

Smt. Nirmala Devi Vs. Additional Commissioner and ors.

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Court : Allahabad

Decided On : Jul-05-2007

Reported in : AIR2007All184

Judge : S.U. Khan, J.

Appellant : Smt. Nirmala Devi

Respondent : Additional Commissioner and ors.

Disposition : Petition dismissed

Judgement :

ORDER

S.U. Khan, J.

1. Original respondent No. 8 Lallan (since deceased) had two daughters i.e. Smt. Nirmala Devi the petitioner and Smt. Bittan Devi mother of respondents 4 to 7 Vijay Nath and others. It is alleged that Lallan executed a memorandum of family settlement on 6-2-1989 stating therein that earlier he had given his entire agricultural land to his two daughters i.e. Nirmala Devi and Bittan Devi. It appears that on the basis of the said alleged family settlement names of both the daughters were mutated in the revenue records on 22-1-1991. This was done in pursuance of order dated 10-1- 1991 passed in case No. 413 by Additional Tehsildar, Manikpur, Kunda District Pratapgarh. Thereafter, Lallan executed a sale deed in

favour of respondents 4 to 7 on 15-12-1989. Respondents 4 to 7 filed application before Naib Tehsildar. Naib Tehsildar heard all the parties concerned. Lallan stated that he had not executed the memo- randum, of family settlement. NaibTehsildar Manikpur Kunda Pratapgarh through order dated 5-2-1998 set-aside his earlier order dated 10-1-1991 and directed that the names of respondents 4 to 7 shall be mutated. Against, the said order, belated appeal was filed. Deputy Collector, Kunda district Pratapgarh rejected the delay condonation application through order dated 9-6-1991. Against the said order, revision No. 21 of 1999 was filed. Additional Commissioner (1) Allahabad Division Allahabad rejected the revision on 15-1-2002, hence, this writ petition.

2. Learned Counsel for both the parties were asked to argue the matter on merit, hence, decision is being given on merit. True copy of the unregistered memorandum of family settlement has been filed along with supplementary affidavit by the petitioner. In the said settlement, it was mentioned that the two daughters were successors of Lallan and they were serving him, hence, Lallan had given possession of his agricultural land to them earlier through family settlement and through the said memorandum dated 6-2-1989 the said fact was being recorded.

3. Family settlement can take place only among those family members who have got right (share) in the property. Agricultural land in dispute was admittedly Bhumidhari land of Lallan and his daughters could not have any share in the land during life time of their father Lallan. In view of this, even if it is assumed that family settlement took place and memorandum of settlement was executed it has got no value as it was simply a transaction of sale, hence, it could be executed through registered sale deed. Learned Counsel for the petitioner has mainly placed reliance upon the authority of Supreme Court reported in Kale and Ors. v. D.D.C. : [1976]3SCR202 . In the said authority, reliance was placed upon S.M. Das v. P.M. Ram AIR 1955 SC 481 wherein it was held that 'and we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all time and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the proper- ties resides in only one of their number (pro- vided he or she had

claimed the whole and made such an assertion of title)'.

4. In the instant case the two daughters by no stretch of imagination could claim any existing right in the property during life time of their father Lallan.

5. Accordingly. I am of the opinion that family settlement or memorandum, of family settlement even if affected and executed as legally not enforceable as it amounted to transfer.

6. Consequently, there is no merit in the writ petition, hence, it is dismissed.

7. However, if petitioners have got any right to challenge the sale deed by Lallan in favour of respondents 4 to 7 apart from the ground that Lallan had no right to execute the sale deed, they are at liberty to file suit for declaration and for such reliefs which they may consider necessary subject to availability of all possible objections to the contesting respondents.

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