

(2014) 08 AHC CK 0149

Allahabad High Court

Case No: Writ-B No. 34671 of 2014

Suresh Chandra Mani

APPELLANT

Vs

Dhananjai

RESPONDENT

Date of Decision: Aug. 6, 2014

Acts Referred:

- Transfer of Property Act, 1882 - Section 52
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 229B

Citation: (2014) 125 RD 31

Hon'ble Judges: Ran Vijai Singh, J

Bench: Single Bench

Advocate: R.P. Shastri, Advocate for the Appellant; Ashish Mani Tripathi, Advocate for the Respondent

Judgement

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Ran Vijai Singh, J.

Heard Sri R.P. Shastri, learned Counsel for the petitioners, learned Standing Counsel for the State respondents and Sri Ashish Mani Tripathi, learned Counsel for respondent No. 1. By means of the present writ petition the petitioner has prayed for issuing a writ of certiorari quashing the order dated 14.3.2013 passed by the Commissioner, Gorakhpur Division Gorakhpur in Appeal No. 3/8/D-2013 (Dhananjai v. Suresh Chandra and others) and the judgment and order dated 23.4.2014 passed by learned Member Board of Revenue, Allahabad in Revision No. 35/2013-14 (Suresh Mani and others v. Dhananjai and others).

2. Vide order dated 14.3.2013 the Commissioner, Gorakhpur Division Gorakhpur has admitted the appeal holding it to be maintainable and stayed the operation of the impugned order dated 3.1.2013 whereas by the subsequent order dated 23.4.2014

the revision filed by the petitioner against the order dated 14.3.2013 has been dismissed by the learned Member, Board of Revenue, Allahabad holding it to be not maintainable.

3. While assailing the impugned order dated 14.3.2014 Sri R.P. Shastri, learned Counsel for the petitioner submits that respondent No. 1 happens to be the purchaser of the land through registered sale deed executed by Gulabi Devi and Vijai Kumar who according to Sri Shastri had been executed in violation of the restrained order dated 18.12.2004 passed by the Sub Divisional Officer in Suit No. 173 of 1983 (Saraswati Prasad and others v. Smt. Sudhia and others).

4. The facts giving rise to the present writ petition are that the petitioner has filed Suit No. 173 of 1983 (Saraswati Prasad and others v. Smt. Sudhia and others) under section 229B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 before the Sub Divisional Officer, Deoria. In the suit on 18.12.2004 an injunction was issued directing the respondents not to create any third party right during the pendency of the suit. The suit was ultimately decreed but pending suit in contravention of the order dated 18.12.2004 a registered sale deed was executed in favour of respondent No. 3 by Gulabi Devi and Vijai Kumar who were defendants in the suit. Taking note of that the Sub Divisional Officer held the transaction void being hit by section 52 of the Transfer of Property Act, 1882. Further the subsequent purchaser was not necessary party and decreed the suit vide judgment and decree dated 8.1.2013.

5. Against the judgment decree dated 8.1.2013, respondent No. 1 has filed Appeal No. 13/8/D-2013 (Dhananjai v. Suresh Chandra and others). There an objection was raised with regard to maintainability of the appeal but the learned Commissioner, Gorakhpur Division Gorakhpur has held that the appeal is maintainable. While doing so he has also granted interim protection staying the operation of the order dated 8.1.2013 and further restrained execution of any sale deed and not to create any third party right over the land in dispute in the meantime.

6. Sri Shastri, while assailing this judgment has vehemently contended the appeal on the instance of the purchaser who purchased the land in breach of restrained order is not maintainable. In support of his submission he has placed reliance upon the judgment of the Apex Court in Surjit Singh and others v. Harbans Singh and others, 1994 (Suppl.) RD 416 (SC) and the judgments of this Court in Subhash Chand Goyal v. U.P. Financial Corporation Kanpur, 2005 pl 2455, [Shyoraj Singh and Others Vs. Zahir Ahmad and Others](#),.

7. Refuting the submission of the learned Counsel for the petitioner, Sri Tripathi, learned Counsel for the respondent No. 1 submits that although respondent was not necessary party but he is bona fide purchaser of the land in dispute, therefore, has right of hearing before the Court below.

8. Be that as it may, I am not inclined to interfere in this matter at this stage. The petitioner is at liberty to file an application seeking recall of the order dated

14.3.2013 passed by the Commissioner, Gorakhpur Division, Gorakhpur taking all those grounds which have been taken here in this writ petition. In case such an application is filed within a period of two weeks along with a certified copy of the order of this Court, the Commissioner before proceeding any further shall pass a reasoned and speaking order on the application of the petitioner. As an interim measure, it is provided that till the disposal of the petitioners' application neither any third party right shall be created nor the nature of the land shall be changed. With the aforesaid observation/direction the writ petition is disposed of.