain an order for summoning the record. It shows that the appellant has abused the process of law by obtaining such an order from the Additional Registrar. In view of the provision of Chapter XII, Rule 1 second proviso referred to above, it is only the Court which alone can summon the record in appeal from order or revision. The Additional Registrar or Registrar is neither empowered nor competent to summon the records in such cases.

5. Be that as it may, records have since come. Let the records be transmitted to the learned court below at the cost of the appellant through special messenger. Cost whereof shall be put in by the appellant within one week from today. In

default, the defence of the appellant in the suit shall be struck off.

6. After this order, on the prayer of both the learned counsel, the appeal is treated to be on the days' list for hearing and is taken up for hearing. Both the learned counsel had addressed the Court on merit of the appeal.

7. It appears that by reason of the said order, the whole proceeding has since been stayed which is otherwise prohibited under Section 41(a) of the Specific Relief Act.

8. Mr. Dilip Gupta, learned counsel for the respondent on the other hand contended that the proceeding was not a Judicial proceeding, therefore, the Court passed an injunction in terms of Section 41(a) of the said Act.

9. Mr. M. C. Tiwari, learned counsel for the appellant on the other hand contended that it is a judicial proceeding.

10. I have heard learned counsel for the parties.

11. In order to attract Section 41(a) of the Specific Relief Act. It must be shown that (1) at the time of the institution of the suit in which the injunction is sought, a judicial proceeding must be pending in another Court and not merely contemplated, and (2) that the object of the relief by way of injunction is to prevent multiplicity of suits, as was held in *Municipal Board, Meerut v. Bir Singh*. AIR 1965 All 527.

12. In this case a doubt has been raised that the proceedings mentioned therein are not judicial proceedings. Therefore, no injunction could be granted.

13. Be that as it may. It seems that the impugned order was not happily coined. The Court could have passed order to the extent that the order passed in the said proceeding may not be given effect to subject to the result of the suit and may not have been given effect to till disposal of the suit.

14. Admittedly, if the proceeding is proceeded with and the mutation is effected, in that event, it will affect the rights of the parties in respect of the suit property involved in the suit, which is an admitted position. At the same time, by reason of

the order dated 31.3.1995 the proceeding has not been proceeded with.

15. In such circumstances, this appeal is disposed by modifying the order dated 31.3.1995 to the extent that the proceedings mentioned therein, even if proceeded with the orders passed therein, shall be subject to result of the suit and shall not be given effect to until disposal of the suit.

16. With this observation this appeal is disposed.

17. Let the hearing of the suit in the trial court be expedited, if possible within a period of one week from today.

18. With this observation this appeal is disposed of.

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