

Rup Singh Vs. Gopal Prasad and Others

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Court : Allahabad

Decided On : Apr-04-2011

Judge : Rajes Kumar, J.

Appeal No. : WRIT - C No. - 15486 of 2011

Appellant : Rup Singh

Respondent : Gopal Prasad and Others

Advocate for Def. : S.C. Pandey, Adv

Advocate for Pet/Ap. : Rama Goel Bansal, Adv

Judgement :

1. By means of the present writ petition, the petitioner is challenging the order of the District Judge, Mathura dated 9.12.2010 by which he has allowed the revision filed by the respondent against the order of the Additional Civil Judge, Senior division, Mathura dated 9.8.2010 in Original Suit No. 439 of 2001, Gopal Prasad and others v. Mangi Lal and others.

2. The brief facts of the case are that Smt. Lalita Devi was the owner of the property in dispute. The said property was purchased by one Radha Govind by way of the registered sale deed from Smt. Lalita Devi.

3. Radha Govind executed a will of the said property in favour of one Mangi Lal. Mangi Lal applied for mutation after the death of Radha Govind before the

Tehsildar. The son of Radha Govind, namely, Gopal Prasad raised objection in the mutation proceeding on the ground that the will was forged. The Tehsildar allowed the mutation on the basis of the will and directed to enter the name of Mangi Lal in the revenue record in place of Radha Govind. After the mutation, Mangi Lal has executed a registered sale deed in favour of the petitioner, Rup Singh Chaudhary on 5.2.2003. The name of the petitioner has also been mutated in the revenue record. Meanwhile, Gopal Prasad, son of Radha Govind, has also executed a sale deed in favour of Deena Nath Chaturvedi and Smt. Madhu Garg. Deena Nath Chaturvedi and Smt. Madhu Garg filed the appeal being Appeal No. 25 of 2010 challenging the order of the Tehsildar by which the Tehsildar has directed to mutate the name of Mangi Lal in place of Radha Govind. The said appeal was dismissed by the appellate court against which the revision was filed before the Commissioner being Revision No. 13 of 2003. The revision² was allowed and the matter was remanded back to the Tehsildar for fresh consideration. Mangi Lal challenged the said order by filing the revision in the Board of Revenue, which has been allowed in his favour.

4. Against the order of the Board of Revenue, Deena Nath Chaturvedi and Smt. Madhu Garg filed Writ Petition No. 45281 of 2006 before this Court. This Court allowed the writ petition and remanded back the matter to the Sub Divisional Magistrate, Mathura with the direction to decide the matter afresh. In the mutation proceeding, again the Sub Divisional Magistrate, Mathura has directed to mutate the name of the petitioner against which a revision filed by the respondent has been dismissed.

5. It appears that a Suit No. 439 of 2001, Gopal Prasad and others v. Mangi Lal and others, has been filed by Gopal Prasad and others. In the said Suit, Deena Nath Chaturvedi and Smt. Madhu Garg moved an impleadment application, which has been allowed. The petitioner also moved an impleadment application for impleading him as a party in the suit. The said application has been allowed by the Additional Civil Judge, Senior Division, Mathura vide order dated 9.8.2010 against which Gopal Prasad and others filed the revision, which has been allowed by the impugned order.

6. Heard Smt. Rama Goel, learned counsel for the petitioner and Sri S.C. Pandey, learned counsel for the respondents.

7. With the consent of learned counsel for the parties, the writ petition is disposed of at this stage.

8. The contention of the petitioner is that the petitioner is the subsequent purchaser of the property in dispute and is in possession. He has contested the mutation proceeding. Therefore, in respect of the property in dispute, the petitioner is the necessary party and in case if any order will be passed in the Suit, the petitioner's rights will be affected. In support of the contention, she relied upon the decision of the Apex Court in the case of Amit Kumar Shaw and another vs. Farida Khatoon and another, reported in 2005 SCFBRC 325 and the decision of the Apex Court in the case of Savitri Dvi v. District Judge, Gorakhpur, reported in Supreme Court & Full Bench Rent Cases, 1999, 211.

9. Learned counsel for the respondents has relied upon the decision of the revisional court and submitted that the impleadment of the petitioner has rightly been denied.

10. I have considered the rival submissions and perused the impugned order.

11. In my view, the impugned order is not sustainable. The petitioner is a purchaser of the property in dispute. In the mutation proceeding, he was also a party. Therefore, in respect of the property in dispute, if any order would be passed, the same may prejudice the petitioner. Therefore, being a subsequent purchaser, the petitioner is entitled to be heard and accordingly, the impleadment application of the petitioner should be allowed.

12. In the case of Amit Kumar Shaw and another vs. Farida Khatoon and another (Supra), during the pendency of the Second Appeal, a party has acquired leasehold right of the purchaser by a deed of assignment and also by the sale deed. Another party sold and transferred the rights in favour of the said party. By virtue of the aforesaid transfer, the said party has become owner of the property.

13. The Apex Court held that the interest of the party will be highly prejudiced, in case they may not be made party of the suit. In the circumstances, the Apex Court held that the subsequent purchaser should be made a party.

14. In the result, the writ petition is allowed. The order dated 9.12.2010, passed by the District Judge, Mathura in Civil Revision No.4 175 of 2010, Gopal Prasad and others vs. Mangi Lal and another, is set aside and the order of the Additional Civil Judge, Senior Division, Mathura, dated 9.8.2010 is restored.

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