

**(2002) 10 AHC CK 0176****Allahabad High Court****Case No:** Civil Revision No"s. 15, 16 and 18 of 2002

Debi Das (deceased)

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Oct. 11, 2002**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 115

**Citation:** AIR 2003 All 14 : (2003) 3 AWC 1921**Hon'ble Judges:** B.K. Rathi, 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. Rathi, 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, arid 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.