

AFRNeutral Citation No. - 2023:AHC-LKO:85302Court No. - 6**Case :-** WRIT - B No. - 4512 of 1985**Petitioner :-** Ram Tahal Singh**Respondent :-** Deputy Director Of Consolidation Sultanpur And Others**Counsel for Petitioner :-** Ashok Pandey, Mohammad Aslam Khan, Onkar Pandey, Raghaw Ram Upadhyay, Ram Lagan Misra, Rama Raman Misra, S M Nasir, Umesh Chandra Pandey, Vishnu Dev Shukla**Counsel for Respondent :-** C.S.C.**Hon'ble Rajnish Kumar, J.**

1. Heard, Shri Mohd. Arif Khan, learned Senior Advocate assisted by Shri Akbar Ali Khan, Advocate holding brief of Shri Mohammad Aslam Khan, learned counsel for the petitioner and Shri Vishnu Dev Shukla, learned counsel for respondents no.5 and 6. Learned Standing Counsel is present for respondents no.1 to 3.

2. Learned counsel for the petitioner submitted that on account of abnormal conduct of his father i.e. respondent no.4 (now deceased), the petitioner was forced to enter into legal battle with him and file Injunction Suit No.191 of 1977; Ram Tahal Versus Ram Ajore and others, in which the interim injunction was granted on 14.10.1977 restraining the respondent no.4 from executing the sale deed. But inspite of the interim injunction granted by the Civil Court, the respondent no.4 executed the sale deed in favour of respondents no.5 and 6 on 18.10.1977, whereas the land in dispute was mortgaged in favour of the Land Development Bank. The petitioner filed another Suit No.50 of 1981 for cancellation of sale deed and during pendency of the Suit, the consolidation proceedings started, therefore, the Suit was abated. The petitioner filed objection under Section 9A-2 of the U.P. Consolidation of Holdings Act, 1953 (here-in-after referred as the Act 1953), which was rejected. Therefore the petitioner had filed an appeal and thereafter revision which have also been dismissed without considering the grounds raised by the

petitioner, therefore the petitioner has filed this petition, challenging the said orders.

3. Learned counsel for the petitioner submitted that sale deed was executed in violation of the injunction order dated 14.10.1977, therefore it was a void document and the Suit for cancellation of sale deed could not have been abated because the suit for cancellation of sale deed is a suit of civil nature which is cognizable by the Civil Court only, therefore the consolidation courts cannot decide it. He relied on Section 5 of the Act 1953 and Section 52 of the Transfer of Property Act, 1982 in these regards. Thus the submission is that the impugned orders are not sustainable in the eyes of law and are liable to be quashed by this court. He placed reliance on **Ram Padarath and others Versus Second Additional District Judge, Sultanpur and others; 1989 AWC (FB)(LB) 290** And **Ram Asrey Singh and others Versus State of U.P. and others; 2006(1) ALJ 533.**

4. Per contra, learned counsel for respondents no.5 and 6 submitted that the respondent no.4 had no knowledge of the order of interim injunction at the time of execution of sale deed, therefore it cannot be said that the sale deed was executed in violation of the interim injunction order. He further submitted that loan amount of Land Development Bank has been paid, therefore there was no objection from the Land Development Bank. Accordingly the impugned orders have rightly been passed in accordance with law. The petition has been filed on misconceived and baseless grounds, which is liable to be dismissed with costs.

5. I have considered the submissions of learned counsel for the parties and perused the impugned orders, which have only been placed on records of this case.

6. The respondent no.4 had died during pendency of the present writ petition, therefore his name was deleted in pursuance of the order dated 05.01.2006 passed by this court.

7. As borne out from the pleadings and impugned orders placed on record, the petitioner had filed Regular Suit No.191 of 1977; Ram Tahal Singh Versus Ram Ajore and others for permanent injunction, in which an interim injunction was granted on 14.10.1977 restraining the respondent no.4 from executing the sale deed of the land in question. However the sale deed was executed by the respondent no.4 in favour of respondents no.5 and 6. on 18.10.1977. Thereafter the petitioner filed another suit no.50 of 1981 for cancellation of sale deed as argued by learned counsel for the petitioner and disclosed in one of the impugned orders, whereas as per other impugned order it was the appeal filed by the petitioner and the Suit was amended impleading the opposite parties No.5 and 6 challenging the sale deed executed by the respondent no.4 on 18.10.1977. Be that as it may, it was abated on 16.01.1980 on account of the start of the consolidation proceedings.

8. The petitioner filed objection under Section 9 of the Act 1953. Three issues were framed by the Consolidation Officer. The first of which was as to whether according to Ram Tahal, Ram Ajore Singh is Sankramaniya Bhumidhar of Khata No.111. The second issue was how much area would be registered in accordance with the report of Assistant Consolidation Officer and the third as to how the Khata would be divided.

9. After adducing the evidence by the parties the Consolidation Officer decided the objection by means of the order dated 11.05.1981. The issue no.1 was decided against the petitioner with the finding that the sale deed executed on 18th of October 1977 has been proved by the respondents no.5 and 6 with the evidence of his brother and Mukhtar Khas Ram Narayan, who had stated that Ram Ajore Singh had executed the sale deed

for a consideration of Rs.20,000/- and he was fit and in good mental condition at the time of execution of sale deed. He had also stated that he was also present at the time of sale deed with Ram Ajore, who had put his signatures on the sale deed and the attesting witnesses Kedar Nath had put his thumb impression and Braj Karan Singh had signed. He has further stated that after execution of the sale deed, the land in question is in possession of Raj Bahadur and Ram Dulare and their names are also recorded and Ram Ajore, Ram Harakh and Shiv Bahadur have no concern with the same.

10. The attesting witness Braj Karan Singh was also produced, who stated that he knows Raj Bahadur and Ram Dularey in favour of whom Ram Ajore Singh had executed sale deed, on which he had put his signatures, which is Ext.Ka-1. The mutation has also been made on the Nakal Khatauni of 1383-1388 Fasali, from which it is apparent that no objection was raised by Ram Ajore Singh. It has not been stated that Ram Ajore Singh was mad or of unsound mind. Ram Tahal has also not made any objection regarding his title. The Land Development Bank has not made any objection. The issue no.2 and 3 have been decided accordingly. The petitioner has not assailed the aforesaid findings recorded by the Consolidation Officer. According to the order of the Consolidation Officer Khata No.111 was recorded in the basic year in the name of Ram Bahadur and Ram Dularey son of Ram Pher and their share is one half each.

11. The aforesaid order dated 11.05.1981 was challenged by the petitioner in appeal filed under Section 11(1) of the Act 1953, which has been dismissed on the ground that the land in dispute was recorded in the name of the father of the appellant Ram Ajore before execution of sale deed on 18.10.1977. He had executed the sale deed to Ram Babadur and another. The sale deed is registered and has been proved by the attesting witness Braj Karan Singh and one another therefore the registered sale deed

cannot be disbelieved merely on saying of the appellant that by deceiving the father of the appellant the sale deed has been got executed. The petitioner also failed to prove his title or share alongwith his father Ram Ajore in the land in dispute, therefore before the execution of the sale deed the father of the petitioner was the only recorded tenure holder of the land in dispute. The appeal was dismissed by means of the judgment and order dated 22.04.1982.

12. The petitioner preferred revision No.643/425 under Section 48 of the Act 1953. The revision has also been dismissed by means of order dated 07.05.1983 on the ground that no proof has been filed on record to show that the injunction order dated 14.10.1977 was communicated to Ram Ajore prior to execution of sale deed. The petitioner has also not made any objection under Section 9 of the Act 1953 before this Court that his father is of unsound mind. It has further been recorded that the petitioner has not filed any objection under Section 9 of the Act 1953 that the petitioner has also got the land in dispute being son of his father, whereas he has made only objection that respondent no.4 Ram Ajore had no right to execute the sale deed, in view of the interim injunction order, service of which, prior to execution of sale deed is not proved. Since the land in dispute was recorded in the name of Ram Ajore, therefore he had right to execute the sale deed and if it was got executed by forgery then only he had right to challenge the same. The Suit for cancellation of sale deed is also abated from the court of Munsif and now the petitioner cannot allege that the sale deed was got executed by forgery and his mind was not in good condition. If the petitioner would have made any objection claiming his right over the land in dispute, it could have been considered, but no such objection has been made under Section 9 of the Act 1953, therefore the sale deed cannot be treated to be wrong merely on the basis of the stay order by the Munsif Magistrate, service of which on respondent no.4 prior to

execution of the sale deed also could not be proved. The sale deed has also been proved by the attesting witness. Therefore he is in agreement with the findings recorded by the lower courts.

13. Section 5 of the Act 1953 provides the effect of notification under Section 4(2). Sub-section (2)(a) provides that every proceeding for correction of records and every suit and proceeding in respect of declaration of rights or interest in any land laying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending, stand abated. The first proviso of this section provides that no such order shall be passed without giving notice by post or in any other manner and after giving them an opportunity of being heard. The second proviso provides that on the issue of a notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part as the case may be, shall stand vacated.

14. Section 52 of the Transfer of property Act 1882 provides that during the pendency of any suit or proceeding, which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

15. In view of the aforesaid two provisions made under the Act 1953 and the Transfer of Property Act 1882, the reliance on which has been placed by learned counsel for the petitioner, the suit for correction of records and declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any

other right in regard to which proceedings can be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision shall stand abated, but no such order can be passed without giving them an opportunity of being heard. On the issue of a notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order shall stand vacated. Thus if the suit was wrongly abated by the Civil Court, the petitioner could have challenged the said order before the appropriate court, but nothing has been brought on record to show that the said order was challenged by the petitioner in any court of law, by which it has been rescinded or modified.

16. Sub-section (b) of sub-section (2) of Section 5 provides that such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation authorities under and in accordance with the provisions of this Act and the rules made thereunder. The petitioner instead of challenging the order of abatement passed by the Civil Court has chosen to agitate before the consolidation authority by filing an objection under Section 9A-2 of the Act 1953, but without disclosing any right in the land in dispute under and in accordance with the provisions of this Act and the Rules made thereunder as held by the revisional court. Therefore the contention of learned counsel for the petitioner in this regard is misconceived and not tenable.

17. So far as the reliance placed by learned counsel for the petitioner on Section 52 of the Transfer of Property Act 1882 is concerned, the same also could have been considered by the Civil Court and the petitioner before the consolidation authorities also failed to disclose that the interim injunction passed by the civil court and pendency of suit was communicated to the respondent no.4, 5 and 6 before execution of sale deed. Since the petitioner

accepted the order of abatement and filed an objection before the consolidation authorities, therefore the same has been dealt with in accordance with the Act and the Rules in accordance with law.

18. A Full Bench of this court, in the case of **Ram Padarath and others Versus Second Additional District Judge, Sultanpur and others (Supra)**, has held that a recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue Court. Relevant paragraph 41 is extracted here-in-below:-

“41. We are of the view that the case of *Indra Deo v. Smt. Ram Piari*, 1982 (8) ALR 517 has been correctly decided and the said decision requires no consideration, while the Division Bench case, *Dr. Ayodhya Prasad v. Gangotri*, 1981 AWC 469 is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void document will lie in the revenue court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status of a tenure-holder is necessarily needed in which event relief for cancellation will be surplusage and redundant. A recorded tenure-holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court.”

19. This Court, in the case of **Ram Asrey Singh and others Versus State of U.P. and others (Supra)**, while relying on several judgments of the Hon'ble Apex Court and the aforesaid Full Bench judgment of this court in the case of **Ram Padarath and others Versus Second Additional District Judge, Sultanpur and other** has held that from the aforesaid judgments it is clear that the Apex Court has clearly held that in such types of cases where the rights or title are not involved and the question involved is cancellation of deed, it is the civil court only which has jurisdiction to proceed with the suit and cancel the said document. In the said case the challenge of the sale deed was made on the ground that it was executed by impersonation,

whereas the defendant no.2 (respondent 3) in the petition had half share in the land in dispute.

20. In view of above and the aforesaid Full Bench decision of this court, the recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document, which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court, but in the present case the petitioner was not a recorded tenure holder and admittedly the respondent no.4 was the recorded tenure holder at the time of execution of sale deed. He has also not challenged the order of abatement passed by the civil court, which he could have challenged in appropriate proceedings. The petitioner before the consolidation courts also failed to claim or show any right or title over the land in dispute. Nothing has also been brought on record to show that the relief, which should have been claimed before the revenue court was claimed by the petitioner before the civil court. Therefore he is not entitled for any benefit of the said decision and also the other case relied by learned counsel for the petitioner. Thus this court is of the view that the impugned orders have rightly and in accordance with law been passed by the Consolidation authorities, which does not call for any interference by this court. The petition has been filed on misconceived and baseless ground and it lacks any merit.

21. The petition is, accordingly **dismissed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 22.12.2023

Banswar