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Court : Allahabad

Decided On : Mar-15-2011

Judge : A.P. Sahi, J.

Acts : The U.P. Consolidation of Holdings Act - Section 9

Appeal No. : Civil Misc. Writ Petition No.68930 of 2009

Appellant : Parag

Respondent : A.D.M., City/D.D.C., Gorakhpur and Others

Judgement :

1. This petition questions the correctness of the order of the Deputy Director of Consolidation dated 30.11.2009, whereby it has been held that the sale-deeds executed in favour of the contesting respondents by the guardian of the petitioner during his minority were valid and, therefore, the orders passed by the Consolidation Officer and the Settlement Officer Consolidation in favour of the petitioner were set aside, and the entries made in favour of the contesting respondent in the basic year of the revenue records were maintained.

2. In order to understand the controversy, the following pedigree is extracted for reference:-

Triveni

|

||

Jamuna Achhaiber- Murati (wife)

|

|| Lal Bihari

Vrindawan Balbhadra |

Parag

3. The petitioner Parag is the grand son of Achhaiber and son Lal Bihari. Lal Bihari the petitioner's father predeceased his father, after the birth of the petitioner. Consequently, the petitioner was looked after by his grant mother Smt. Murati. The name of the petitioner came to be recorded through guardian Smt. Murati in the revenue records. The other collaterals of the branch of Jamuna, as per the pedigree herein above, started troubling her and a litigation went on between them in which criminal proceedings were also initiated and Vrindawan and Balbhadra had been convicted. Fearing further trouble, Smt. Murati to secure the interest of the petitioner, shifted to another village Natwa, where she purchased land in the year 1959. She also moved an application before the District Judge in the year 1959 for her appointment as a guardian of the petitioner.

4. Accordingly, Smt. Murati was appointed guardian under the orders of the District Judge dated 10.12.1960.

5. Later on, in order to meet the expenses of the land purchased at village Natwa and other expenses including construction of a house, she applied for permission before the learned District Judge for disposing of the land presently in dispute as she had taken some advance to the tune of Rs. 3,200/-. The said request was accepted after a report was called for by the District Judge and the proposed sale-deed was approved on 27.4.1963. The sale-deeds were executed on 27.8.1963 where after the names of the predecessors in interest of the contesting respondents came to be mutated under the orders of the Sub-Divisional Officer.

5. The maternal uncle of the petitioner Ramdev moved an application before the learned District Judge for changing the guardianship of the grand mother of the petitioner. A suit for cancellation of sale-deed was also filed before the learned Munsif, Bansgaon, Gorakhpur, which was decreed ex-parte but the same was set aside on an Appeal filed by the predecessors in interest of the respondents on 27.11.1971. The matter was taken up further but consolidation operations intervened where after the proceedings abated, and objections were filed under Section 9 of The U.P. Consolidation of Holdings Act by the petitioner through his maternal uncle Ramdev. The ground taken was that the saledeeds were got fraudulently executed and, therefore, the name of the purchasers should be expunged and that of the petitioner should be recorded.

6. This dispute before the Consolidation Authorities began in relation to the land situated in village Sisai at the first instance.

7. The objection filed by the petitioner was allowed on 31.8.1967 and a direction was issued to record the name of the petitioner over the land in the said village. The predecessors in interest of the contesting respondent filed an Appeal against the same which was allowed on 9.5.1968. A revision was filed by the petitioner against the appellate order which was dismissed on 9.9.1968.

8. Aggrieved by the rejection of the revision, the petitioner filed Writ Petition No.427 of 1969 which was allowed with a direction to determine as to whether the sale-deeds executed by Smt. Murati were binding on the petitioner or not. The matter was remanded to the appellate stage before the Settlement Officer Consolidation. This time the appeal filed by the contesting respondent was dismissed and the order dated 31.8.1967 passed in favour of the petitioner was upheld vide order dated 14.9.1970.

9. In between the dispute relating to the land in the other two villages of Harpur and Khajuri had reached the appellate stage and the Appeal filed by the predecessor in interest of the contesting respondent was also dismissed on 12.4.1973 and 8.6.1971. Revisions were filed in relation to all the three villages and the same were allowed on 21.6.1974. The petitioner, aggrieved against the said order, moved an application that the same was ex-parte which application

was rejected on 18.11.1976.

10. The petitioner, therefore, approached this Court by filing a Writ Petition which was allowed directing the authorities below to decide the revision in accordance with the directions given in the judgment dated 18.3.1970.

11. This issue relating to the jurisdiction of the consolidation Courts to enter into the validity of the sale-deed was considered by a Full Bench of this Court in the writ petition filed by the petitioner being Writ Petition No.315 of 1976 which was allowed on 27.9.1984 and a copy of the said judgment is on record as Annexure-2 to the writ petition. The Full Bench while disposing of the Writ Petition posed the question as to whether the orders of the Civil Court and the order of the writ court arising out of the Suit filed by the petitioner for cancellation of the sale-deed would operate as res-judicata and preclude the jurisdiction of the Consolidation Authorities in the light of the decisions that have been cited at the Bar. The following opinion was expressed by the Full Bench:-

Having heard counsel for the parties and given our anxious consideration, we are of opinion that in view of the law laid down by the Supreme Court in the case of Mathura Prasad (supra) the order of the civil court abating under Section 5 of the U.P.

Consolidation of Holdings Act the appeal arising out of the suit filed by the petitioner together with the said suit would not operate as res-judicata but the decision of this Court in Writ Petition No.427 of 1969 would operate as res-judicata and respondents 3 and 4 on account of that decision are precluded from asserting that the consolidation authorities did not have jurisdiction over the matter.

We now proceed to give our reasons for this conclusion.

12. It is in the aforesaid background that the Deputy Director of Consolidation has now proceeded to pass the impugned order. Assailing the same, Sri A.K. Mishra contends that in order to assess as to whether the sale-deed was binding or not, the basic question that had to be addressed to by the Deputy Director of Consolidation was as to whether while proceeding to execute the sale-deed Smt.

Murati, the grand mother of the petitioner, was acting in the paramount interest of the minor, and that the evidence which was led, was credible enough to conclude that the sale-deed was genuinely executed. For this, Sri Mishra contends that the husband of the sister of petitioner's father (Phupha) was instrumental in the aforesaid transaction which was not in the interest of the minor and the consideration for the said sale-deed was absolutely doubtful. He, therefore, contends that the Deputy Director of Consolidation having lost sight of the said fact committed an error in reversing the orders of the authorities below who had found that the sale-deeds were a fraudulent transaction against the interest of the minor and not for a valid consideration. He, therefore, submits that the sale-deeds were not binding on the petitioner and the Deputy Director of Consolidation has drawn erroneous assumptions both on fact and in law.

13. Sri A.P. Tiwari, learned counsel for the contesting respondent, on the other hand, submits that the Deputy Director of Consolidation has recorded findings of fact and in view of the judgement which intervened way back, whereby the revisional authority was directed to decide the matter fresh, the validity of the sale-deed as being voidable was beyond the jurisdiction of the authorities. He further submits that if the document was treated to be void then only the Consolidation authorities could have proceeded to ignore the same and pass orders, but once it is clear that the document was voidable, then it is the civil court which had the jurisdiction in the matter and the consolidation authorities were precluded from entering into the issue of the validity of the sale-deeds. He, therefore, contends that the evidence which was led before the Civil Court clearly establishes that the sale-deeds were validly executed and the order of the learned District Judge appointing Smt. Murati as guardian and the consequential execution of sale-deeds have become final. The subsequent alteration in guardianship at the instance of the maternal uncle of the petitioner Ramdev would not invalidate the transaction entered earlier. He further submits that the sale-deed by Smt. Murati in favour of her son-in-law would by itself not be a circumstance to conclude that the transaction was fraudulent. He further submits that the argument of the petitioner that the advance of Rs. 3,200/- has been shown to be the reason for sale of the land whereas the land was sold only for Rs. 1,000/- cannot now be questioned as the consideration was there in the saledeed to the satisfaction of the learned

District Judge, who approved the sale-deed.

14. Sri A.K. Mishra contends that the aforesaid circumstance that the need of Rs. 3,200/- whereas the sale-deeds was executed of Rs. 1,000/- in respect of an area of 3 Acre was a shame transaction entered by Smt. Murati in collusion with her son-inlaw and for this benefit. He contends that the entire transaction is shrouded under the circumstance indicated above and as a matter of fact the sale-deed is void. He further submits that there was no necessity of taking any advance for the benefit of the petitioner as the land had already been purchased earlier in village Natwa.

15. Having heard learned counsel for the parties and perused the records, the Deputy Director of Consolidation, in the opinion of the Court, has misunderstood the scope of the inquiry that was to be made by him in the light of the judgment of this Court dated 27.9.1984 and the earlier judgment dated 18.3.1970 in Writ Petition No.427 of 1969. The Settlement Officer Consolidation had clearly recorded findings to the effect as to why the sale-deeds were not binding and had entailed the entire circumstances detailed therein. The Deputy Director of Consolidation has concluded that the proceedings before the District Judge under the guardianship and Ward Act was by itself sufficient to prove the validity of the transaction which, in the opinion of the Court, is not the correct approach inasmuch as in order to ascertain the binding nature of the sale-deed in the light of the judgment of Full Bench of this Court, it was necessary to find out as to whether the said sale-deeds have been in fact executed in interest of the minor or not. The Deputy Director of Consolidation has ignored to record a finding on the issue relating to the necessity of paying back a sum of Rs. 3,200/- when the land which was purchased in village Natwa was for only Rs. 1,000/-. The finding recorded that Smt. Murati has not concealed any such fact about the necessity of the sale-deed is incomplete without discussing the real issue that Rs.1,000/- was the consideration shown for the purchase of the land in village Natwa.

16. The evidence which was led, was, therefore, required to be sifted in the light of the aforesaid issue keeping in view the law laid down by the Apex Court in this regard. To conclude as to the document was void or voidable, the Consolidation

authorities were bound to assess the binding nature of the sale deed on the touchstone of the minors interest. It was therefore necessary to deal with the issue and the evidence from that angle. The Deputy Director has therefore not proceeded in letter and spirit of the judgement of the Full Bench decision in this case decided on 27.9.1984.

17. The matter has been heard finally with the consent of the parties after exchange of Affidavits and is, therefore, being disposed of at this stage.

18. For the reasons recorded herein above, the order of the Deputy Director of Consolidation being cryptic in nature without assessing the relevant issues that was required to be resolved between the parties, the impugned order is unsustainable and is, accordingly, quashed. The Deputy Director of Consolidation shall decide the matter afresh in the light of the observations made herein above. Allowed.

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