

Fakir Chand Vs Nagar Palika

Court: Allahabad High Court

Date of Decision: Sept. 6, 2002

Acts Referred: Civil Procedure Code, 1908 (CPC) – Order 39 Rule 1, Order 39 Rule 2

Uttar Pradesh Panchayat Raj Rules, 1947 – Rule 3AAA

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 – Section 122B

Citation: AIR 2004 All 22 : (2002) 5 AWC 3711

Hon'ble Judges: S.P. Srivastava, J; K.N. Sinha, J

Bench: Division Bench

Advocate: Sankatha Rai, Vinod Kumar Rai and Vijay Kumar Rai, for the Appellant;

Final Decision: Dismissed

Judgement

S.P. Srivastava and K.N. Sinha, JJ.

The Appellant-Plaintiff feeling aggrieved by the order passed by the trial court rejecting an application

seeking an ad interim injunction in terms of the decree sought for has now come up in appeal before this Court seeking redress praying for the

reversal of the impugned order and the grant of the interim injunction, as prayed for.

2. We have heard the learned Counsel for the Appellant and have carefully perused the record.

3. The Plaintiff-Appellant claimed to have purchased an area of 200 sq. yards of khasra plot No. 6/1 on which a kothari of 18 sq. yards had been

built. The sale deed for the aforesaid house was executed in favour of the Appellant by Smt. Dayawati on 23.1.1987.

The plot No. 6/1 is situate in

village Mohammadpur Dedha, Pargana Jalalabad, Tehsil and district Ghaziabad. It is not disputed that initially the Gaon Sabha had executed a

patta for residential purposes in respect of the aforesaid land in favour of the predecessor-in-interest of Dayawati. This patta is said to have been

executed in the year 1979. It may further be noticed that it is also not disputed that vide the notification dated 30.8.1983, the plot No. 6 along with

its sub-divisions and several other plots were brought within the territorial limits of Nagar Palika, Murad Nagar, w.e.f. 1.9.1983. As contemplated

under the rules framed under the U.P. Panchayat Raj Act, 1947 as contained in Rule 3AAA the jurisdiction of the Gaon Sabha concerned to the

extent of the area included within the limit of Nagar Palika ceased and got reduced to that extent and the said plot stood transferred to the local

body within the limits whereof the area was included. Proceedings for the eviction of the Plaintiff and delivery of the possession of the land in

dispute was initiated u/s 122B of the U.P.Z.A. and L.R. Act. The proceeding was initiated against the Plaintiff-Appellant by the Nagar Palika. In

the aforesaid proceedings, the revising authority while allowing the revision of the Nagar Palika vide the judgment and order dated 15.6.2001 had

directed for the eviction of the Plaintiff and delivery of possession of the land in dispute to the Nagar Palika.

4. Subsequent to the order passed by the aforesaid authority, the Plaintiff filed the suit praying for a decree of permanent injunction restraining the

Defendant from interfering in any manner with the possession of the Plaintiff over the house constructed on the land in dispute.

5. The trial court after considering the affidavits exchanged between the parties and the evidence brought on the record up to that stage, came to

the conclusion that since the Plaintiff could have approached the Board of Revenue for the relief against the order passed by the revising authority,

the Collector directing his dispossession from the property in dispute, there could be no justifiable ground for granting the temporary injunction in

view of the provisions contained in Section 41(h) of the Specific Relief Act. It was held that the Plaintiff had not claimed any relief in respect of his

title as envisaged u/s 122B (4D) of U.P.Z.A. and L.R. Act, 1950 and in view of that matter also, there could be no justification for nullifying the

order passed by the competent authority, the Collector while exercising the exclusive jurisdiction vested in him under the provisions of Section

122B of the U.P.Z.A. and L.R. Act. Apart from the aforesaid grounds, the trial court further found that the Plaintiff could not be held to have been

successful in establishing a case where injunction in terms of the final relief claimed in the suit deserved to be granted.

6. In the facts and circumstances of the present case, it may be observed that while dealing with the suit, the trial court observed that the order

passed in the proceedings u/s 122B of the U.P.Z.A. and L.R. Act was subject to the regular suit but the suit contemplated under the aforesaid

provision is a suit as envisaged under the provisions of the U.P.Z.A. & L. R. Act regarding declaration of title. In the present case, it is further

apparent that the rights flowing from the patta in respect of a residential plot which is claimed to have been executed in favour of the predecessor-

in-interest of Dayawati were of a limited nature and were not transferable inter vivos. The Plaintiff, therefore, could not derive any title through the

sale deed executed in favour of the Appellant by Dayawati in the year 1987. The learned Counsel for the Appellant has tried to urge in this

connection that by virtue of his possession, the Plaintiff and his predecessor-in-interest had matured title in respect of the land in dispute and that

could be transferred in favour of the Plaintiff. In this connection, suffice it to say, that there was no such jural relationship between Dayawati, her

vendee and the Plaintiff which could permit in law the clubbing of the periods of possession for the purposes of making any title.

7. In any view of the matter, no such plea in regard to maturing of rights by adverse possession has been set up in the plaint. Further taking into

consideration the period for prescribing any title by adverse possession as against the Gaon Sabha, it is obvious that neither Dayawati nor the

Plaintiff could be deemed to have acquired any such title. The status of the Nagar Palika and the Gaon Sabha had to be taken to be that of the

transferee of the Gaon Sabha in respect of the plot in question as contemplated under Rule 3AAA referred to herein above.

8. In the circumstances, by the date of the filing of the suit, by no stretch of imagination, the Plaintiff could be deemed to have acquired any title.

9. Taking into consideration the facts and circumstances as brought on record in their totality, we are not satisfied that sufficient ground can be said

to have been made out for any interference in the ultimate order passed by the trial court.

10. This appeal, consequently, fails and is dismissed in limine.

11. It may, however, be observed that the views expressed and observations made herein are only with reference to the stage of the proceedings

and should not in any manner be deemed to imply or mean reflection or comments on the merits of the case. The trial court shall consider and

decide the suit on merit after taking into consideration the evidence led by the parties in support of their respective cases.

12. We are further of the view that taking into consideration the nature of the controversy raised in the suit and the stake involved, the trial court

shall endeavour to dispose of the suit finally expeditiously.