

Smt. Chandrawati Devi Vs. Deputy Director of Consolidation and ors.

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Court : Allahabad

Decided On : Aug-07-2007

Reported in : 2007(4)AWC3579

Judge : Krishna Murari, J.

Appellant : Smt. Chandrawati Devi

Respondent : Deputy Director of Consolidation and ors.

Advocate for Pet/Ap. : Sri. Vijai Kumar Ojha

Disposition : Petition dismissed

Judgement :

Krishna Murari, J.

1. Heard Sri Vijai Kumar Ojha, learned Counsel for the petitioner.

2. Facts giving rise to dispute are as under:

In the basic year Avadhu, Parasuram, Panchu sons of Vindeshwari and Kalpa widow of Vindeshwari were recorded as 'bhumidhar'. After death of Kalpa, an objection was filed by Panchu, Parasuram and Avadhu claiming partition of the land in dispute. Another objection was filed by contesting respondent Nos. 6 and 7 and one Ram Bhajan claiming rights on the basis of adverse possession over the

land in dispute. Consolidation Officer consolidated both the objection and vide order dated 28.11.1990 allowed the objection filed by respondent Nos. 6 and 7 and Ram Bhajan and directed their names to be recorded over the land in dispute. The order was challenged in appeal. Vide order dated 28.12.2001 Settlement Officer of Consolidation allowed the appeal and set aside the order of the Consolidation Officer dated 28.11.1990 and maintained the entry of name of Panchu, Parasuram and Avadhu over the land in dispute. Appellate order was challenged by respondent Nos. 6 and 7 as well as Ram Bhajan by filing a revision. During the pendency of the revision, Ram Bhajan died issueless. Deputy Director of Consolidation vide order dated 19.12.2005 dismissed the revision. The revisional order was challenged by respondent Nos. 6 and 7 before this Court by filing Writ Petition No. 13709 of 2006 which was dismissed vide judgment dated 9.3.2006. Thus, the order of the Settlement Officer of Consolidation dismissing the claim of respondent Nos. 6 and 7 based on adverse possession stood confirmed by this Court.

3. During the pendency of the proceedings before the Settlement Officer of Consolidation, respondent No. 7 Ram Lagan executed a registered sale deed with respect to his share in the land in dispute in favour of the petitioner. After the writ petition was dismissed by this Court, the petitioner filed an application before the Deputy Director of Consolidation to recall the order dated 19.12.2005 on the ground that it was ex parte passed behind his back without any notice or opportunity of hearing though he was an interested and necessary party in the proceedings. It was also pleaded in the said application that she was the bona fide purchaser for value without any notice or knowledge about the pendency of the litigation. Another recall application was filed by respondent Nos. 6 and 7 on the ground that on account of illness they could not appear before the Deputy Director of Consolidation and also could not inform their counsel as such the revision was decided without hearing them. It was also pleaded that on account of financial difficulty the recall application could not be filed within time.

4. In so far as the recall application filed by respondent Nos. 6 and 7 is concerned, the same was dismissed rightly by the Deputy Director of Consolidation on the ground that they had full knowledge of the proceedings and had also filed writ

petition before this Court and the same is not in issue before this Court in the present writ petition.

5. In so far as the recall application filed by the petitioner is concerned, the same was dismissed by the Deputy Director of Consolidation on the ground that the land was purchased by her during the pendency of the litigation as such her right should be governed by the principle of lis pendens and since her vendor has lost the proceedings up to the High Court it is not open to her to file any recall application and the proceedings which have become final against her vendor cannot be reopened at her behest. Aggrieved by the same, the petitioner has approached this Court.

6. It has been urged by learned Counsel for the petitioner that an assignee or transferee pendente lite can always challenge the proceedings even though he may not be a party in the said proceedings. It has further been urged that no adverse inference can be drawn against the petitioner for her failure to contest the proceedings for want of knowledge and recall application filed by her, has wrongly been dismissed. In support of contention, he has placed reliance on a Division Bench judgment of this Court in the case of Smt. Teji v. Dy. Director of Consolidation, Faizabad and Ors. 1985 RD 427 and a judgment of the Apex Court in the case of Raj Kumar v. Sardari Lal and Ors. : (2004)2SCC601 .

7. I have considered the argument advanced by learned Counsel for the petitioner and perused the record as well as the case law relied upon,

8. There is no dispute about the fact that the land in dispute was purchased by the petitioner during the pendency of the proceedings from respondent No. 7 who laid his claim over the land in dispute on the basis of adverse possession. Though initially the claim was allowed by the Consolidation Officer but later on the appellate court, revisional court and this Court negated his claim and it was held that he has not perfected rights over the land in dispute on the basis of adverse possession. It is thus clear that the petitioner was transferee pendente lite and would be governed by the outcome of the litigation of her predecessor-in-interest. The question which arises for consideration is whether the proceedings which have been finalised can be allowed to be reopened on an application of a

transferee pendente lite on the ground that he or she was the bona fide purchaser for value without notice of the pendency of the dispute with respect to the property.

9. Based on the two case laws relied upon by learned Counsel for the petitioner, it has been sought to be urged that her recall application has wrongly and illegally been dismissed in the teeth of the law laid down in the said two judgments. The argument advanced by learned Counsel for the petitioner is totally misconceived and is based on misreading of the aforesaid two case laws relied upon by him. In the case of Smt. Teji (supra) one of the questions referred for adjudication to the Division Bench was 'whether a person who has not moved a substitution application as assignee or transferee was not a party to the case at any stage can file an application for setting aside the order passed on the basis of compromise purporting to be under Section 201 of U.P. Land Revenue Act on the ground that it was an ex parte order.'

10. In the said case, there was dispute between the petitioner and the respondent with regard to inheritance of the property in dispute. During the pendency of the title dispute respondent made an application to the Settlement Officer of Consolidation for grant of permission for sale of the property which was allowed subject to the condition that sale should not be hit by Section 168 of the U.P.Z.A. and L.R. Act and if she lost the title case the permission rendered would be infructuous. After obtaining permission the land in dispute was transferred. The petitioner filed a revision challenging the permission for sale by the Settlement Officer of Consolidation. During the pendency of the revision proceedings, the respondent/vendor died. Petitioner got her own son substituted in place of the deceased vendor and got a statement made before the Deputy Director of Consolidation that he as the legal representative of the vendor does not want to pursue the application for permission of sale. On the basis of compromise and on the strength of the statement, the revision was allowed and permission for sale was set, aside. Thereafter, the vendees moved an application before the Deputy Director of Consolidation contending that they had no knowledge of the revision or substitution proceedings and they may be substituted in place of the deceased vendor and ex-parte order be recalled. Deputy Director of Consolidation allowed the application filed by the vendees, against which petitioner has approached this

Court.

11. In the backdrop of the aforesaid facts, while considering the said question it was observed as under:

8. As regards the second question it is true that the transferee, namely, opposite parties 3 to 5, were not parties to the revision which was earlier allowed in their absence on February 12, 1980, vide Annexure-4. But if this be the objection against their competency to move an application for restoration, then it would follow that the said order of the Deputy Director dated February 12, 1980 was not binding on them. If the order was not binding on them then the petitioner Smt. Teji cannot derive any benefit out of that order as against those opposite parties. We are not concerned with the factual controversy as to whether Smt. Teji was aware of the transfer or not, whether these opposite parties were aware of the pendency of the revision or not. The fact remains that if they were not parties to the decision, the decision could not be binding on them. Any compromise with Smt. Singari or with Smt. Singari's reversionary heir entered into after the date of transfer by Smt. Singari in their favour cannot be binding on them.

9. As transferees the opposite parties were necessary parties to the revision, or at any rate, proper parties. It was therefore open to them to ask for a decision after giving them an opportunity of hearing. It has been held by the Hon'ble Supreme Court that even a person who is not a party to the decision may be allowed by an appellate court to appeal against decision if the decision would prejudicially affect his interest, vide Smt. Ratan Golcha v. Golcha Property Ltd. 1970 (3) SCC 575. Extending the same principle of equity and justice we see no reason why the transferees could not ask for the recall of the aforesaid decision dated February 12, 1980 which was rendered in their absence and without any opportunity to them and for a fresh decision after due opportunity to them. The subsequent fresh decision of the Deputy Director was passed after opportunity to the said transferees and also to Smt. Teji the petitioner. We are, therefore, of the opinion that there was no legal error in Deputy Director entertaining the said application of the opposite parties 3 to 5 in this behalf.

12. From the aforesaid facts, it is clear that after death of vendee instead the vendors being substituted in her place the petitioner got his own son substituted by connivance and got the revision allowed and thus it was held that the vendors were necessary party and order obtained behind their back will not bind them. The case of Raj Kumar (supra) is also clearly distinguishable. In the said case, the Hon'ble Apex Court ruled that a lis pendens transferee though not brought on record under Order XXII, Rule 10 is entitled to move an application under Order IX, Rule 13 to set aside a decree passed against her transferors, the defendants in the suit. The aforesaid law was laid down in the backdrop of the facts where during the pendency of a civil suit relating to an immovable property the same was transferred by the defendants and the said suit was decreed ex parte against the defendants. After obtaining knowledge of the ex parte decree, the transferee moved an application for setting aside the ex parte decree. The Apex Court clearly held that bringing of a lis pendens transferee on record is not as of right but in the discretion of the Court. However, though not brought on record the lis pendens transferee remains bound by the decree. However, taking aid of Section 146 of the C.P.C. it was held a transferee pendente lite even though may not have been brought on record is entitled to move an application under Order IX, Rule 13 to set aside a decree passed against her transferor. It is undisputed that a transferee pendente lite or assignee steps into the shoes of the transferor and where the transferor stops prosecuting the litigation having lost interest on account of transfer made by him or on account of death or for any other reason, it was held that proceedings can be continued or reopened at the behest of such transferee pendente lite.

13. The facts of the case in hand are entirely different. In the present case, the vendor of the petitioner contested the proceedings up to this Court and lost and the judgment which has become final against him would also bind the petitioner who is a transferee pendente lite. It is not a case wherein ex parte decree has been passed against the defendants who may have lost interest in prosecuting the litigation on account of transfer made by him nor it is a case where instead the transferee or assignee being brought on record in place of the deceased party some other person may have been substituted and the proceedings may have been decided to the detriment of the transferee pendente lite.

14. Even otherwise, the claim of respondeat No. 7, the vendor of the petitioner, was based on adverse possession which he failed to establish. The petitioner does not have any independent rights rather rights, if any, would flow from her vendor. However, if her vendor failed to establish his rights, the petitioner cannot demonstrate and establish that her vendor had perfected rights by adverse possession. It is not a case where the proceedings are to be continued by the petitioner on behalf of her vendor. Allowing the recall application of the petitioner would amount to reopening of the proceedings inviting fresh adjudication though the same already stand finally adjudicated on merits against her vendor.

15. In view of the aforesaid facts, the two judgments relied upon by the learned Counsel for the petitioner in support of the case have no application whatsoever. The petitioner as a transferee pendente lite is bound by the final outcome of the litigation contested by his vendor respondent No. 7 and the proceedings cannot be reopened on his application on the ground that he was a necessary party and had no notice or knowledge about the proceedings. In the facts and circumstances, his recall application has rightly been dismissed by the Deputy Director of Consolidation and there appears to be no infirmity in the impugned orders.

16. The writ petition accordingly, fails and is dismissed.