(2014) 05 AHC CK 0061

Allahabad High Court

Case No: Writ-B No. 18325 of 2014

Virendra Nath Singh		APPELLANT
	Vs	
D.D.C.		RESPONDENT

Date of Decision: May 5, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Specific Relief Act, 1963 - Section 26
- Transfer of Property Act, 1882 - Section 53(2)
- Uttar Pradesh Agricultural Credit Act, 1973 - Section 10
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 9

Citation: (2014) 124 RD 59

Hon'ble Judges: Anjani Kumar Mishra, J

Bench: Single Bench

Advocate: P.N. Singh and D.K. Tiwari, Advocate for the Appellant; S.K. Singh, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Anjani Kumar Mishra, J.
Heard Shri P.N. Singh, learned Counsel for the petitioner and Shri S.K. Singh, who has filed caveat on behalf of respondent Nos. 3 to 6. The instant writ petition arises out of an objection u/s 9 of the U.P. Consolidation of Holdings Act, and relates to plot No. 96 area 1.002 hectares of khata No. 72 Sa which was recorded in the name of the petitioner. The contesting respondents sought mutation on the basis of a sale deed dated 10.4.1995 and a rectification deed dated 24.9.1999 which was allowed and they were ordered to be recorded over plot No. 96 having an area of 840.

2. Aggrieved by the order, the petitioner filed an appeal which was allowed, the order of the Consolidation Officer (the CO) was set aside the matter was remanded for a fresh

decision.

3. Aggrieved by the order of remand the contesting respondents, filed a Revision No. 267 of 2013-14 (Sudama and others v. Virendra Nath Singh and others), which has been allowed by the impugned order. Hence this writ petition.

4. Learned Counsel for the petitioner has submitted that he executed sale deed on 10.4.1995 in favour of father of the contesting respondents, on the basis whereof the purchaser was mutated by the order of the Tehsildar dated 6.7.1997.

5. On the start of consolidation operations the predecessor-in-interest of the contesting respondents, filed an objection u/s 9 alleging therein that a sale deed had been executed in his favour by the petitioner. This sale deed pertained to plot No. 18. Since, the vendor (petitioner), did not possess enough land in the said plot as such a rectification deed was executed on 24.4.1999 by the petitioner. This rectification deed was to make good the shortfall of land in plot 96. This objection was contested by the petitioner, on the ground that a rectification deed, could be executed within six months of the original deed. In the instant case, it has been executed after a gap of almost four years and, as such the rectification deed was ineffective and, the objection of the contesting respondents was liable to be dismissed. It was further alleged that the property, subject matter of the rectification was hypotheticated and, as such the same could not have been subject matter of the rectification deed.

6. Learned Counsel for the petitioner, therefore, submits that these aspects had been noticed by the Settlement Officer, Consolidation (the SOC) and he had, therefore, remanded the matter for a decision on these aspects of the matter and the Deputy Director of Consolidation (the DDC) has passed an order only on account of equity ignoring the legal aspects and, therefore, the impugned order deserves to be set aside.

The case of the petitioner, therefore, as submitted by their Counsel is that no rights could be granted in favour of the contesting respondents, as the alleged rectification deed was executed well after the six month period specified for the same. He has further submitted that under the circumstances any rectification beyond the period of six months could have been obtained only by means of a suit u/s 26 of the Specific Relief Act. Since the property in question was hypotheticated, the said deed was void in view of the section 10 of the U.P. Agricultural Credit Act, 1973. In support of his contentions, he has referred to section 53(2) of the Transfer of Property Act as also Rule 354 of the Rules framed under the Registration Act, 1908.

7. In rebuttal, the learned Counsel for the caveator has stated that the sale deed executed in 1995 in favour of the predecessor-in-interest of the contesting respondents of plot No. 18, was executed for a consideration of Rs. 50,000. The vendor (petitioner) knew that he had already sold of major portion of plot No. 18 and, was possessed only of about 100 links therein. Despite this knowledge, he executed a sale deed of 840 links of this

plot in favour of the contesting respondents. When this fact was discovered by the respondents, the petitioner executed the rectification deed. He has further submitted that on account of this fraudulent act of the petitioner, an FIR was lodged against him. He thereafter, filed Criminal Misc. Writ Petition No. 3499 of 2009 praying for quashing of this said FIR.

8. By an earlier order dated 9.4.2014, the record of this writ petition No. 3499 of 2009 was summoned and, I have also perused the same.

9. Paragraph 5 of this writ petition is quoted herein below:--

5. That initially the above noted registered sale deed dated 10.4.1995 has been executed in the favour of respondent No. 4 and others mentioning the wrong Arajiyat No. i.e. Araji No. 18 measuring area 840 Kadi, hence in that very situation the petitioner has executed another Titimma sale deed dated 29.4.1999 in the favour of respondent No. 4 including his 3 brothers as well as Anil Kumar and Arun Kumar sons of Ram Sakal Surya Nath and Bodhiram sons of Bal Kishan mentioning the Araji No. 96 measuring area 840 kadi of which the petitioner was actual owner and there by the petitioner has stated that over Araji No. 96 measuring area 840 Kadi the respondent No. 4 including his 3 brothers as well as Anil Kumar and Arun Kumar sons of Ram Sakal Surya Nath and Bodhiram sons of Bal Kishan may get registered there name in revenue record in the place of petitioner.

10. From the said averments made by the petitioner in Criminal Misc. Writ Petition No. 3499 of 2009 quoted herein above, it is clear that the petitioner admits having executed a rectification deed. It is also clear that he admits that the earlier sale deed was not of the area of land it purported to sell. Under the circumstances, since the executed sale deed of 1995 was admittedly of an area muchless than was purported to be sold by the said sale deed therefore, a rectification deed was executed of the requisite area from another plot. It is now not open for the petitioner to challenge the same on technicalities.

11. Under the circumstances, the DDC has rightly allowed the revision and set aside the order of remand specifically noticing the fraudulent and mala fide action on the part of the petitioner.

12. In light of the above, I am not inclined to exercise any discretion in favour of the petitioner, in my equity jurisdiction under Article 226 of the Constitution of India. Substantial justice has been done between the parties and, therefore, the writ petition deserves to be dismissed.

13. The petitioner having admitted execution of a sale deed in 1995 as also, the rectification deed in the year 1999 as also, the reasons which necessitated the execution of the rectification deed, it is now not open for the petitioner to seek refuge behind legal technicalities so as to deny the genuine claim of the contesting respondents. The writ petition is accordingly dismissed. However, there will be no order as to costs.