

Neutral Citation No. - 2023:AHC:234809

Judgment Reserved on 6.12.2023

Delivered on 12.12.2023

Court No. - 48

Case :- WRIT - B No. - 1318 of 1978

Petitioner :- Sadhu

Respondent :- DDC

Counsel for Petitioner :- BI Verma,B.L.Verma,K.K.Bajpai,Sachida

Nand Tripathi,Sp Soni,Swaraj Prakash

Counsel for Respondent :- SI Yadav,Ganesh Kumar

Hon'ble Saurabh Shyam Shamsbery,J.

1. Heard Sri Sachida Nand Tripathi, learned counsel for the petitioners and Sri Ganesh Kumar, learned counsel for contesting respondents.
2. This is a case arising out of a proceedings under Section 9-A (2) of Uttar Pradesh Consolidation of Holdings Acts, 1953 (hereinafter called the 'Act of 1953').
3. Father of original petitioners filed an objection that name of original respondent no.2 (Janki) was wrongly mentioned in revenue records, despite he was in possession over land in dispute.
4. The Consolidation Officer vide order dated 20.12.1972 has accepted objections filed on behalf of father of original petitioners and name of original respondent no.2 (Janki) was expunged from revenue records. Relevant finding is mentioned hereinafter:

"बैनामा 1375 फ० में दिनांक 24-2-68 को दिया गया है। 1375 फ० में रामअचल वर्ग 9 दर्ज था। इसलिए जानकी की ओर से दस्तावेज बैनामा में भी यह नहीं लिखा कि वह स्वयं इस भूमि पर काविज था और क्रेता गण को भी काविज करा दिया है बल्कि लिखा है कि बैनामा दार को चाहिए कि आराजी निजाई मुवैदा पर काविज दखील होकर पूर्णतयः दर पुस्त मांग भुगत करें और अपना नाम कागजात सरकारी में दर्ज करा लेवे, बैनामा दार का 1375 फ० से आजतक कब्जा हुआ नहीं क्योंकि इसके प्रमाण में उन्होंने एक भी गवाह नहीं दिया न कोई खसरा में ही कब्जे का इन्द्राज है। जिससे बैनामा दार का कब्जा प्रमाणित हो सके। उपरोक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुंचता हूं कि जानकी 1365 फ० से ही गांव छोड़ कर चला गया और उसके सामने की रामअचल का कब्जा हो गया था। जब उसका खेत निकलता समझा तो रिस्तेदारों के हक में बैनामा कर दिया जिनका कोई कब्जा दखल नहीं हुआ। बैनामा के दाखिल खारिज का जहां तक प्रश्न है जब उनका कब्जा ही नहीं है और कब्जे के आधार पर रामअचल वादी इस भूमि का पहले ही सीरदार होने का अधिकारी हो गया है तब दाखिल खारिज का प्रश्न ही नहीं उठता अतः वाद बिन्दु 1 स्वीकारात्मक तथा वाद बिन्दु 2 नकारात्मक निस्तारित किए जाते हैं।"

(Emphasis Supplied)

5. Aforesaid order was challenged by respondents before the Settlement Officer of Consolidation by way of filing an appeal which was allowed vide order dated 27.2.1973. It was held that Janki (original respondent no.2) has executed a sale deed in favour of other respondents and that land was in his possession and it was handed over to vendees also. Entry made in revenue records that Janki was "Farar" was rejected on basis of documents available on record. Relevant part of the order is mentioned hereinafter:

"भूमि लेख नियमावली के अन्तर्गत असल कास्तकार को प-क 10 की टिप्पणी जारी करना अनिवार्य है। इस तरह रिस्पोंडेंट ने पक्ष में कब्जे का इन्द्राज बिना प-क 10 की टिप्पणी जारी किए हर फर्जी व गलत साबित हुआ तथा इस फरजी इन्द्राज के आधार पर रिस्पोंडेंट का नाम आराजी निजाई पर वर्ग 9 में गलत ढंग से दर्ज किया गया है।

रिस्पोंडेंट ने 1 साल की सिचाई की रसीद प्रस्तुत किया है तथा लगान की रसीद प्रस्तुत किया है किन्तु रिस्पोंडेंट ने हर साल के सिचाई की रसीद तथा उसके महसूल सिचाई के लगान की रसीद प्रस्तुत करके यह आपत्ति नहीं किया है कि रिस्पोंडेंट का कब्जा आराजी निजाई पर लगातार है। भूमि लेख नियमावली के अन्तर्गत रिस्पोंडेंट का कब्जा तथा वर्ग 9 का

इन्द्राज फरजी साबित हुआ और जानकी के बयान से स्पष्ट हुआ कि अपीलान्त को बैनामा के आधार पर मौके पर कब्जा दे दिए हैं। तथा जानकी ने बैनामा की वैधानिकता को भी अदालत में आ करके साबित किया है। इस तरह विद्वान च०अ० ने गलत ढंग से रामअचल रिस्पोंडेन्ट को फरजी व गलत कब्जा व वर्ग 9 के आधार पर सीरदार करार दिया है और अपीलान्त के बैनामा को वैधानिक नहीं माना है बैनामा बहक अपीलान्त वैधानिक साबित हुआ तथा अपील तदनुसार स्वीकार की गई।"

(Emphasis Supplied)

6. Aforesaid order was challenged by father of original petitioners by way of filing a revision. However, it was dismissed vide order dated 29.10.1977 passed by the Deputy Director of Consolidation. It was held that Janki was not 'Faraar', and relevant part thereof is mentioned hereinafter:-

"जवाब देते हुए विपक्षी ने कहा कि धारा 145 का निर्णय जानकी के पक्ष में हुआ 31-5-50 के बाद कोई मुकदमा बेदखली का नहीं हुआ। धारा 145 के मुकदमा रामअचल निगरानी कर्ता गवाह था धारा 61 के मुकदमों 14-3-49 को जानकी के पक्ष में निर्णय हुआ निगरानीकर्ता की अपील खारिज हुई। 20-2-71 को रामअचल ने जो जानकी के विरुद्ध बयान दिया था उसकी नकल धारा 229 बी के मुकदमें है। कास्तकार जानकी थे 16,17, साल हुए जानकी ने खेत व्यय कर दिया अपने रिस्तेदार को फर्जी बैनामा किया, अतः फरारी की बात गलत है। च०अ० के यहां जानकी का व्यान हुआ अतः जानकी फरार कैसे है। अगर जानकी फरार थे तो जिसकी सिविल मृत्यु मानी जानी चाहिए तो जानकी को वैसे का वैसा फरीक क्यों बनाया गया जहां तक कब्जे के इन्द्राजात है वह कभी कभी के है और भूलेख नियमावली के विरुद्ध है। अगर बहस के लिए माना जाय कि निगरानीकर्ता काबिज है तो निगरानीकर्ता का उक्त बयान उनके केश को समाप्त कर देता है और परमिसिव कब्जे के आधार पर धारा 210 में निगरानीकर्ता को कोई अधिकार नहीं मिलेगा।

मैं स०ब०अ०च० के निर्णय और निगरानीकर्ता के तर्क से सहमत हूँ जानकी

फरार नहीं है बैनामा ठीक है जानकी ने स्वयं कब्जा डिलीवर करने की बात कही है निगरानीकर्ता के पक्ष में कब्जे का इन्द्राज नियमित नहीं है उससे उसे कोई अधिकार नहीं मिल सकता स०ब०अ०च० का निर्णय में कोई त्रुटि नहीं है।"

(Emphasis Supplied)

7. Aforesaid two orders passed by the Settlement Officer of Consolidation and Deputy Director of Consolidation respectively are challenged in present writ petition.

8. Learned counsel appearing on behalf of petitioners submitted that original respondent no.2, Janki was recorded as 'Faraar' in revenue records, therefore, he was not in possession over the land in dispute. Sale deed executed in favour of other respondents would not have any legal consequence since possession of land in dispute in pursuance of aforesaid sale deed was not handed over as vendor (Janki) was not in possession over land in dispute and he was rightly recorded as 'Faraar' in revenue records. Counsel for petitioners referred the findings returned by the Consolidation Officer in this regard that recital of sale deed states that vendee would take steps for possession.

9. Learned counsel for the petitioners further submitted that documents relied upon by Appellate Authority as well as Revisional Authority have no legal basis since it does not prove that original respondent no.2 (Janki) was in possession over land in dispute.

10. Per contra, learned counsel appearing on behalf of respondents has submitted that findings returned by two authorities i.e. Appellate as well as Revisional Authority that Janki was not 'Faraar' were based on various documents, therefore, could not be considered to be a perverse finding.

11. Learned counsel appearing on behalf of the respondents submitted that there was a dispute between Ram Achal (father of original petitioner no.1) and Janki (respondent no.2) under Section 229 of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 as well as in proceedings undertaken under Section 145

Cr.P.C., Janki was found in possession over land in dispute, therefore, entries made in the revenue records that Janki was 'Faraar' was contrary to the documents on record.

12. Heard learned counsel for the parties and perused the records.

13. Issues which have cropped up for consideration in this writ petition is as to whether name of Janki, respondent no.2 in revenue records was correctly recorded as 'Faraar' or not and as to whether there would be any effect of certain proceedings, undertaken between Ram Achal (father of petitioner no.1) and Janki, respondent no.2 in the present case qua to possession over land in dispute.

14. As referred above, since there are two concurrent findings against the petitioners, therefore, this Court could interfere only when they are perverse or beyond jurisdiction and in this regard relevant paragraphs of judgment passed by Supreme Court in ***Krishnanand (Dead) through Legal Representatives and others vs. Deputy Director of Consolidation and others, (2015) 1 SCC 553*** are mentioned hereinafter:

"12. The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for re-appreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction

or the finding is patently perverse. In the present case, though the High Court reversed the concurrent findings of the authorities below and came to the opposite conclusion on matter of facts, the High Court did not do so on the ground that the authorities below acted in excess of their jurisdiction or without jurisdiction or that the finding is vitiated by perversity.

13. We are of the view that the High Court ought not to have entered into re-appreciation of evidence and reversed the findings of fact arrived at by the three authorities below, especially since, the authorities had neither exceeded their jurisdiction nor acted perversely. The High Court has nowhere stated that it was of the view that there is any perversity, much less the High Court failed to demonstrate any such circumstances.”

15. The findings returned by the Appellate as well as Revisional Authority are mainly based on documents on record which are not under dispute. There were two proceedings between the parties, one under Section 229 of the Act of 1950, and another under Section 145 Cr.P.C. and in both the proceedings Janki, respondent no.2 was found in possession over the land in dispute.

16. Aforesaid findings could not be contradicted since no documents to oppose the same were placed on record.

17. The other argument was in regard to recital of sale deed that vendee has to take steps for possession over land in dispute and that the Consolidation Officer has held that vendee was not in

possession over the land in dispute, when he executed the sale deed which is not on record.

18. As referred above, it has not been disputed that proceedings under Section 229 of the Act of 1950 as well as under Section 145 Cr.P.C. were undertaken wherein Janki was found in possession over land in dispute.

19. Recital of the sale deed would only indicate that further proceedings in pursuance of sale deed has to be undertaken by the vendee and not by the vendor.

20. There was no entry of Form P.A.10, therefore, no benefit of it could be granted to the petitioners. The irrigation slips filed on behalf of petitioners were not sufficient to prove of their possession, since there was a break in continuity. No other documents were found sufficient to prove the case of petitioners rather on basis of documents available claim of the respondents was found proved.

21. Judgments relied on by counsel for the petitioners of Punjab and Haryana High Court in ***Kartar Singh and others Vs. Smt. Harbans Kaur, AIR 1995, P & H 186*** would not be applicable in the facts and circumstances of the present case, whereas the judgment cited by counsel for the respondents of this Court in ***Motil Lal Vs.D.D.C. & Ors, 2023:AHC197946*** would be applicable in the facts and circumstances of the present case, as it was held that initial burden to prove that Form P.A.10 was properly prepared and was served on real Kashtkar, was on petitioner but from records and orders, it would be evident that the petitioners have failed to discharge initial burden of prove that Form P.A.10 was properly prepared in accordance with due procedure.

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22. In view of the above discussion, since the findings returned by the Appellate as well as Revisional Authority, were based on materials available on record and there is no document on record or any other material to suggest that there is perversity in the impugned orders.

23. Writ petition is accordingly dismissed.

Order Date :-12.12.2023

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