

Debi Das (deceased) Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Oct. 11, 2002

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 115

Citation: AIR 2003 All 14 : (2003) 3 AWC 1921

Hon'ble Judges: B.K. Rath, J

Bench: Single Bench

Advocate: Shyamal Narian and Ajit Kumar, for the Appellant; Vipin Sinha and Devendra Pratap Singh, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.K. Rath, J.

The property in dispute is site No. 48, Civil Lines, Allahabad having an area of 14,400 sq. yards, on the portion of which bungalow No. 17/27, Elgin Road and 1 Stretchy Road exist. Three suits regarding this property have been filed In the Court of Civil Judge,

(Senior Division), Allahabad, in which Debi Das, the revisionist is common plaintiff and in other two suits some others have been Joined as co-

plaintiffs. In brief the allegations of the revisionists are that the land of this bungalow is nazul land and revisionist Debi Das is the lessee of the same.

2. It is further alleged that the lease of the nazul land was last renewed in favour of Sri Debi Das on 21-12-1989 by the Commissioner, Allahabad

Division, Allahabad by the deed, Annexure No. 1 to the affidavit filed in support of the revision. That therefore, he continues to be lessee of the

nazul land. That the State Government has decided to confer the free hold rights upon lessees of the nazul land. That according to the Government

Order the free hold rights can be conferred on the lease holder or their nominees and none else. That therefore, the free hold right regarding the

disputed property can be conferred on the revisionist, Debi Das alone.

3. It is further contended that a power of attorney was executed by Sri Debi Das in favour of respondent No. 14, Dr. Arup Banerjee and his father

B. D. Banerjee, which was unregistered and only notarized. On the basis of the same they have executed some documents on 11-3-1999 and 12-

3-1999 in favour of respondent Nos. 3 to 14. That on the basis of the said documents, the District Magistrate and Commissioner, Allahabad

Division, Allahabad is intending to confer the right of free hold over the above nazul land in favour of respondent Nos. 3 to 14. That Arup Banerjee

and his father have no right to execute the document. There was no registered power of attorney in their favour and the power of attorney has

already been withdrawn. That the price of the bungalow is about Rs. 6.50 crores and only a sum of Rs. 65 lacs are alleged to have been paid. The

property of Rs. 6.50 crores could not have been transferred for Rs. 65 lacs by any prudent man. That this amount was also not paid. That

therefore, the nazul land can not be made free hold in favour of respondent Nos. 3 to 14.

4. On these assertions three suits were filed in the Court of Civil Judge (Senior Division), Allahabad by the revisionists. The first is suit No. 488 of

1999, in which the prayer made was that the State of U.P. and Collector, Allahabad be restrained by permanent injunction from ordering and

granting free hold rights, after converting lease hold rights of the disputed land in favour of defendants respondents and the defendants-respondents

be restrained from claiming or getting any right of free hold in the said land. Another suit No. 529 of 1999 was filed for declaration that the

document dated 12-3-1999 alleged to have been executed by Dr. Arup Banerjee and his father, B. D. Banerjee in favour of the defendants-

respondents as void. The other relief sought in this suit was that the respondents be restrained from alienating or transferring the property in dispute

to any other person.

5. The third suit No. 326 of 2000 was filed by the revisionist in which the prayer has been made that documents dated 11-3-1999 and 12-3-1999

proposed to be the nomination deed alleged to have been executed on behalf of the plaintiff by Dr. Arup Banerjee and B. D. Banerjee and deed

dated 23-10-1999 alleged to have been executed by Collector, Allahabad on behalf of the State of U.P. conferring free hold rights on the

respondents be declared as null and void. A further prayer made in the suit was that an injunction be issued to restrain the respondents from

alienating the property or demolishing the existing constructions and raising new constructions.

6. In all the three suits applications for temporary injunctions under Order 39 Rules 1 and 2 CPC were also moved by the revisionists. However,

the learned Civil Judge, (Senior Division), Allahabad in all the three suits issued notices of the applications under Rule 3 but did not pass any

interim order. Aggrieved by it, the present three revisions have been filed with the prayer in brief that the respondents be restrained from alienating

or transferring the land of the said bungalow and from raising any constructions over the same or demolishing the existing constructions and

changing the nature of the property, and they may be directed to maintain the status-quo over the property in dispute till the decision of the

application for issue of temporary injunction on merits by the learned Civil Judge (Senior Division), Allahabad in the three suits.

7. I have heard Sri Shyamal Narain, learned counsel for the revisionist and Sri Vipin Sinha, learned counsel for the respondents in details.

8. I have considered the arguments. I am afraid that no relief can be granted to the revisionists in these revisions in view of the proviso added to

Section 115 CPC by Amending Act No. 46 of 2002 enforced w.e.f. 1-7-2002, which is as follows :

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue. In the course of a suit

or other proceeding, except, where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the

suit or other proceedings.

9. According to this proviso therefore, the order can not be varied, reversed in the exercise of powers u/s 115 CPC for the reason that had the

order been made in favour of the revisionist it would not have finally disposed of the suits.

10. Accordingly, all the three revisions are dismissed with the direction to the trial Court to dispose of the application for temporary injunction

expeditiously. The stay order, if any is hereby vacated.