

**(2003) 03 AHC CK 0084**

**Allahabad High Court (Lucknow Bench)**

**Case No:** Civil Revision No. 118 of 2003

Jagannath

APPELLANT

Vs

Lala Ram and Another

RESPONDENT

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**Date of Decision:** March 6, 2003

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 11

**Citation:** (2003) 2 AWC 1669

**Hon'ble Judges:** N.K. Mehrotra, J

**Bench:** Single Bench

**Advocate:** V.K. Yadav and S. Singh, for the Appellant; None, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

N.K. Mehrotra, J.

This is a revision u/s 115 of the CPC against the order dated 13.1.2003 passed by the Civil Judge, Havali, Junior Division, Lucknow in Regular Suit No. 755 of 1999 : Lala Ram v. Jagannath and Anr., rejecting the application C-21 of the defendant-revisionist under Order VII Rule 11 of the Code of Civil Procedure.

2. I have heard the learned counsel for the revisionist.

3. The plaintiff filed a suit for declaration that the Will dated 21.1.1981 executed by Devi Prasad, father of the plaintiff in favour of the defendants is void and further declaration that defendant No. 1 is the son of defendant No. 2 and he has no right to inherit the property of Devi Prasad, father of the plaintiff and permanent prohibitory injunction restraining the defendant from interfering in the possession over the disputed agricultural land. Defendant appeared and moved an application C-21 under Order VII Rule 11, CPC with the allegations that the plaintiff has sought declaration of a bhumidhari property and his name is not mutated in the revenue

record and without this, the relief of permanent prohibitory injunction cannot be granted. Therefore, this suit is barred by the provision of U. P. Zamindari Abolition and Land Reforms Act. The plaintiff filed objection that the relief sought in the suit cannot be granted by the revenue court. I find that three reliefs as stated in the plaint cannot be granted by the revenue court, therefore civil court has jurisdiction. The learned counsel for the revisionist has referred [Ram Padarath and Others Vs. Second Addl. District Judge and Others,](#). It has been laid down in this case by the Full Bench that the judgment of the Division Bench in the case of [Dr. Ajodhya Prasad Vs. Gangotri Prasad,](#), so far as it holds that suit in respect of void document will lie in the revenue court, does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting his relief permissible under law except when a declaration of right or status as a tenant holder is necessarily needed in which event, relief for cancellation will be surplusage and redundant. In the instant case, after the death of Devi Prasad, application for mutation is pending and plaintiff being the son of Devi Prasad, prima facie has the right to get his name mutated. So far as three reliefs sought in the suit are concerned, prima facie cannot be granted by the revenue court, therefore, it cannot be said that the learned trial court has exercised a jurisdiction not vested in it or has acted with illegality or material irregularity.

4. Learned counsel for the revisionist has further referred Vishambher and Anr. v. IIIrd Additional District Judge, Azamgarh 1992 AWC 771. In which it was held that the suit for injunction by a person who is not in possession cannot lie and without a relief of declaration which is cognisable, by the revenue court. This decision is not applicable in the instant case in view of the relief sought in the plaint.

5. In view of the above, the revision is liable to be dismissed at the admission stage.

6. The revision is dismissed.