

(2011) 05 AHC CK 0288

Allahabad High Court

Case No: Review Application No. 12518 of 2011 in C.M.W.P. No. 49804 of 2005

Ram Achal and Others

APPELLANT

Vs

Deputy Director of
Consolidation and
Others

RESPONDENT

Date of Decision: May 13, 2011

Acts Referred:

- Transfer of Property Act, 1882 - Section 41

Citation: (2012) 4 AWC 3761 : (2011) 113 RD 432

Hon'ble Judges: Sibghat Ullah Khan, J

Bench: Single Bench

Judgement

Sibghat Ullah Khan, J.

Heard Sri Tripathi B.G. Bhai, learned Counsel for the applicant in the review petition at great length. This application has been filed by Petitioners for seeking review of my judgment and order dated 13.12.2010 through which I dismissed the writ petition. It is correct that in my judgment I wrongly mentioned that compromise was verified before the reader. It was not verified before the reader.

2. Even if I fully agree with the learned Counsel for the Petitioner that compromise in fact took place still it will not make any difference.

3. Learned Counsel for the Petitioner has repeatedly argued that unless finding of fraud is recorded compromise cannot be avoided. This argument is also accepted and through this judgment a categorical finding is recorded that Petitioners played a fraud of the highest grade on 27 March, 1997 by getting the matter decided through compromise. Either deceased Ramdeen was equal partner in the fraud with the Petitioners as he had decided to sell the land and in-fact on 21.4.1997 he sold the land to Dharamraj Respondent No. 5 or Ramdeen was not at all involved in the fraud and it was the handy work of only the Petitioners. Witnesses or even

documentary evidence may lie but circumstances never lie. Admittedly since 1972 only the name of Ramdeen was entered in the revenue record. Respondent No. 5 purchased the property from him on the basis of entry of his name in the revenue record. A position which was continuing for 25 years could not by any stretch of imagination bonafidely change just three weeks before the execution of the sale-deed. If the case of the Petitioners is accepted then one brother will get the land and the other will get the market value thereof at the cost of innocent purchaser Respondent No. 5 who has parted with adequate sale consideration. During argument learned Counsel for the Petitioners categorically admitted that in between 27.3.1997 and 21.4.1997 names of the Petitioners were not mutated in the revenue record and only the name of Ramdeen continued to be recorded in the revenue record. After the sale deed the name of the purchaser i.e. Respondent No. 5 was recorded in the revenue records. These circumstances do not leave the least doubt about the correctness of the allegation and findings of fraud against the Petitioners. In any case interest of purchaser Respondent No. 5 is fully protected by virtue of Section 41 of Transfer of Property Act as till the sale name of Ramdeen continued to be recorded in the revenue records.

4. No. one sells his immovable property the moment he decides to sell that, particularly in villages. Searching a buyer and finalising the deal takes lot of time. Accordingly, even if it is held that on 27.3.1997 compromise did take place, still by then Ram Deen must have decided to sell the land. In such situation the compromise would be deemed to have been designed to defraud the prospective purchaser in future. Petitioners being beneficiaries of this design, are squarely liable for the same.

5. Learned Counsel for the Petitioners has cited few authorities which are not at all relevant to the facts of the case.

6. The review petition is utterly devoid of merit hence it is rejected.