

Court No. - 17

Case :- WRIT - C No. - 1002293 of 1995

Petitioner :- Chandrika Prasad And Others

Respondent :- IInd Addl. Civil Judge And Others

Counsel for Petitioner :- V.B. Verma

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri V.B. Verma, learned counsel for the petitioners as well as learned Standing Counsel for the respondents.

2. By means of present writ petition the petitioners have challenged the order dated 14.07.1994, passed by the Munsif, Haveli, Faizabad whereby he has dismissed the suit preferred by the petitioners on the ground that the said suit is barred by the provisions of Section 52 as well as Section 49 of the Consolidation of Holdings Act, 1953 (*hereinafter referred to as "the Act, 1953"*). Challenging the order dated 14.07.1994, an appeal was preferred before the IInd Additional Civil Judge (Senior Division), Faizabad and the appeal has also been dismissed by means of order dated 22.07.1995. Both the said orders are under challenge in the present writ petition.

3. Learned counsel for the petitioners at the very outset has pressed the application being IA No. 8 of 2022, praying that he may be permitted to amend the memo of writ petition and assail the said orders under Article 227 of the Constitution of India.

4. No objection has been raised by learned Standing Counsel to the aforesaid application. Accordingly, amendment application is allowed. Accordingly present writ petition be treated to be as writ petition under Article 227. Learned counsel for the petitioner is directed to carry out necessary incorporation during course of the day.

5. It has been submitted by learned counsel for the petitioners that dispute in the present writ petition is with regard to land of Gata No. 79, 48, 249 and 352, situated at Village - Ibrahimpur Diwli, Pargana - Magalsi, Tehsil - Sadar, Distrit - Faizabad. It is stated that the said land was given by Mishri Lal Yadav, father of the petitioners to one Vansraji who was petitioners mother, towards maintenance in 1992. The land which was given to petitioners mother devolved upon them and accordingly they became owner of the said land. It seems that on the other hand

father of the petitioners - Mishri Lal Yadav by means of registered sale deed sold the said land to the respondents on 06.07.1992. Subsequently, the said land was grant by father of petitioners to mother of petitioners - Smt. Vansraji. It is stated that once said land is given to Smt. Vansraji, then same cannot be sold by Mishri Lal Yadav - father of petitioners to the private respondents.

6. It is in the aforesaid circumstances, petitioners have instituted suit for cancellation of sale deed in the Court of Munsif Haweli, Faizabad. The private respondents put in appearance in the said suit and filed their objections stating that the suit was barred under the Consolidation of Holdings Act, 1943. The Munsif Haweli, Faizabad up held the objections of respondents and was of the view that in the light of the fact that Consolidation operations have commenced in the said village the suit would not be maintainable and also that in the light of Section 49 of the Act, 1943 the suit was not maintainable before the Munsif Haweli and accordingly returned the plaint to be filed before the Court of competent jurisdiction.

7. Against the order passed by the Munsif Haweli the petitioners preferred appeal before the IInd Additional Civil Judge (Senior Division), Faizabad. The Additional Civil Judge duly considered the facts in the present case. He considered the fact that notification under Section 4 of the Act, 1943 was issued on 30.08.1980 and consolidation operations were concluded and notification under Section 52 of the Act, 1943 was issued on 07.09.1991. The sale deed in the present case was executed on 06.07.1992, which was after publication of the notice under Section 52 of the Act, 1943 and consequently the appellate Court was of the view that there was no bar under Section 5 to maintain the suit preferred by the petitioners and consequently returned finding in favour of petitioners that the suit was maintainable and that as per provisions of Section 5 there was no bar.

8. On the other hand the appellate Court did not accepted the contention of the petitioner with regard to the bar of suit under Section 49 of the Act, 1943. He was of the view that even if notification under Section 52 has been issued, there may be case with regard to consolidation which are pending before the Revenue authorities and such suits which are pending would continue till their conclusion even if notification under Section 52 has been issued. Despite the fact that there is no reference that issued raised by the petitioner was pending before any of the consolidation authority or before any consolidation Court, the said principle was made applicable in the case of the petitioners also and merely on the basis of hypotheses it was

held that suit was barred under Section 49 of the Act, 1943.

9. It is submitted by learned counsel for the petitioners that with regard to disputed property no suit was pending in any of the revenue Courts and consequently finding recorded by the Additional Civil Judge are perverse and require interference. It is submitted that once notification under Section 52 of Act, 1943 is issued even there is no bar under Section 49 of the Act, 1943 to institute suit in a Civil Court and the principle which has been followed by the Additional Civil Judge in the present case, is only with regard to the matter which are pending before the consolidation Courts on the date when notification under Section 52 of Act, 1943 has been issued.

10. It is submitted by learned counsel for the petitioners that in the light of above particularly in the facts of the present case where no such proceedings were pending before the revenue Court bar of Section 49 would not apply.

11. Learned Standing Counsel has opposed the writ petition but could not dispute the aforesaid proposition and also the fact that notification under Section 52 of Act, 1943 was issued on 07.09.1991 while sale was registered on 06.07.1992 which was much subsequent to the notification under Section 52.

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

13. Undisputedly in the present case notification under Section 49 of Act, 1943 was issued on 30.08.1980 and consolidation proceedings were concluded and notification under Section 52 of Act, 1943 was issued on 07.09.1991. In the present case the alleged sale deed has been executed on 06.07.1992 and suit was instituted by the petitioners on 07.01.1997. From the aforesaid dates it is clear that the sale deed was executed after the conclusion of consolidation proceedings and hence notification under Section 52 of the Act, 1943. Even on the date of institution of suit consolidation operations had concluded, in the light of the fact that notification under Section 52 was issued on 07.09.1991, there is no material on record to indicate that any suit was pending before the consolidation Courts on the date of issuance of notification under Section 52 of Act, 1943 and once in the facts of the present case where consolidation operations had concluded and notification under Section 52 was issued there was no bar in entertaining the suit of cancellation of sale deed which was filed by the petitioners.

14. In the light of above the judgment and order of the Additional Civil Judge dated 22.07.1995 is clearly erroneous

and is hereby set aside.

15. The writ petition is **allowed**.

Order Date :- 3.11.2023

A. Verma

(Alok Mathur, J.)