
(2021) 01 UK CK 0102

Uttarakhand High Court

Case No: Appeal From Order No. 110 Of 2011

Jaitoon & Others

APPELLANT

Vs

Suchita Khurana &
Others

RESPONDENT

Date of Decision: Jan. 25, 2021

Acts Referred:

- Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 - Section 331
- Code Of Civil Procedure, 1908 - Section 9, 100, 104
- Code Of Civil Procedure, 1908 - Order 43 Rule 1

Hon'ble Judges: Lok Pal Singh, J

Bench: Single Bench

Advocate: Virendra Singh Rawat

Final Decision: Allowed

Judgement

Lok Pal Singh, J

1. Appeal from order is directed against the impugned order dated 03.03.2011, passed by Civil Judge (Sr. Div.) Dehradun in Original Suit No. 477 of

2004 whereby the trial court has decided issue nos. 3 and 4 against plaintiffs and has held that the suit of the plaintiff is barred by Section 331 of Uttar

Pradesh Zamindari Abolition and Land Reforms Act (hereinafter referred as UPZA&LR Act) and returned the plaint to the plaintiff.

2. Factual matrix of the case are that the plaintiffs instituted the present suit on the ground that the plaintiffs were the joint owner and in possession of

the suit property but due to some clerical mistake the land was recorded as Van Gram Samaj property and the management of the suit property was

handed over to the Forest Department in respect of which suit no. 12/2002-03 for declaration of rights was filed in the court of Assistant Collector 1st

Class, Dehradun which was decreed in favour of the plaintiffs vide judgment and order dated 19.05.2004 and the plaintiffs continue in possession over

the suit property. The plaintiffs are pardanaseen and illiterate women; they appointed defendant no. 2 Sri Rakesh Khurana, their power of attorney

holder to contest the suit but by misusing the power of attorney defendant no. 2 executed the sale deed dated 25.04.2004 in favour of his wife

defendant no. 1. On 13.12.2001, when plaintiffs came to execute the power of attorney in favour of defendant no. 2, defendant no. 2 obtained their

thumb impression on blank papers with the assurance that some applications have to be filed in the court on these blank papers. He also assured the

plaintiffs that after the decision of the case, the power of attorney executed in his favour by the plaintiffs will not remain in existence. On 19.05.2004,

the suit was decided in favour of the plaintiffs and their names recorded in the revenue records. After the decision of the case, they were of the

impression that the power of attorney executed in favour of defendant no. 2 has elapsed but the plaintiffs received a notice from the court of Tehsildar

in case no. 4214 of 2004 and case no. 4215 of 2004 for mutation then plaintiffs came to know about execution of the sale deed by defendant no. 1 in

favour of his wife, namely, Smt. Suchita Khurana. Since, sale deed has been executed by defendant no. 2 by committing fraud, the plaintiffs have

instituted a suit for declaration of the sale deed dated 25.04.2004 as null and void.

3. Defendants filed their written statements denying the plaint averments. They stated that the power of attorney was executed by the plaintiffs in

favour of defendant no. 2 and exercising the power extended in favour of defendant no. 2, defendant no. 2 executed the sale deed in favour of

defendant no. 1. It is contended that the plaintiffs have sold the property to defendant no. 1 for the total consideration of Rs. 4,75,000/-.

4. Notices were issued to the respondents and they engaged Sri Bhupesh Kandpal, Advocate but learned counsel for the respondents did not appear to

argue the case on several occasions, thus this court vide order dated 28.10.2020 has observed that in the event of non appearance of the counsel on

the next date, the case shall be proceeded ex-parte against the respondent. Pursuant to such order, as there is no representation for the respondent,

the case was heard ex-parte.

5. Heard learned counsel for the appellant and perused the material brought on record.

6. The suit in question was instituted on 31.08.2004 for cancellation of the sale deed dated 25.04.2004 on the pretext that the plaintiffs are the

recorded owner of the property in suit with transferrable rights and defendant no. 2 by committing fraud and misrepresentation executed the sale deed

in favour of his wife-defendant no.1. According to the plaintiffs, it was a sham documents. In pith and substance, the case of the plaintiffs is that the

sale deed dated 24.05.2004 is a null and void document having been executed by misusing the power of attorney executed in favour of defendant no.

2. During the pendency of the suit, the mutation application filed by respondent no. 1 on the basis of the sale deed dated 24.05.2004, has been

affected. The order of mutation has been challenged before the Commissioner, Garhwal Division, and order of status quo has been passed. It is apt to

note that the entries in the name of the plaintiffs have to be seen on the date of the institution of the suit. Perusal of the Khatauni available on record

would depict that the name of the plaintiffs are recorded in the Khatauni on the date of the institution of the suit and mutation proceedings are still

pending in the court of the Commissioner, Garhwal Division.

7. Counsel for the appellants submits that at present name of the plaintiffs is recorded in the revenue records as bhumidhar of the land. He further

submits that the suit for cancellation/ declaration of sale deed pertaining to bhumidhari land only lies in the civil court.

8. The learned trial court framed the issue nos. 3 and 4 and by impugned order dated 3.03.2011 decided the same. Issue nos. 3 and 4 are extracted

hereunder:-

3. Whether the suit is barred by Section 331 of UPZA&LR Act?

4. The court has no jurisdiction to hear the suit?

9. For kind reference Section 331 of UPZA&LR Act is extracted hereunder:-

331. Cognizance of Suits, etc. under this Act. - (1) Except as provided by or under this Act no court other than a court mentioned in Column 4 of

Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or

proceedings mentioned in Column 3 thereof [,] [or of a suit, application or proceedings based on a cause of action in respect of which any relief could

be obtained by means of any such suit or application :]

[Provided that where a declaration has been made under Section 143 in respect or any holding or part thereof, the provisions of Schedule II insofar as

they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.]

[Explanation. - If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for

from the civil court may not be identical to that which the revenue court would have granted.]

[(1-A) Notwithstanding anything in sub-section (i), an objection, that a court mentioned in Column 4 of Schedule II, or, as the case may be, a civil

court, which had no jurisdiction with respect to the suit, application or, proceeding, exercised jurisdiction with respect thereto shall not be entertained

by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases

where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.]

(2) Except as hereinafter provided no appeal shall lie from an order or [decree] passed under any of the proceedings mentioned in Column 3 of the

Schedule aforesaid:

[(3) An appeal shall lie from any decree or from an order passed under Section 47 or an order of the nature mentioned in Section 104 of the Code of

Civil Procedure, 1908 (V of 1908) or in Order 43, Rule 1 of the First Schedule to that Code passed by a court mentioned in Column No. 4 of Schedule

II to this Act in proceedings mentioned in Column 3 thereof to the court or authority mentioned in Column No. 5 thereof.

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or

decree, passed in an appeal under sub-section (3), to the authority, if any, mentioned against it in Column 6 of the Schedule aforesaid.]"".

10. The scope and ambit of Section 331 and Schedule II of the U.P.Z.A. & L.R. Act was considered by the Hon'ble Supreme Court in the case of

Sri Ram and another vs. Ist Additional District Judge and others (2001) 3 SCC 24. In the said case, the Hon'ble Supreme Court after considering

the judgment of Full Bench of Allahabad High Court in Ram Padarath and others vs. Second Additional District Judge, Sultanpur and others, 1989 RD

21 (All) (FB) observed as under:-

7. On analysis of the decisions cited above, we are of the opinion that where a recorded tenure-holder having a prima facie title and in possession

filed suit in the civil court for cancellation of sale deed having been obtained on the ground of fraud or impersonation cannot be directed to file a suit

for declaration in the Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure-holder is not under cloud. He

does not require declaration of his title to the land. The position would be different where a person not being a recorded tenure-holder seeks

cancellation of sale deed by filing a suit in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a

declaration of his title and, therefore, he may be directed to approach the Revenue Court, as the sale deed being void has to be ignored for giving him

relief for declaration and possession.

11. Section 9 of CPC provides that the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature

excepting suits of which their cognizance is either expressly or impliedly barred.

[Explanation I].- A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may

depend entirely on the decision of questions as to religious rites or ceremonies.

[Explanation II].- For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or

whether or not such office is attached to a particular place.].

12. The issue regarding jurisdiction of Civil Court is no more res integra in view of the law laid down by the High Court in the case of Kamlu Prasad

and others vs. Kishna Kant Pathak and others (2007) 4 SCC 213. In the said case, it was observed as under:-

14. In this connection, the learned counsel for the appellant rightly relied upon a decision of this Court in Shri Ram & Anr. v. Ist Addl. Distt. Judge &

Ors., (2001) 3 SCC 24. In Shri Ram, A, the original owner of the land sold it to B by a registered sale deed and also delivered possession and the

name of the purchaser was entered into Revenue Records after mutation. According to the plaintiff, sale deed was forged and was liable to be

cancelled. In the light of the above fact, this Court held that it was only a Civil Court which could entertain, try and decide such suit. The Court, after

considering relevant case law on the point, held that where a recorded tenure holder having a title and in possession of property files a suit in Civil

Court for cancellation of sale deed obtained by fraud or impersonation could not be directed to institute such suit for declaration in Revenue Court, the

reason being that in such a case, prima facie, the title of the recorded tenure holder is not under cloud. He does not require declaration of his title to

the land.

13. It is settled position in law that mutation of name in the revenue records is not adjudication of title, but if the entry in the revenue records is

disputed then such entry cannot be relied upon as the sole and conclusive evidence of title. Revenue entries are not proof of title.

14. A bare perusal of the plaint and papers on record reveals that plaintiffs are the recorded owner of the property in suit and are in possession of the

same. Their title is not under cloud. According to the plaintiffs, the sale deed was forged one and was liable to be cancelled. Name of the defendant

came to be recorded only on the basis of the above mentioned sale deed. In the case in hand, declaration of title of the plaintiffs is not involved, only

relief of declaring the sale deed as null and void is sought and it is only the civil court which can grant the relief for declaring the sale deeds null and

void.

15. For the reasons and above discussion, this court is convinced that on the date of the institution of the suit name of the plaintiffs are recorded in the

revenue records, however, during the pendency of the suit, the mutation application filed by respondent no. 1 was allowed and it was directed that her

name may be mutated in the revenue record. Feeling aggrieved, the appellants preferred appeal before the Assistant Collector which stands dismissed

and the revision before the Commissioner, Garhwal Division is pending wherein the order of status quo has already been passed. The entries in the

revenue record have to be seen on the date of the institution of the suit and subsequent entries will not affect the jurisdiction of the court. The trial

court has committed manifest error of law in holding that the civil court has no jurisdiction to try the case and the suit is barred by section 331 of

UPZA&LR Act.

16. The impugned order dated 03.03.2011 passed by the learned trial court is unsustainable in the eyes of the law and the same is liable to be set

aside. The same is hereby set aside. Appeal stands allowed. The matter is remanded to the trial court to decide the suit afresh on merits and in

accordance with law.