

Smt. Ketuka Vs. Mathura

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Court : Allahabad

Decided On : Jul-31-2002

Reported in : 2002(4)AWC3061

Judge : Kamal Kishore, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 9 and 100; [Specific Relief Act, 1963](#) - Sections 31; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 331

Appeal No. : Second Appeal No. 754 of 1980

Appellant : Smt. Ketuka

Respondent : Mathura

Disposition : Appeal dismissed

Judgement :

Kamal Kishore, J.

1. This is the second civil appeal against the judgment and decree dated 21.8.1980 passed by IVth Additional District Judge, Lakhimpur Kheri dismissing the appeal and confirming the judgment and decree dated 19.12.1979 decreeing the Suit (No. 210 of 1978) for cancellation of the Will dated 18.6.1977. The aforesaid suit was for cancellation of Will as well as for permanent injunction.

2. The following question of law has been formulated in this second appeal :

'Whether the civil courts had no jurisdiction to decide the suit?'

3. I have heard the parties counsel and have gone through the records.

4. It has been urged on behalf of the defendant-appellant that the civil court has got no jurisdiction to entertain the suit regarding the agricultural land and the courts below have erred in decreeing the suit.

5. Considering the provisions of Section 31 Specific Relief Act and Section 331 of U.P.Z.A. and L.R. Act, this Court, in the cases of *Indra Deva v. Ram Pyari*, 1982 ALJ 1308 and the case of *Ram Padarath v. Ind Additional District Judge*, 1989 (1) AWC 290 (FB) : 1988 (6) LCD 565 has laid down the law to the effect that the suit for cancellation of sale-deed whether void or voidable is maintainable in the civil court. Their Lordships in *Ram Padarath* (supra) have laid down the law to the following effect :

'We are of the view that the case of *Indra Deva v. Smt. Ram Pyari*, 1982 ALJ 1308 has been correctly decided and said decision requires no consideration, while Division Bench case in *Dr. Ayodhya Prasad v. Gangotri* is regarding the jurisdiction of consolidation authorities but so far as it holds that suit in respect of void documents will lie in revenue court, it does not lay down a good law. Suit and action for cancellation of void documents will generally lie in civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right of status is necessarily needed in which even 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 seeking relief for cancellation of 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.'

6. In the case of *Mst. Bismillah v. Janeshwar Prasad*, 1990 (1) AWC 35.9 (SC) : 1990 (II) LCD 536 (SC), the Supreme Court has followed with affirmance the view and law laid down in *Ram Padarath's* case.

7. It has been held by a Full Bench of this Court in Ram Padarath and Ors. v. IInd Additional District Judge, Sultanpur and Ors., 1989 (1) AWC 290 (FB) : 1988 (II) SCD 387, that a suit for cancellation of sale-deed will be maintainable in the civil court even though the allegation of plaintiff is that the sale-deed is a void document. The same view had been expressed by me in Indra Dev and Ors. v. Smt. Ram Pyari and Anr., 1982 All LJ 1308. My judgment and the judgment of the Full Bench were cited before their Lordships of the Supreme Court in Smt. Bismillah v. Janeshwar Prasad and Ors., 1990 (1) AWC 359 (SC) : (1990) 1 SCC 207. Their Lordships have not expressed any disapproval with the view taken in these two cases.

8. In this view of the matter, there is no substance in this contention of the learned counsel for the appellant, and I hold that the suit for cancellation of sale-deed did lay in civil court and that Section 331 of U.P.Z.A. and L.R. Act did not bar it. 'Learned counsel further contended that the finding of the Court below that the deed has been obtained by misrepresentation and fraud and that the plaintiff did not execute the sale-deed with full understanding is incorrect and is liable to be set aside and the learned court below wrongly held that the sale-deeds were without consideration and further that they were not read over and explained to the plaintiff vendor. This is a question of appreciation of evidence. The question of law formulated above is being answered against the appellant.

9. Both the courts below have recorded concurrent findings of fact to the effect that the plaintiff became the owner of the land in suit after the death of Ganga Ram. The defendant-appellant is not the owner and the Will dated 18.6.1977 executed in favour of the defendant is fake one and is liable to be cancelled.

10. Thus, the findings of fact recorded by both the courts below are based on evidence on record. These concurrent findings of fact recorded by both the courts below are based on evidence on record, hence they do not call for any interference by this Court in view of the recent rulings of Hon'ble Supreme Court in Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors., 1999 (2) AWC 1608 (SC) : 1999 (3) SCC 722, Hamida and Ors. v. Md. Khalil, 2001 AIR SCW 2057, Chandra Bhan v. Pamma Bai and Anr., 2001 AIR SCW 2295 and Kaluram v.

Shrinathdas and Ors., 2001 AIR SCW 2290.

11. The second civil appeal is devoid of merits and is hereby dismissed with costs.

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