

(2005) 09 AHC CK 0215

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 36730 of 2001

Daya Shankar, Uma Shankar and
Hari Shankar

APPELLANT

Vs

Additional District Judge and
Others

RESPONDENT

Date of Decision: Sept. 14, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 4
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 330
- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 215I, 285I, 285K

Citation: (2006) 1 AWC 476 : (2005) 99 RD 653 : (2005) 2 RD 653

Hon'ble Judges: D.P. Singh, J

Bench: Single Bench

Advocate: Sankatha Rai, Vijay Kumar Rai and Vinod Kumar Rai, for the Appellant; Arun Kumar, R.S. Mishra and C.S.C., for the Respondent

Final Decision: Allowed

Judgement

D.P. Singh, J.

Pleadings are exchanged and the counsel for the parties agree that the petition may be disposed off under the Rules of the Court.

2. Heard counsel for the parties.

3. This writ petition is directed against an appellate order dated 26.9.2001 setting aside the order of the trial court holding that the suit was not maintainable.

4. That the plaintiff respondent second set filed suit No. 215 of 1991 for cancellation of an attachment order dated 19.3.1988, the auction sale dated 26.3.1990 and its confirmation dated 30.3.1991. Further relief for mandatory injunction to restrain the

defendant Nos. 1 to 9 from interfering in their possession over the suit property has also been sought.

5. Inter-alia allegations in the suit were that the plots of schedule No. 1 belonged to Vijai, defendant No. 13 while the plots of schedule No. 2 were Bhumidhari of Bhagwali Prasad, defendant No. 10 and the plots mentioned in schedule No. 3 were the Bhumidhari of Suresh Kumar, plaintiff No. 1, Bhagwati Prasad and Smt. Jaigul Begum, vendee of plaintiff No. 2 Raj Kumar. It was further pleaded that the plaintiff No. 1, defendant No. 13 and defendant Nos. 10 to 12 had taken a loan of Rs. 70,600/- from the State Bank of India and for that purpose had mortgaged the disputed land. As the loan was not repaid, a recovery certificate was issued for realization of the amount. In pursuance of which, plot No. 60A, 60B, 212 were sold for a sum of Rs. 1,30,000/- and further the property of schedule No. 1 was also attached and sold for Rs. 70,000/-. It was pleaded that the plaintiff or defendant Nos. 10 to 13 never received any notice of sale which was done behind their back without complying with the provision of the rules and were sold for inadequate price and the entire transaction was fraudulent and collusive and was only a paper transaction. An application for temporary injunction was also moved but the same was rejected vide order dated 30.10.1991 against which a Misc. Appeal No. 38 of 1991 was filed which was also dismissed vide order dated 16.7.1998 which was again subjected to challenge before this Court through writ petition No. 27826 of 1998 which was also dismissed vide order dated 3.9.1998.

6. The petitioners filed their written statement, inter-alia, stating that the suit was filed with false allegations and in pursuance of the recovery proceedings the disputed property was attached way back on 28.3.1988 when Bhagwati filed Writ petition No. nil of 1988 challenging the recovery proceedings but the court refused interference on merits, however, passed an order on his undertaking on 13.5.1988 fixing instalments for repayment of the loan. The order was not complied. It was further pleaded that another writ petition was filed on behalf of the plaintiffs and the defendant Nos. 10 to 13 which was also dismissed vide judgment and order dated 26.3.1991. It was further pleaded that the suit is not maintainable in view of bar u/s 330(c) of the U.P. Zamindari Abolition and Land Reforms Act (herein-after referred to as the Act).

7. After pleadings of the parties had been exchanged, 10 issues were framed where issue No. 7 and 8 were with regard to the jurisdiction of the court and maintainability of the suit. The trial court decided both the issues vide order dated 24.12.1998 holding that the suit was barred and not maintainable and returned the plaint for presentation before the appropriate court. A Misc. Appeal No. 5 of 1999 against the aforesaid order has been allowed by the impugned order.

8. Learned counsel for the petitioner has urged that the suit was not maintainable before the civil court as it was barred u/s 330-(c) of the Act and there was no material pleading of fraud and the issue raised in . the suit had already been

decided either by the High Court in writ jurisdiction or by the Revenue Authorities under the provision of the Act.

9. From the record it is evident that the disputed property was mortgaged to secure a loan in favour of the Bank and after the attachment notice dated 8.1.1987 the property was duly attached on 19.3/1988 and when one of the owners. Bhagwati Prasad had filed writ petition before this court it was disposed off on 13.5.1988 allowing repayment in four instalments but yet the loan was not repaid. In spite of notices dated 31.7.1988, 5.9.1989, 26.11.1989 and 14.12.1989 the amounts were not paid and as such a sale proclamation under the Act was issued on 22.2.1990 and was duly pasted at the spot. Even though the auction sale was held on 26.3.1990, no application under Rule 285-I of the Rules was filed within the prescribed period and instead on 12.4.1990 a writ petition No. 9513 of 1990 was filed by Bhagwati Prasad, Vijai Narain, Raj Kumar and Suresh Kumar challenging the auction sale dated 26.3.1990 and claiming the following relief:

"i) To issue a writ of Mandamus directing the opposite parties not to confirm the auction sale held on 26.3.1990;

i) To issue a writ of Certiorari quashing the auction sale held on 26.3.1990 in respect of the property of the petitioners and respondent No. 10 Sobhnath situate in village Madhorampur and Amawan, Tehsil Bhadohi, District Varanasi;

ii) To issue a writ of mandamus directing the opposite parties not to dispossess the petitioners and opposite party No. 9;

iii) To issue any order writ or direction which in the interest of justice he deemed fit and proper in the circumstances of the case: And

iv) To award the costs of the writ petition to the petitioner."

10. On the following grounds:

"1. Because no notice of demand was issued nor recovery certificate was issued to the petitioner's nor citation was given.

2 Because the opposite parties are charging compound interest and penal interest and as such the amount due has been increased to such huge amount.

3 Because the entire property has been auctioned very inadequate consideration without due notice and publication.

4. Because the agricultural lands were in several villages consisting of several plots and all have been sold for Rs. 2,36,000/- is of the amount due though sold for inadequate consideration.

5. Because the petitioner will be ruined of the proceeding of auction is not quashed."

11. Initially an interim order was granted on 17.4.1990 but after exchange of affidavits, the writ petition was dismissed by a detailed order dated 26.3.1990. After noting that the earlier writ petition filed by Bhagwati Prasad had been disposed off vide order dated 13.5.1988 with a direction for repayment of the loan in four instalments starting from July, 1988 to 30th April, 1989, but the order was not complied. The court went on to hold to the following effect.

"It is the own case of the petitioner that he did not pay any instalment as directed by the Court and ultimately the amount swelled further. Ultimately, the property mortgaged by the petitioner was sold in an auction for the recovery of Rs. 1,97,000 -. The property was sold for Rs. 2,36,000 -. This auction sale and recovery proceedings are challenged by the petitioners on the ground that the amount was unreasonable and the interest charged is also incorrect and also on the ground that no notice for auctioning the land was given and without serving any notice of demand the proceedings could not have been taken. The respondents No. 5 to 10 are auction purchasers and they have filed detailed counter affidavit in reply to the writ petition. In paragraph No. 9 thereof it has been specifically stated that, prior to the auction, notices were sent to the petitioners repeatedly on 31.7.1989, 5.9.1989, 26.11.1989 and 14.12.1989. The petitioners, however, did not appear despite these notices, ultimately the property was put to be auctioned for sale on 26th of March, 1990 and was purchased by the aforesaid respondents for Rs. 2,36,000/-. Although the petitioners have filed a rejoinder affidavit, but in reply to the paragraph No. 9 they have not stated that the notices had not been served on the petitioners. The reply is very vague, and, therefore, we have no reason to doubt the correctness of the assertions made in the counter affidavit. In view of this factual position, we are not inclined to agree that the petitioners had not been served with any prior notice before the auction sale took place or that no citation was issued to him."

12. After dismissal of the writ petition the auction sale was duly confirmed on 30.3.1991 and it is only thereafter the present suit was filed on 31.5.1991 for the same relief which were claimed in the aforesaid writ petition but without mentioning about the said judgment. While the suit was pending one of the owners Raj Kumar filed a time barred objection under Rule 285-I on 23.10.1991 which came to be dismissed on 16.9.1995. These facts are substantially not denied.

13. It would be appropriate to examine Section 330 which provides as follows:-

[330 Bar to jurisdiction of civil courts in certain matters - Save as otherwise provided by or under this Act, no suit or other proceeding shall lie in any civil court in respect of-

(a) any entry in or omission from a compensation Assessment Roll; or

(b) any order passed under Part 1 of this Act; or

(c) the assessment or collection of land revenue under Chapter X or the recovery of any sum of money recoverable as arrears of land revenue.]

14. However, Rule 285-K opens a window for approaching the civil court in the following terms.

"[285-k If no application under Rule-215-I is made within the time allowed therefore, all claims on the ground of irregularity or mistake in publishing of conducting the sale shall be barred:

Provided that nothing contained in this rule shall bar the institution of a suit in the civil court for the purpose of setting aside a sale on the ground of fraud]

15. Substantively the grounds taken in the suit are that no notice of recovery or auction sale etc. was served on the plaintiffs. However, in the passing the word "Farji" tantamounting to "fraudulent" have been used without any specific detail. General allegations would not be sufficient to over ride the bar created by Section 330 (c) of the Act. The celebrated Constitutional Bench's decision in the case of [Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath](#),] has held in paragraph No. 25 to the following effect :-

"It is also to be observed that no proper particulars have been furnished Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence & coercion, the parties pleading it must set forth full particulars & the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any Ct. ought to take notice, however strong the language in which they are couched may be, & the same applies to undue influence & coercion. "

16. The allegations of fraud are contained in paragraph Nos. 12 and 14 which is quoted below.

"12. Yah ki nilam ki karyavahi bhi bina poorva nirdharit ghoshra key niyam key pratikool Avidhanik roop sey apney daftar mey baithkar Muddalhum sankhaya 7 lagayal 9 key sajishi va farebi karyavahi ki vajah sey bashajis Muddalehum sankhaya I lagayat 3 hokar vivadit bhumii ko bahut kam mulya mey nilam hona arjit hai s taur par sampurta karyavah kurki nilam va confirmation nilam jail farji karyavahi ki den hai and dhokha poorn karyavahi hai jo kisi bhi surat mey kayam rahney yogya nahi hai.

14. Yah ki sampur karyavahi niswat kurki va nilam matra kagji (paper transaction) hai, jiska palan vastavik roop sey nahi huya hai. "

17. A perusal of the said paragraph would show that the necessary particulars for establishing fraud have not been stated therein. Order VI Rule 4 of the CPC clearly provides that where party cries "fraud" or "misrepresentation" etc. it has to give

particulars and details of fraud in the pleadings. That is to say the allegation should be specific, particular and precise. The names of the persons, the date and place of the transaction and the actual nature of the transaction should be disclosed. In the present case officials of the Revenue Department had prepared the papers and executed it, normally they are presumed to be uninfluenced and unbiased, therefore there was all the more necessary to give the particular as to why and how they engaged themselves in the alleged "fraudulent" exercise. The Apex Court has reiterated in *Smt. Sukhedi v. Bairo J.T* [1999 (3) . 56] that full particulars necessary for establishing fraud has to be pleaded. In my opinion, mere usage of the words and general allegations would not be sufficient to over come the bar of Section 330, and that too in the present case where the petitioner has lost twice before this Court and then before the Revenue Authority.

18. There is yet another aspect to the case. It is not denied that two writ petitions had been filed against the recovery proceedings when the first was dismissed on 13.5.1988 and the second was dismissed on 26.3.1991, while the suit itself was filed on 31.5.1991, but the plaintiffs made no mention of the aforesaid fact which was material to the issue involved in the suit. Thus, the plaintiffs also appear to be guilty of suppression of material facts. Examining the issue from any angle, it is apparent that the appellate authority has not applied itself to the principle enshrined in Order VI Rule 4 which has been interpreted by the Apex Court on several occasions and its order cannot be sustained and the suit, as it stands, is barred by Section 330 (c) of the Act.

19. For the reasons given above, this petition succeeds and is allowed and the impugned order dated 26.9.2001 is hereby quashed. No order as to cost.