

Sheo Murat Singh Vs Addl. District Judge IV and Others

Court: Allahabad High Court

Date of Decision: Dec. 4, 1991

Citation: (1992) 1 AWC 246

Hon'ble Judges: S.C. Verma, J

Bench: Single Bench

Advocate: V.V. Misra, Yatindra Singh and V.K.S. Chaudhari, for the Appellant; S.K. Verma, for the Respondent

Final Decision: Dismissed

Judgement

S.C. Verma, J.

The present petition is directed against the order of IV Additional District Judge, Ghazipur dated 21-4-1988 and the order

dated 17-9-1987 passed in Original Suit No. 81 of 1985 holding that the Civil Court has jurisdiction to adjudicate upon the present dispute and

grant relief for cancellation of the sale deed dated 9th May 1985 and for permanent injunction to restrain the Defendants from interfering in

possession of the disputed land.

2. An issue relating to the jurisdiction of the Civil Court to try the suit was framed by the learned Civil Judge and it was held by the trial court that

the relief for cancellation of the sale deed could be granted by the Civil Court. The learned IVth Additional District Judge in Civil Revision No. 158

of 1987 upheld the view taken by the learned Civil Judge.

3. Learned Counsel for the Petitioner has challenged the impugned orders mainly on the grounds that as the name of the Petitioner had already

been mutated in the revenue records in pursuance of the disputed sale deed, the Revenue court alone has jurisdiction to correct the revenue

records and the disputed sale deed being void, the relief for declaration and injunction can also be granted by the revenue court. In support of his

contention Learned Counsel for the Petitioner placed reliance on Ram Padarath v. II Additional District Judge Sultanpur 1989 AWC 290 (FB),

which is being quoted below:

We are of the view that the case of Indra Deo v. Smt. Ram Piari 1982 (8) ALR 517, has been correctly decided and the said decision requires no

consideration while the Division Bench case. Dr. Ajodhya Prasad Vs. Gangotri Prasad, is regarding the jurisdiction of consolidation authorities

but so far as it holds that suit in respect of void document will lie in the revenue court it 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 this relief permissible under law

except when a declaration of right or status of a tenure-holder is necessarily needed in which event relief for cancellation will be surplusage and

redundant. A recorded tenure-holder having 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.

Learned Counsel for the Petitioner placed strong reliance on the law with regard to exception laid down that when declaration of right or status of

a tenure holder is necessarily needed in which event relief for cancellation will be surplusage and redundant, suit is necessarily to be filed before the

revenue court. According to the Learned Counsel for the Petitioner in the present case also, since the sale deed being a void document, suit for

declaration is necessary as mutation of the names has taken place in the revenue records.

4. In my opinion the arguments of the Learned Counsel for the Petitioner in the present set of facts and the circumstances cannot be accepted. In

the plaint it has been pleaded that without the knowledge of the Plaintiff a fictitious sale deed dated 7th May 1985 has been created and was got

registered and on that basis the names of the vendee had been mutated in the revenue records. The Plaintiff claimed to be still in possession and

claimed following relief:

Aa--Basdoor degree bahak madduai khilaph mudaleh kabala jahira. nabista mudduai bahak mudaleh dinank 7-5-85 jo registry daftar sub-registrar

Saidpur men bahi No. gild No. 869 prista 105-106 par No. 972 par tarikh 9-5-85 ko hui hai, mansookh pharmai javey aur iski suchana daftar

Sub Registrar Saidpur ko bheg de jawe.

Ba--Mudaleh ko dabao ke liye mana kar diya jawe ke we kabja dakhil muddai upar aarji nijai wa fasal men kishi taur par pana wa muja-him na

ho.

The Petitioner claimed that the mutation of the name in revenue record was in pursuance of the sale deed and thus the title to the disputed property

has been claimed only on the basis of disputed sale deed. There is no dispute with regard to the Plaintiff's title prior to the execution of the sale

deed. Therefore, the only cloud on the title of the Plaintiff was the sale deed.

5. In these circumstances the simple suit for cancellation of a document or instrument, if the same cast cloud on one's right and title or is likely to

cast could over it or affects the same adversely in respect of agricultural property, does not create any difficulty and it does not necessitate any

further declaration as to the claimant's right and title over the disputed land. In the present case if the principal relief for cancellation of a void sale

deed is granted by the Civil Court, there would be no necessity to claim any further relief with regard to the title or right of the Plaintiff over the

disputed land.

In my opinion merely because the name of the vendees have been mutated on the basis of disputed sale deed and there is no other claim of right or

title over the disputed land, it would not be necessary at this stage to seek any relief before the revenue court and any declaration of title would not

be required as a principal relief. After the validity of the disputed sale deed had been adjudicated by the civil court the Petitioner may seek redress

before the revenue court for correction of the revenue records.

6. After the decision in Full bench case of Ram Padarath (supra) Hon. Supreme Court in Smt. Bismillah v. Janeshwar Prasad 1990 1 AWC 359

(SC) also approved the full bench decision and applied the law laid down that the suit for cancellation of the void document will generally lie in

Civil Court.

7. The view of the courts below that the present suit is maintainable before the Civil Court, does not suffer from any illegality or infirmity. The

petition is devoid of merit and is accordingly dismissed.

8. There shall be no order as to costs.