

Court No. - 8

Case :- WRIT - C No. - 1004738 of 2006

Petitioner :- Dinesh Chandra Yadav

Respondent :- Raja Chandramani Kant Singh And Another

Counsel for Petitioner :- A.S.Chaudhary,M.A.

Siddiqui,P.V.Chaudhary,Prabhakar Vardhan Chaudha

Counsel for Respondent :- C.S.C.,Govind Kumar

Chourasia,Mohan Singh,Nagendra Khare

Hon'ble Pankaj Bhatia,J.

1. A supplementary counter affidavit has been filed by the heirs of respondent no.5, which is taken on record.

2. Heard learned Counsel for the petitioner and Sri Nagendra Kumar Khare, learned Counsel appearing on behalf of the respondents no.1/5 and 1/6.

3. The present petition has been filed by the petitioner claiming the ownership of a land through a sale deed executed in favour of the grandfather of the petitioner on 23.04.1951. Subsequently, the petitioner and his cousin brother divided amongst them the said property into two equal shares.

4. It is argued by the Counsel for the petitioner that half portion of the Northern side of the property in question fell in the share of the petitioner and the half portion of the southern side fell in the share of the cousin brother of the petitioner. It is argued that the cousin brother of the petitioner, who was given the southern portion of the property in question, constructed his property and thereafter continued to live and even, the petitioner had constructed the ground floor of the property allotted to him, however, when the petitioner moved an application for sanctioning of a map for the first floor of the said premise, the objections were made by the then respondent no.1 (now represented by the heirs being respondents no.1/5 and 1/6) claiming the rights over the property in question by virtue of his being the Zamindar duly recorded in the land revenue record. It is also on record that the respondent no.1 moved an application under Section 33/39 of the U.P. Land Revenue Act for correction of plot no.1755-M. area 0.100 dismal, however, the said application was rejected vide order dated 31.08.2004 and thereafter, no declaration of title was filed by the respondent no.1. Despite there being no title suit filed by the respondent no.1, he continued to claim ownership over the property in

question.

5. It appears from the record that the petitioner had applied for raising construction on the first floor of the premise under his occupation which was objected by the respondent no.1. In view of the said objection, a notice was issued to the petitioner on 17.02.2006 by the Executive Officer, Nagar Panchayat, an authority empowered to sanction the map and after considering the objection, the map was sanctioned in favour of the petitioner on 04.07.2006. The said sanction was subject to any decision by a competent court.

6. The respondent no.1 aggrieved by the order dated 04.07.2006 preferred an appeal under Section 318 of the Uttar Pradesh Municipality Act. The said appeal was allowed by the appellate authority vide order dated 23.09.2006 by recording that the petitioner had produced the sale deed in respect of property no.751/1 whereas the construction is being made on the property no.1755 and the boundaries of the said property are different. Thus, on the said ground, the order sanctioning the map in favour of the petitioner vide order dated 04.07.2006 was quashed.

7. The contention of the Counsel for the petitioner is that the issue with regard to the title or misrepresentation of title cannot be decided by a map sanctioning authority. It is further argued that admittedly no suit either for declaration or for demarcation of the property has ever instituted by the respondent no.1. The claim of the petitioner based upon some revenue record was repelled in the proceedings under Sections 33/39 of the U.P. Land Revenue Act, against which, no remedy has been availed by the respondent no.1 and thus, the appellate authority has erred in rejecting the map sanctioned order. Even otherwise, it is argued that the order of sanction of map itself recorded that the same was subject to outcome of the litigation.

8. The Counsel representing the heirs of the respondent no.1 argues that the petitioner was trying to raised construction over the property, for which, no sale deed was executed in favour of the predecessor of the petitioner and thus, the respondents were well within their rights to file objections highlighting that the constructions proposed to be raised were on a different property then which was described in the title deed, for which, the petitioner claims title over the property in question. He thus argues that there is nothing wrong in the order passed by the appellate authority and therefore, the writ petition deserves to be dismissed.

9. I have considered the submissions of the Counsel for the

parties and perused the record.

10. There is nothing on record at the instance of the respondent no.1, otherwise, to demonstrate that any suit has been filed by the respondent either seeking declaration or otherwise in respect of the property. The petitioner and his cousin brother had raised constructions over the ground floor where they were residing. No suit for eviction has been filed against the petitioner or his cousin brother.

11. In view thereof, the reasoning recorded by the appellate authority in the order dated 23.09.2006 without even recording that *prima facie* the claim of the respondent was not based upon any documentary evidence to claim title over the property in question cannot be sustained and is quashed. The order dated 04.07.2006 is restored.

12. The writ petition is ***allowed***.

Order Date :- 18.10.2023

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