

Ram Chandra Vs Bhaddi Lal

Court: Allahabad High Court

Date of Decision: Aug. 6, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) " Section 9

Specific Relief Act, 1963 " Section 31

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 " Section 229B, 331

Citation: (2014) 10 ADJ 291 : (2014) 125 RD 491

Hon'ble Judges: Attau Rahman Masoodi, J

Bench: Single Bench

Advocate: A.D. Singh and G.K. Gupta, Advocate for the Appellant; C.B. Singh and S.M. Singh, Advocate for the Respondent

Judgement

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Attau Rahman Masoodi, J.

Heard Sri A.D. Singh learned Counsel for the petitioner and Sri C.B. Singh learned Counsel for respondent

Nos. 1 and 2. Respondent No. 3 is a proforma respondent. Mst. Mahrin was the original tenure-holder of property in dispute who is said to have

died in the year 1982. In due course of time names of the petitioner and respondent No. 3 who are the real brothers came to be recorded in the

revenue record i.e. in Khatauni in terms of the order dated 10.4.2000 as is evident from the Khatauni pertaining to the years 1403-F to 1408-E

2. The petitioner and respondent No. 3 came to know about a sale-deed said to have been executed by Mst. Mahrin i.e. their mother in some

proceedings which are unrelated to the present dispute. Soon after it was known to the petitioner that a fake sale-deed dated 18/21.3.1983 said to

be executed by Mst. Mahrin was relied upon in some bail proceedings, they filed a suit for cancellation of sale-deed before the Court of Civil

Judge (Junior Division), Fatehpur in original Suit No. 527 of 2000. After filing of civil suit before the Court of Civil Judge (Junior Division)

Fatehpur, as many as six issues came to be framed upon exchange of pleadings between the petitioner and respondent Nos. 1 and 2.

3. The issues framed by the Trial Court included the issue as to the maintainability of suit, which was framed as Issue No. 5. According to the

learned Counsel for respondent Nos. 1 and 2 the said issue was initially decided in favour of the petitioner which gave rise to Civil Revision No. 20

of 2007. The civil revision was decided by the Court below on, 26.9.2007 and the matter was relegated to the Trial Court for being decided

afresh. In pursuance of the revisional Court order dated 26.9.2007 issue No. 5 which related as to the maintainability of civil suit and in respect of

which bar of section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950 was pleaded before the Trial Court came, to be decided by

the Trial Court on 18.7.2009 whereby, the civil suit filed by the petitioner was held to be non-maintainable. In this manner issue No. 5 was

decided against the petitioner. A Misc. Appeal against the order/judgment dated 18.7.2009 was filed before the Court of Addl. District & Session

Judge, Court No. 8, Fatehpur which, was registered as Misc Appeal No. 12 of 1991. The Court below decided the Misc. Appeal by means of

order/judgment dated 25.2.2012 and order passed, by the Trial Court on 18.7.2009 was upheld.

4. The present writ petition is directed against the orders passed by the Courts below dated 18.7.2009 and 25.2.2012.

5. Learned Counsel for the petitioner while assailing the Orders passed by the Courts below has submitted that the bar of section 331 of U.P.

Zamindari Abolition and Land Reforms Act, 1950 would not operate and oust jurisdiction of Civil Court in view of the fact that the alleged sale-

deed was executed at a point of time when Mst. Mahrin had already died and thereafter the names of the petitioner came to be recorded and

having regard to these facts he confined the relief prayed for in the suit to the extent of cancellation of said sale-deed as void as the disputed sale-

deed was wrongly misused.

6. Learned Counsel for the petitioner has placed a copy of plaint on record wherein para 2 of the plaint clearly pleads about the occurrence of

death of Mst. Mahrin in the year 1982 and the relief is also confined to the cancellation of sale-deed as void and for this purpose the necessary

entry maintained in the registration" office of the registrar is also prayed to be expunged. In support of his Contention, learned Counsel for the

petitioner has relied upon a judgment in the case of Pancham v. Ram Gen and others 2009 (108) RD 737.

7. On the contrary learned Counsel appearing for respondent Nos. 1 and 2 disputing the factual position and jurisdiction of the Civil Court placed

reliance upon the provisions of section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950.

8. Learned Counsel for the respondent has argued that the aspect of the matter whether the alleged sale-deed is executed by a dead person or not

being a disputed fact and notwithstanding the fact that the relief is confined to the cancellation of sale-deed and consequential expunction of

registration of the deed alone, yet the suit filed by the petitioner would not be maintainable before the Civil Court rather it would be maintainable

before the Revenue Court as the subject matter of sale-deed is agricultural land.

9. Having regard to the submissions made by the learned Counsel across the bar, it is relevant to refer to section 31 of the Specific Relief Act

which is reproduced hereunder:

31. When cancellation may be ordered--(1) Any person against whom a written instrument is void or voidable, and who has reasonable

apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court

may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the Court shall also send a copy of its decree to the

officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in this books the

fact of its cancellation.

10. A cause of action which is squarely covered within the ambit of section 31 of the Specific Relief Act by virtue of section 9 of the Code of Civil

Procedure, can be taken cognizance of, except when it is either expressly or impliedly barred. The relief prayed for in the suit filed by the petitioner

undisputedly falls within the ambit of section 31 of the Specific Relief Act. The cause of action set up in the suit if also such that the petitioner in the

back ground of the fact that other persons may not misuse the sale-deed in a manner as it was discovered by him in the bail proceeding, therefore,

the suit for cancellation of the sale-deed was instituted coupled with the incidental relief of expunging the entry from the record of registration by the

office concerned.

11. The possession of land in dispute is not claimed by the petitioner, which according to him has not been disturbed on the strength of disputed

sale-deed, therefore, the question as to whether the suit is maintainable before the Civil Court or Revenue Court is the only question involved in this

writ petition. Although this issue is no more res integra, yet disputes of this kind have attracted attention of this Court under variety of situations.

12. In the instant case, the remedy of cancellation of sale-deed as void though being amenable under section 31 of the Specific Relief Act read

with section 9 of Code of Civil Procedure has been declined by the Civil Court merely on the ground that section 331 of the U.P.Z.A. & L.R. Act

contemplates an express bar.

13. While elaborating the scope of section 331 of U.P.Z.A. & L.R. Act learned Counsel for the petitioner has relied upon two judgments. The

judgment in the case of Kamla Prasad and Others Vs. Sri Krishna Kant Pathak and Others, , is rendered by the Apex Court and a Full Bench

judgment of this Court in the case of Ram Padarth and others v. Second Addl. D.J. Sultanpur decided on 26.9.1988 is rendered by the High

Court.

14. From a careful consideration of the aforesaid judgment rendered by the Apex Court, it is seen that Hon"ble Apex Court in the aforesaid

decision was satisfied that the cause of action involved in the proceeding was covered under section 229-B of U.P.Z.A. & L.R. Act for

declaration. Once the scope of suit, under the circumstances and in the opinion of the Apex Court fell within the ambit of section 229-B of

U.P.Z.A. & L.R. Act, the conclusion that the revenue Court alone had jurisdiction in respect of such a cause of action leaves no room of doubt

that the remedy of such a cause of action could fall within the ambit of section 331 of U.P.Z.A. & L.R. Act. The scope under section 331 of

U.P.Z.A. & L.R. Act does eclipse the jurisdiction of civil Court in the disputed areas pertaining to agriculture land with respect to the type of cases

which are not squarely covered within the ambit of section 31 of the Specific Relief Act. The jurisdiction conferred under section 331 of U.P.Z.A.

& L.R. Act lies in respect of all the suits, applications or proceedings mentioned in column 3 of Schedule II. A suit for cancellation of registered

sale-deed which is void or voidable is not covered in express or implied terms so far as the entries in the referable Schedule-II in section 331 of

U.P.Z.A. & L.R. Act are concerned.

15. The Full Bench judgment relied upon by the learned Counsel for the respondent also does not support his contention in the manner in which it

has been canvassed before this Court.

16. The scope of section 31 of the Specific Relief Act to the narrow extent of cancellation of sale-deed remains alive so long as the incidental

reliefs and cause of action under column 3 of Schedule II referred to under section 331 of the U.P.Z.A. & L.R. Act in respect of agricultural land is

clearly not hit in the proceedings. In the instant case, exclusive jurisdiction under section 31 of the Specific Relief Act is capable of being exercised

and no finding has been recorded by the Court below which ousts the Civil Court jurisdiction.

17. The denial of remedy before the civil Court in my considered opinion is an erroneous approach. As such the impugned judgment and orders

dated 25.2.2012 and 18.7.2009 passed by the Trial Court as well as the appellate Court are misconceived and liable to be set aside. The Trial

Court had already framed the issues and the parties have also exchanged the pleadings, therefore, it is open to the Trial Court to proceed with the

matter and decide the issues of cancellation of sale-deed having regard to the rival contentions and evidence led by the parties.

18. In the result the impugned judgment and orders dated 25.2.2012 and 18.7.2009 are hereby set aside and the matter is remanded to the Trial

Court to proceed with the determination of issues on merit expeditiously in accordance with law. The writ petition is allowed.