
(2009) 08 AHC CK 0304

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 6976 (M/B) of 2009

Smt. Maya Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Aug. 10, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 226

Citation: (2010) 4 AWC 3492

Hon'ble Judges: S.P. Mehrotra, J; Anil Kumar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Anil Kumar, J.

We have heard Sri V.K. Singh, learned Counsel for the petitioner and the learned standing counsel appearing for respondent Nos. 1 to 4.

2. Learned Counsel for petitioner submitted that Smt. Bhagwan Devi, widow of Nankau Ram, after the death of her husband had adopted Sri Lalta Prasad in the year 1950 (copy of adoption deed is annexed as Annexure-1 to the writ petition). As such, Sri Lalta Prasad who had become the owner of house Nos. 113/05 and 114/93 situate at mohalla Naya Gaon west circle Aminabad has executed Will deed in favour of his wife Shyama Devi on 25.7.1997.

3. Sri Lalta Prasad died in the year 1980. Smt. Shyama Devi became the owner of the entire property owned by Lalta Prasad and Smt. Shyama Devi thereafter executed a Will deed in respect to the house Nos. 114/93 and 113/5 in favour of her daughter Maya Devi (petitioner).

4. When it came to knowledge of the petitioner that Sri Shiv Narain Lal Gupta (respondent No. 8) has alleged that late Sri Lalta Prasad had executed a registered

sale deed in his favour in respect to house Nos. 114/93 and 113/5, the petitioner has filed a suit for cancellation of the sale deed which is pending before the lower court.

5. It was further submitted that Sri Shiv Narain Lal Gupta had filed a regular suit being Suit No. 643 of 1988 Sheo Narain v. Shyama Devi, for possession which was dismissed on 17.4.1992 for want of prosecution.

6. Learned Counsel for petitioner further submitted that a regular suit being Suit No. 184 of 1988 Smt. Shyama Devi and Anr. v. Mahadev Prasad Gupta and Ors., was filed in the Court of Upper Munsif, Lucknow, in which the Court concerned by means of an order dated 3.1.1989 has granted interim injunction order whereby the respondents, their agents and servants were restrained from interfering in the peaceful possession of the plaintiff in respect to the house in dispute.

(A copy of which is annexed as Annexure-4 to the writ petition).

7. On 25.5.2009, when the husband of the petitioner was not present and had gone to attend a marriage ceremony at Katra Bazar and the petitioner, her mother and daughter were alone in the house taking advantage of the said fact, the respondents grabbed the house Nos. 114/93 and 113/5 situated at mohalla Naya Gaon west circle Aminabad of the petitioner and had beaten them badly.

8. In this regard the petitioner lodged an first information report, (Annexure-5 to the writ petition) and other appropriate criminal proceedings were also taken in the matter in question.

9. In view of the above said facts, the learned Counsel for petitioner has submitted that a writ of mandamus be issued commanding the respondents to restore the possession of the petitioner's house Nos. 113/09 and 114/93 situate at mohalla Naya Gaon west circle Aminabad as the action of the respondents is in violation of the injunction order passed on 3.1.1989, passed in Regular Suit No. 184 of 1988.

10. After considering the arguments advanced by the learned Counsel for the petitioner and the counsel for respondents, we are of the opinion that if the petitioner has been dispossessed from the house in question by the respondents in disobedience and disregard to the injunction order passed in Regular Suit No. 184 of 1988, Smt. Shyama Devi v. Mahadev Prasad Gupta and Ors., then she has got an adequate remedy u/s 151, C.P.C.

11. Section 151, C.P.C. provides as under:

151. Saving of inherent powers of the Court-Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

12. On a bare perusal of Section 151 of the Code of Civil Procedure, it cannot be said to be in dispute that Section 151 confers wide powers on the Court to make such

orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

13. The power of Section 151 to pass order of injunction in the form of restoration of possession of the Code is not res integra now.

14. In the case of [Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal](#), the Hon"ble Supreme Court has held:

While dealing with the power of the Court to pass orders in the ends of justice or to prevent the abuse of process of the Court, the Court has got inherent powers to pass an order u/s 151, C.P.C. which confers wide power on the Court to make such orders as they may be necessary for the ends of justice, or prevent the abuse of the process of the Court.

15. Further in the case of Meera Chauhan v. Harsh Blshnol and Anr. JT 2007 (1) SC 458 : 2007 (1) AWC 469 (SC), the Hon"ble Apex Court has held as under in the following paragraphs:

18. At the same time, it is also well-settled that when parties violate order of injunction or stay order or act in violation of the said order the Court can, by exercising its inherent power, put back the parties in the same position as they stood prior to issuance of the injunction order or give appropriate direction to the police authority to render aid to the aggrieved parties for the due and proper implementation of the orders passed in the suit and also order police protection for implementation of such order.

19. It is also well-settled that when in the event of utter violation of the injunction order, the party forcibly dispossesses the other, the Court can order restoration of possession to the party wronged.

16. In view of the above law laid down by Hon"ble Supreme Court in our opinion, the inherent powers of the Court u/s 151, C.P.C. are wide and are not subject to any limitations. Where in violation of a stay order or injunction against a party, something has been done in disobedience, it will be the duty of the Court as a policy to set the wrong right and not allow the perpetuation of the wrong doing.

17. In our view, the inherent power will not only be available in such a case, but it is bound to be exercised in that matter in the interests of justice. Even apart from Section 151, C.P.C, we observe that as a matter of judicial policy, the Court should guard against itself being stultified in circumstances like this by holding that it is not powerless to undo a wrong done in disobedience of the Court's order.

18. According to our opinion, if the petitioner has any alleged grievance in the matter in question, in that event, the petitioner has statutory remedy under the Act and the petitioner can avail the same for redressal of his grievance which can be adequately granted by the concerned Court taking into consideration the evidence

and other factors. Therefore, in our opinion the petitioner is not entitled for the relief as claimed by her in the present writ petition.

19. In view of what has been discussed above, we are not inclined to interfere in writ jurisdiction under Article 226 of the Constitution of India as the writ petition lacks merits.

The writ petition is accordingly dismissed.