

Neutral Citation No. - 2023:AHC:214443

Judgment Reserved on 2.11.2023

Delivered on 8.11.2023

Court No. - 48

Case :- WRIT - B No. - 8308 of 1979

Petitioner :- Pankhi

Respondent :- J.D.C. And Others

Counsel for Petitioner :- Sri R.S. Mishra,G.P. Mathur,R.P.

Mishra,Ram Karan

Counsel for Respondent :- S.C.,Ashok Kumar Rai,Mr. Sabhapathi

Tiwari,Tarkeshwar Mishra

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri S.K.Pandey, learned counsel for the petitioner and Sri Tarkeshwar Mishra, learned counsel for respondents.
2. Factual matrix of dispute involved in present case is that a vendor, Smt. Razia, executed a sale deed on 2.7.1963 in favour of original contesting respondent, Ram Naresh, which was registered on 17.7.1963. In aforesaid time period, same vendor i.e. Smt. Razia, executed an another registered sale deed on 9.7.1963, in favour of original petitioner Pankhi, therefore, dispute for consideration before this Court is that amongst aforesaid two sale deeds, which would be considered to be valid and enforceable.
3. During consolidation proceedings, Consolidation Officer after considering rival objections has allowed mutation in favour of

original petitioner on basis of sale deed dated 9.7.1963, by returning a finding that sale deed registered on 17.7.1963 was not executed on 2.7.1963.

4. Thereafter, original respondent preferred an appeal before the Settlement Officer of Consolidation, which was rejected vide order dated 18.11.78, which was further challenged by the original respondents in revision before the Deputy Director of Consolidation, who allowed the same vide order dated 17.08.1979.

5. In aforesaid circumstances, respondents preferred a writ petition before this Court bearing No.578 of 1972, which was allowed vide order dated 19.11.1974 whereby orders passed by Appellate Authority and Revisional Authority were set-aside and matter was remitted to the Appellate Authority to decide the appeal afresh.

6. In the aforesaid circumstances, matter was reheard by the Appellate Authority and vide order dated 18.11.1978, appeal filed by respondent no.2 was rejected and relevant part thereof is mentioned hereinafter:

"माननीय न्यायाधीश उच्च न्यायालय के उक्त आदेश से स्पष्ट है कि पांखी का दस्तावेज बैनामा दिनांक 09.07.1963 जिसे श्रीमती रजिया ने उसके हक में लिखना पूर्णतः साबित है। अब पत्रावली के वापस होने के पश्चात केवल यह देखना है कि क्या दस्तावेज बैनामा बहक पांखी आपरेटिंग होना अथवा दस्तावेज बैनामा बहक राम नरेश श्रीमती रजिया ने दिनांक 09.07.63 को पांखी प्रतिपक्षी के हक में बैनामा लिखा और उसकी रजिस्ट्री उसी दिन हुआ। कथित बैनामा जिसे श्रीमती रजिया द्वारा राम नरेश के हक में लिखा जाना बताया जाता है। वह दिनांक 02.07.63 को लिखा गया बताया गया जिसकी रजिस्ट्री का दिनांक 17.07.63 है। राम नरेश की तरफ से यह स्पष्ट नहीं किया गया है कि दिनांक 02.07.63 को लिखे गये बैनामा की रजिस्ट्री दिनांक 17.07.63 को 15 दिन के बाद क्यों करायी गयी। जैसा ऊपर लिखा जा चुका है कि अब्दुल कलाम गवाह ने यह स्पष्ट ब्यान दिया है कि स्टैम्प एन्टी डेटेड है, और दिनांक 09.07.73 के पूर्व का खरीदा हुआ नहीं है जो खरीद की तारीख

स्टैम्प पर है वह गलत है। इस अब्दुल कलीम के उक्त साक्ष्य के विरोध में राम नरेश ने कोई साक्ष्य नहीं दिया है। अपील में कोई बल नहीं है।"

(Emphasis Supplied)

7. In the aforesaid circumstances, contesting respondent herein filed a revision petition before the Deputy Director of Consolidation which was allowed vide order dated 17.8.1979 and relevant part thereof is mentioned hereinafter:

"As regard the statement of Ram Naresh that he took an our in searching the stamp paper, I find that it is not uncommon for the villagers to take hour in searching out the stamp papers more over, such statement cannot be made the sole basis of presumption that he was trying to at document of back date. Further the learned ASOC has held that Abdul Kalam witness has explicitly stated that the stamp was anti dated. I have gone through the statement of Abdul Kalam A.R.K. of the Collectorate but no where I find that he has stated that the stamp papers were anti dated and the same was not purchased before 09.07.63. I have also seen the register of stamp on the basis of which Abdul Kalam gave statement and found that in S.No. 1018 and 1019 two stamp papers of Rs. 20 and 25 respectively have been sold to Smt Razia on 28.06.63. The entries regarding these two stamp papers is in the last portion of the page. I also found that on several dates the entry of stamp papers has been made even below the last line of the pages. On the particulars case the first Sl. Started from 108 and afterwards 109 serial has been written but after this 1010, 1011 etc. has been written. And has lasted upto 1019. Similar is the position on several cases. However, on Sl. No. 1010 and 1011 a dot has been made after figure 1 before zero. But all this does not show that the Sl. no. has been broken or the stamp papers have been entered afterwards. Thus on the perusal or the stamp register it cannot be held that the entry of the stamp papers has been made afterwards. Therefore, I hold that the entry of 28.06.63 is correct.

In view of the above observation I come to the conclusion that the sale deed executed in favour of Ram Naresh is valid and will prevail over the sale deed executed

on 09.07.63 in favour of Pankhi. The findings of the learned lower courts are not based on correct appraisal of evidence and legal position. I, therefore, allow the revision set aside the order of the learned lower court and order that the name of Ram Naresh shall be recorded on the land in dispute after expunction of the name of Smt. Razia or Pankhi as the case may be. Let amaldaramad be made and file be consigned accordingly."

(Emphasis Supplied)

8. Aforesaid order is impugned in this writ petition.

9. Learned counsel for the petitioner submitted that Revisional Authority has acted beyond its jurisdiction and interfered with concurrent findings returned by two lower authorities. The Appellate Authority has considered rival submissions and considered statement of witness as well and returned a categorical finding that stamps purchased by the vendor in respect of first sale deed were ante dated.

10. Learned counsel for the petitioner further submitted that Revisional Authority has misread statement of witness and erroneously took a different view thereof.

11. Learned counsel for the petitioner further submitted that in aforesaid circumstances, Revisional Authority ought to have remitted the case to Appellate Authority to decide it afresh.

12. Per contra, learned counsel appearing on behalf of respondents submitted that the Revisional Authority has not only carefully perused statement of witnesses, but has also carefully perused register of stamps and since finding returned by the Appellate Authority was perverse and contrary to records, since, substantial illegality was committed which has caused substantial injustice and

therefore, has rightly interfered with concurrent findings being perverse.

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

14. In order to appreciate rival submissions, it would be relevant to quote few paragraphs of the judgment passed by this Court in ***Moti Lal Vs. D.D.C. & Ors, 2023:AHC:197946***, wherein powers available with the Revisional Authority at the relevant period was discussed.

" 5. (i)..... xxx

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(xviii) *The Revisional Authority had jurisdiction to interfere with order or orders passed by lower authority or authorities only under such circumstances when authority has exercised jurisdiction not vested in him in law or failed to exercise jurisdiction vested in him or acted in the exercise of his jurisdiction illegally or with substantial irregularity and as a result of which substantial injustice appeared to have been caused to a tenure holder. (See Act No.XXXVIII of 1958).*

(xix) *The word 'substantial' carries importance. Word 'substantial' often means more than 'significant'. Word 'substantial' means 'having substance' 'essential', 'real', 'of sound worth', etc. According to P.Ramanatha Aiyar's: The Law Lexicon 3rd Edition, 2012 meaning of word 'substantial' is 'considerable' and is not the same as 'not substantial'. Hindi translation of word 'substantial' as used in Amendment Act is 'सारवान्' i.e. which goes to the root of dispute.*

(xx) *The Supreme Court in **Ram Avadh & Ors Vs. Ram Das & Ors., (2008) 8 SCC 58**, has held that concurrent findings of two lower authorities could not be disturbed mainly on basis of assumption or without any basis. It would be relevant that above referred clauses were neither referred nor considered effect of U.P. Land Laws (Amendment) Act, 1982 (U.P.Act No.XX of 1982) enforced with effect from 10.11.1980."*

15. In order to further consider the rival submissions, it would be necessary to mention statement of the witness namely Abdul Kalam, which is reproduced below in its entirety.

"बयान अब्दुल कलाम

बयान अब्दुल कलाम नायब मुहाफिज दफ्तर क्लकट्री ने-
स्टाम्प जो दस्तावेज मोरखा 02.07.63 का है, उसमें नम्बर सुमार 1018 पर 25/- का स्टाम्प खरीदा गया है, मगर जो स्टाम्प दस्तावेज का विषय में राम नरेश के तरफ से दाखिल है वह 20/- का स्टाम्प है। 25/- वाले पर कोई नम्बर नहीं है। 25/- के किसी भी स्टाम्प की लिखी है, वह साफ नहीं है। मशकूक मालूम होती है। 1018 एण्ड 1019 नम्बर के सामने दस्तखत वाले कालम में बनाम मु० रजिया बेबा तमेसर सा०भुवर निरंजन पुर लिखा है, और नीचे नि० अं० बना है। यह इबारत दोनो नं० 1018 एण्ड 1019 को करेक्ट करता है। 1018, 1019 इस पृष्ठ पर अंतिम क्रमांक है। इसके बाद वाले पृष्ठ पर पुनः नम्बर एक से क्रमांक चला है। 28.06.63 के बाद पहले दूसरे पृष्ठ पर जो क्रमांक एक से शुरू हुआ है उसकी डिगरी 01.07.63 में दिखायी गयी है, हमें पता नहीं क्रमांक किस प्रकार इस रजिस्टर में चलता है। इस पृष्ठ पर यानी 48 नम्बर सुमार पर 108 क्रमांक लिखा है। उसके बाद 109 लिखा है। 109 के बाद 1010, 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1018, 1019 लिखा है। पृष्ठ नं० 49 पर पुनः नम्बर एक से शुरू हुआ है।

X X X X X

यह सेल स्टाम्प रजिस्टर है। यह सेफ कस्टडी में रहता है। इसमें घटाने बढ़ाने का अधिकार किसी को नहीं है। 28.06.63 मु० रजिया ने स्टाम्प खरीदा है, यानी मु० रजिया इस बात को मैं इसलिए कहता हूँ कि रजिया का नि० अं० रजिया ने उस दिन दो दस्तावेज खरीदा एक 25/- एक 20/- में इसलिए कह रहा हूँ कि दोनो इन्द्राज के नीचे मु० रजिया का नि० अं० 25/- वाले स्टैम्प का 1018 है, और 20/- वाले स्टैम्प का 1019 है। दोनों स्टाम्प अक्षर व अंक में लिखा हुआ है। जो अक्षर घर लिखा है, उसमें कोई ओवर राईटिंग नहीं है। केवल 25/- वाले के अंक में ओवर राईटिंग है। पहले अंक लिखा गया है, तथा अक्षर लिखा गया है। यह लिखावट सिलसिलेवार है।"

16. First issue which requires consideration is as to whether finding returned by Appellate Authority that the witness Abdul Kalam has made a specific statement that stamps were ante dated and for that I have carefully perused statement of said witness and I find that finding returned by the Revisional Authority that no such statement was made by said witness was correct and since finding

returned by the Appellate Authority was perverse, therefore, it was rightly interfered by the Revisional Authority as it was a substantial illegality and it has also caused substantial injustice to the respondents.

17. I have further carefully perused the findings returned by the Revisional Authority that statement of witness Abdul Kalam if considered carefully, it could not be considered that there were irregularities in details of revenue papers purchased by the vendor in respect of sale deed dated 2.7.1963 (registered on 17.7.1963) and in this regard for sake of repetition, finding returned by the Revisional Authority would be relevant which was returned after perusal of the stamp register.

"I have also seen the register of stamp on the basis of which Abdul Kalam gave statement and found that in S.No. 1018 and 1019 two stamp papers of Rs. 20 and 25 respectively have been sold to Smt Razia on 28.06.63. The entries regarding these two stamp papers is in the last portion of the page. I also found that on several dates the entry of stamp papers has been made even below the last line of the pages. On the particulars case the first Sl. Started from 108 and afterwards 109 serial has been written but after this 1010, 1011 etc. has been written. And has lasted upto 1019. Similar is the position on several cases. However, on Sl. No. 1010 and 1011 a dot has been made after figure 1 before zero. But all this does not show that the Sl. no. has been broken or the stamp papers have been entered afterwards. Thus on the perusal or the stamp register it cannot be held that the entry of the stamp papers has been made afterwards. Therefore, I hold that the entry of 28.06.63 is correct."

18. The next issue which requires consideration is that what would be effect of delay of 15 days in registration of the sale deed dated 2.7.1963. In this regard the finding returned by the Revisional

Authority would again be relevant that it could be registered within four months.

19. Learned counsel for the petitioner has also tried to dispute the execution of sale deed dated 2.7.1963. However, it has no legal force since the vendor has categorically admitted that she has executed both sale deeds.

20. In the aforesaid circumstances, I do not find any substantial ground to interfere with the impugned order.

21. Writ petition is accordingly dismissed.

Order Date :-8.11.2023

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