

(1993) 01 AHC CK 0021

Allahabad High Court

Case No: Writ No"s. 1062 and 3698 of 1983 and 4939 of 1984

Radhey Shyam

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision: Jan. 11, 1993

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 331

Citation: (1993) 2 AWC 836 : (1993) RD 238

Hon'ble Judges: D.P.S. Chauhan, J

Bench: Single Bench

Advocate: Rajeshji Verma, for the Appellant; S.K. Singh and T.N. Hukhu, for the Respondent

Final Decision: Dismissed

Judgement

D.P.S. Chauhan, J.

The unanimity of opinion on the controversy of the nature, as is involved in the present petitions, could not deter the litigants interested in forestalling the proceedings in Civil Court.

2. In the present three writ petitions common question for consideration, as cropped up, is as to-

Whether the Jurisdiction of the Civil Court to take cognizance of suits was barred u/s 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1951?

3. It is settled position of law that the jurisdiction of the Court Is determined on the basis of averments in the plaint without reference to the defence in the written statement In this view of the matter, it is not accessory to consider the defence set up In the written statement

4. The brief facts are-

(a) Suit No. 141 of 1980 was filed by one Kamala Om in the Court of the Munsif, Bansgaon, against Sarvsi Radhey Shyam Ojha and Hari Narain Ojha for the cancellation of the sale deed dated 9-4-1980, which was executed in favour of Radhey Shyam Ojha, defendant, 1, and related to the holdings as well as the house belonging to the Plaintiff. The relief was founded on the allegations that the Plaintiff who was issueless, executed a will in respect of his property in favour of Hari Narain Ojha, Defendant No. 2, where upon Radhey Shyam Ojha, with a view to deprive the Plaintiff of his property, got executed the said sale deed in his favour through an imposter impersonating the Plaintiff, who, in fact, did not execute the sale deed in question and the same was fictitious. It was also alleged that no possession was exchanged there upon and the Plaintiff continues to be in possession of the holdings as well as the house and if any mutation has been resorted to on the basis of the sale deed, the same is of no consequence and has no impact, as the Plaintiff did not receive any notice in respect of the mutation proceedings, if any.

(b) Suit No. 187 of 1981 was filed by one Sri Sallesh Kumar Pandey, minor, through next friend, Sri Har Prasad, in the Court of the Munsif, Bansgaon, against Onkar Nath Pandey and four others seeking the cancellation of the two sale deeds dated 19-2-1979 and 21-2-1979. The sale deed dated 19-2-1979 was in favour of Onkar Nath Pandey, Defendant No. 1, and the sale deed dated 21-2-1979 was in favour of Sarvsi Daya Shanker Pandey, Param Hans, Hari Ram and Jawahar Lal, Defendants No. 2 to 5 respectively. It relates to the holdings as well as the house belonging to the Plaintiff. Apart from the relief for cancellation of the said two sale deeds, the Plaintiff also claimed the relief for possession in the event he was found out of possession over the agricultural plots. The relief was founded on the allegations that Smt. Surja Devi, the natural guardian of the Plaintiff, did not execute the sale deeds in question and the same were got executed through imposter by impersonating her. The same did not bear her thumb impression and were fictitious and fraudulent.

(c) Suit No. 146 of 1983 was filed by one Smt. Sumari in the Court of the Munsif, Bansgaon, against Sarvsi Jatai and seven others seeking the relief of injunction for not intervening in her possession over plot No. 96, which was the subject matter of the sale deed dated 6-3-1982. The relief was founded on the allegations that the Defendants got executed the said sale deed dated 6-3-1982 in their favour through an imposter by impersonating her. The sale deed so executed was fictitious and invalid and conferred no right or title on the Defendants. She also claimed herself to be in possession of the land and the names of the Defendants were not mutated on the basis of the sale deed and in the record of the rights her name is continuing.

5. In all the aforesaid three suits, objection regarding their maintainability in Civil Court, in view of Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1951, (for brevity, hereinafter referred to as "the Act") was taken.

6. In Suit No. 141 of 1980 the trial court while deciding the objection on 7-7-1982, took the view that the suit was maintainable in the Civil Court. The District Judge, Gorakhpur, in revision there against, maintained the order of the trial court, vide his order dated 26-11-1982. These two orders are the subject matter of challenge in Writ Petition No. 1062 of 1983.

(b) In Suit No. 187 of 1981 the trial court while deciding the objection on 17-7-1982, took the view that the suit was maintainable in the Civil Court. In revision, the IV Additional District Judge, Gorakhpur, maintained the order of the trial court, vide his order dated 6-1-1983. These two orders are the subject matter of challenge in Writ Petition No. 3698 of 1983.

(c) In Suit No. 146 of 1983 the trial court on 31-5-1983 took the view, while deciding the objection as a preliminary issue, that the suit was not maintainable and directed for return of the plaint for presentation in proper Court. This order was set aside by the District Judge on 14-12-1983 in revision filed thereagainst holding that the suit was not maintainable before the Civil Court. This order of the District Judge is the subject matter of challenge in the Writ Petition No. 4939 of 1984.

7. Heard the learned Counsel for the Petitioners and the learned Counsel for the Respondents in all the three writ petitions which are being decided conjointly, as the same involved an identical question for determination.

8. Sri S.P. Lal holding the brief of Sri Rajeshji Verma in Writ Petition No. 1062 of 1983 could not deny the fact that the sale deed in question dated 9-4-1980 did not relate to agricultural holdings as well as the house. He also could not point out anything so to satisfy the Court regarding the ouster of jurisdiction of the Civil Court. The allegation in the plaint, as stated earlier, clearly go to show that the relief relating to cancellation of the sale deed was founded on the fact that the Plaintiff did not execute any sale deed. In fact, the sale deed was got executed through some body else by impersonation. The relief regarding cancellation of sale deed related to the house, admittedly, could not be granted by the revenue Court u/s 331 of the Act. In *Ram Padarath v. II Additional District Judge, Suitanpur* 1989 AWC 290 the sale deed was sought to be (sic) in the Civil Court by some one impersonating the Plaintiff, who continued to be the tenure holder in possession of the land in question. It is settled position of law that in the case of a void document said to have been executed by some one impersonating the Plaintiff, the relief for its cancellation is more appropriate for clearing the deck of title and burying deep any dispute or controversy on its basis in present or which may take place in future. The Full Bench while approving the case of *Indra Dev v. Smt. Ram Pyarl* 1982 (8) ALR 517 held that the suit for cancellation of a void document will generally lie in the Civil Court and a party cannot be deprived of his right getting this relief permissible under the law except when the declaration of a right or status of a tenure-holder is necessarily needed in which event the relief for cancellation will be surplusage and redundant. A recorded tenure-holder having a prima facie title in his favour can hardly be

directed to approach the revenue Court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue Court. This Full Bench decision was relied upon by the Supreme Court in [Smt. Bismillah Vs. Janeshwar Prasad and Others, .](#)

9. In view of the above. Suit No. 141 of 1980 as filed in the Civil Court was maintainable, Writ Petition No. 1062 of 1983, thus, being devoid of substance, deserves to be dismissed.

10. In Writ Petition No. 3698 of 1983 Sri Swaraj Prakash, learned Counsel for the petitioners, and Sri Sri Kant Misra, learned Counsel for the Respondents, were heard Sri Swaraj Prakash placed reliance on the written Statement. In this case the two sale deeds are questioned. The Plaintiff had set up the case that the sale deeds were obtained by impersonating Smt. Surja Devi, the natural guardian of the Plaintiff, and she never executed any such sale deeds and the same did not bear her thumb impressions. The sale deeds were fictitious, fraudulent and not binding on the Plaintiff.

11. Learned Counsel for the Petitioner tried to place reliance upon the written statement In support of his contention, It is a settled view that the jurisdiction of the Court has to be determined on the basis of the averments" made in the plaint without reference to the defence In the written statement and, in this view of the matter, the written statement need not be looked into for the purpose of determination of the controversy.

12. Learned Counsel for the Petitioner submitted that in the Full Bench (supra), the case [E.I.D. Parry \(India\) Ltd. Vs. Union of India \(UOI\)](#) (Single Judge) was not considered and as such the Full Bench decision cannot be relied on. The Full Bench decision, which was relied on by the Supreme Court in the case (supra) cannot be discarded on the basis that some decision of a learned single judge was not considered therein. On this basis, the decision of the Full Bench cannot be said to be per incuriam, as the principle of per incuriam is different. It is only when some provision of law or some decision of a concurrent authority is not considered then the decision can be said to be per incuriam. The decision of the Full Bench has got binding efficacy. I am not persuaded to take the view different to that of Full Bench.

13. The next argument advanced by the learned Counsel for the Petitioner is that the Supreme Court, in fact, has not expressed any opinion regarding the said decision of the Full Bench. This submission also has no substance as the Supreme Court had relied on the decision of the Full Bench (supra) and the same has been approved. ,

14. Learned Counsel for the Respondents submitted that the case is squarely covered by the decisions of the Full Bench and the Supreme Court (supra) and the suit is maintainable in the Civil Court.

15. The case is covered by the decisions of the Full Bench and the Supreme Court (supra) and Writ Petition No. 3698 of 1983 has no substance and deserves to be dismissed.

16. In Suit No. 146 of 1983 it has been stated by the Plaintiff that on the basis of the sale deed no mutation has been done and the name of tire Plaintiff continues in the record of right. In this case also, the sale deed was obtained by Impersonation which was, according to the Plaintiff, void and she claimed the relief for Injunction against the Defendants. It is immaterial, in the facts and circumstances of this case, that the Plaintiff has not claimed the relief for cancellation of the sale deed. She has proceeded on the basis of the sale deed, which had been executed on the basis of the impersonation is of no significance and that the sale deed was void. In Bisillah's case (supra), the Supreme Court has observed that--

It is true that the question of jurisdiction depends upon the allegations in the plaint and not the merits of the result of the suit. However, in order to determine the precise nature of the action, the pleading should be taken as whole. If as, Indeed, is done by, the High Court the expression "void" occurring in the plaint as descriptive of the legal, status of the sales is made the constant and determinate and what is implicit in the need for cancellation as the variable and as inappropriate to a plea of nullity, the equally, converse could be the position. The real point is not the stray or loose expressions which abound in inartistically drafted plaints, but the real substance of the case gathered by construing pleadings as a whole. It Is said "parties do not have the farsight of prophets and their lawyears the draftsmanship of (sic) Chalmers.

17. This case is also covered by the decisions of the Full Bench and also of the Supreme Court and the suit was maintainable in the Civil Court. The view taken by the District Judge is correct. The writ petition has no merits and deserves to be dismissed.

18. In view of the above, all the three writ petitions are dismissed with costs. Interim order, if any, is discharged.