

**Barkhu and ors. Vs. Vth Additional District Judge and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/484727](http://sooperkanoon.com/484727)

**Court :** Allahabad

**Decided On :** May-07-2004

**Reported in :** AIR2004All418; 2004(4)AWC3175

**Judge :** Arun Tandon, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 31; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 - Sections 331

**Appeal No. :** Civil Misc. Writ Petn. No. 14252 of 1989

**Appellant :** Barkhu and ors.

**Respondent :** Vth Additional District Judge and ors.

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** R.C. Gupta, Adv.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**Arun Tandon, J.**

1. Heard counsel for the petitioner and Standing Counsel on behalf of the respondent. Nobody is present on behalf of the private respondents.
2. Petitioner's father had filed Original Suit No. 219 of 1982, Tamai v. Smt. Prabhawati and Ors., only with one relief i.e. cancellation of the registered sale-deed.
3. In the said suit written statement was filed on behalf of the defendant and it was contended that the suit as filed was not maintainable in view of the bar contained in Section 331 of the U.P.Z.A. and L.R. Act.
4. The Munsif framed an issue in that regard and vide order dated 10th December, 1986 held that the Civil Court had jurisdiction to try the said suit. Against the said order Defendant No. 2 filed a revision, which was numbered as Civil Revision No. 63 of 1987. The revision filed by the defendant has been allowed and it has been held that the Civil Court had no jurisdiction to entertain the suit in view of the bar contained in Section 331 of the U.P.Z.A. and L.R. Act. Hence, present writ petition.
5. It is contended on behalf of the petitioner that the sole relief prayed for in the plaint was for cancellation of the registered sale-deed as well as the gift deed. Thus, in view of the Section 31 of the Specific Relief Act, the Civil Court had jurisdiction to cancel the said document. In support of his contention the counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court reported in 2001 (92) Rev Dec 241 as well as upon the Full Bench judgment of this Court reported in 1989 Rev Dec 21.
6. Despite notices having been issued to the legal heirs of the respondent No. 3 as well as other respondents, nobody is present on behalf of the private respondents.
7. I have gone through the record of the writ petition as well as copy of the plaint, which is enclosed as Annexure 1 to the writ petition.
8. From the record it is apparently clear that only one relief has been claimed in the said plaint namely cancellation of the registered sale-deed as well the gift deed.

9. The Full Bench of this Court, in the judgment reported in 1989 Rev Dec 21, while considering the jurisdiction of the Civil/Revenue Court in respect of the void sale-deed, has specifically held as follows :--

'These cases in substance lay down that suit for cancellation of void deed is cognizable by civil Court and Section 331 does not deprive a party from a right to approach competent Court of law for getting a document cancelled and instead drives a party to revenue Court claiming a different relief and that of cancellation which a revenue Court cannot grant holding the deed to be void.'

10. Suit for cancellation of a void document will generally lies in the Civil Court and party cannot be deprived of his right for getting this relief under the law except when a declaration of title or status of a tenure-holder is necessarily involved where relief of cancellation of sale-deed is surplus. In the plaint allegation it is contended that plaintiff was recorded tenure-holder in possession of land in dispute and an imposter has executed the sale-deed of the land belonging to the plaintiff. Full Bench, referred to above on Page 30 of the said judgment, has been held that in 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.

11. Reference may also be had to the judgment of Hon'ble Supreme Court reported in 2001 (92) Rev Dec 241 : AIR 2001 SC 1250, Sri Ram v. Additional District Judge, wherein it has been held as follows :

12. On the nullity of the documents we are of the opinion that where a recorded tenure-holder having prima facie title and in possess, files a suit in the Civil Court for cancellation of sale-deed having obtained by some fraud or impersonation cannot be permitted to file a suit for cancellation in Revenue Court reasons have been in said case the prima facie title of the tenure-holder is not in question.

13. Reference may also be had to the judgment reported in AIR 1990 SC 540; Smt. Bismillah v. Janeshwar Prasad, as also to Full Bench Judgment of this High Court reported in 1989 All WC 290; Ram Padarath v. Second Addl. Dist. Judge, Sultanpur, in Para 41 it has been held --

'We are of the view that the case of Indra Deo v. Smt. Ram Pyari, 1982 All LJ 1308 has been correctly decided and the said decision requires no consideration, while the Division Bench case, Dr. Ajodhya Prasad v. Gangotri, 1981 All LJ 647 is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void document will lie in the Revenue Court it does not lay down a good law. 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 and 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.'

14. In view of the aforesaid settled legal position, so far as the suit for cancellation of void sale-deed are concerned, it has repeatedly been held that in such cases the suit as filed before the Civil Court is legally maintainable specifically in view of the Section 31 of the Specific Relief Act, which declares that relief for cancellation of the sale deed can be granted by the Civil Court only.

15. So far as the judgments cited by the Counsel for the petitioner are concerned, the judgment reported in AIR 1973 SC 2451 is a case where the uncle of the plaintiff had transferred the share of the plaintiff in excess of his share. In the said case the Hon'ble Supreme Court held that for deciding as to whether transfer was in excess of his share it is necessary to adjudicate upon the representative share of the parties and in such circumstances it was held that the suit before the Revenue Court was the appropriate remedy.

16. Similarly, in the judgment reported in AIR 1990 SC 1173, the thumb impression of a lady has been obtained by misleading her with regard to correctness of the document. The Hon'ble Supreme Court in such circumstances held that it was necessary for the lady to establish her title over the property in question, therefore, the remedy available to her was by way of proceedings before the Revenue Court.

17. In view of the aforesaid facts, the judgments relied upon by the Counsel for the petitioner are clearly distinguishable. In none of the aforesaid cases recorded tenure-holder in possession of land has filed suit for cancellation of the sale-deed simpliciter with no other relief. The legal position as has been held by the Hon'ble Supreme Court in the judgment reported in 2001 (92) Rev Dec 241 : AIR 2001 SC 1250, is squarely attracted in the facts of the present case.

18. So far as the judgments of the Single Judge of this Court, cited by the Counsel for the petitioner, is concerned, the same are clearly distinguishable and do not have any application now in view of the judgment of the Hon'ble Supreme Court, reported in 2001 (92) Rev Dec 241 : AIR 2001 SC 1250, wherein qua a recorded tenure-holder in possession of land, it has specifically been declared that the suit for cancellation of sale-deed before Civil Court is appropriate remedy. In such circumstances the Munsif has not committed any error of law in holding that the suit filed by the plaintiff is maintainable.

19. In view of the aforesaid, the writ petition is allowed. The order passed by the Revisional Court dated 11-5-1989 is hereby set aside.

20. Since the suit is pending consideration since 1992, it is directed that the trial Court shall proceed to decide the said suit at the earliest possible, preferably within a period of six months from the date a certified copy of this order is produced before him