

(2012) 09 AHC CK 0113

Allahabad High Court

Case No: Writ C . No. 42793 of 2012

Vikas Manglik

APPELLANT

Vs

Surendra Prasad and Others

RESPONDENT

Date of Decision: Sept. 3, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10

Hon'ble Judges: Pankaj Mithal, J

Final Decision: Dismissed

Judgement

Pankaj Mithal, J.

Heard Sri Lalit Kumar, learned counsel for the petitioner.

2. Petitioner is a plaintiff in Original Suit No. 650 of 2000 (Suresh Chandra Manglik Vs. State of U.P.). In the said suit petitioner has prayed for a relief in the nature of declaration to declare the free hold deed dated 11.8.1997 illegal, null and void in connection with nazul plot no. 131/451 (Nazul No. 131G) MohallaSaraikona, Bulandshahr.

3. In the said suit an application under Order 1 Rule 10 CPC was filed by third parties for impleadment as defendants as in pursuance of the order of freehold dated 11.8.1997a freehold deed dated 16.8.1992 was executed in their favour and in the event of suit being decreed their rights would be affected.

4. The above impleadment application has been allowed by the court of first instance vide order dated 3.4.2010 which has been upheld by the revisional court vide order dated 24.7.2012.

5. The above two orders have been impugned in the writ petition.

6. Only one submission has been advanced on behalf of the petitioner and that is to the effect that the court below in allowing the impleadment application has permitted even the dead persons to be made party to the suit.

7. I have perused the impleadment application. The application is on behalf of four persons namely; Surendra Prasad, Suresh Kumar, Sundar Lal and Smt. Premwati. The applicants have clearly stated that Sundar Lal and Smt. Premwati are already dead.

8. In view of the above, the application is actually on behalf of other two applicants Surendra Prasad and Suresh Kumar only.

10. The allowing of the aforesaid application only means that the above two persons are to be impleaded as the defendants. This position has also been clarified by the revisional court vide its order dated 24.7.2012 by observing and directing that allowing of the impleadment application would not mean that the dead persons Sundar Lal and Smt. Premwati are also to be impleaded.

11. In view of the above facts and circumstances and the clarification, the submission of learned counsel for the petitioner that the dead persons have also been directed to be impleaded is without substance and can not be accepted.

12. The applicants Surendra Prasad and Suresh Kumar are the necessary and proper parties to the suit. The free hold deed which is sought to be declared null and void is in their favour. Therefore, it can not be declared to be null and void unless they are impleaded and given opportunity to contest the suit on merits.

13. In view of the above, as the aforesaid applicants are necessary party to the suit, the courts below are justified in allowing the impleadment application. There is no merit in the writ petition. It is dismissed accordingly.