

Court No. - 17

Case :- WRIT - C No. - 1004690 of 2003

Petitioner :- Ram Chandra

Respondent :- Smt. Surja And 4 Ors

Counsel for Petitioner :- H.G S Parihar,Devi Prasad Singh,Pradeep Kumar Mishra

Counsel for Respondent :- V.K. Pandey

Hon'ble Alok Mathur,J.

1. Heard Sri Pradeep Kumar Mishra, learned counsel for the petitioner as well as Sri V.K. Pandey, learned counsel appearing for the respondents.

2. By means of present writ petition the petitioner has challenged the order dated 01.08.1998, passed by the Civil Judge (Junior Division), Raebareilly in Suit No. 524 of 1990 as well as order dated 07.11.2003, passed by the 7th Additional District Judge, Raebareilly in Civil Revision No. 72 of 1998, whereby he has rejected the revision by means of order dated 01.08.1998.

3. Brief facts of the case are that suit under Section 6 for possession was filed by the respondent on the ground that property existing on Plot No. 490, situated at Village - Sohalia, Pargana, Tehsil and District - Raebareilly has been purchased by the plaintiffs from father of petitioner and handed over consideration to Ram Gulam - father of petitioner possession of half of the said plot was handed over to the plaintiffs.

4. It has been submitted that before the sale deed could be registered, Ram Gulam - father of petitioner died and subsequently, the petitioner refused to execute the sale deed in favour of plaintiffs. A notice in this regard, after registration of sale deed was given by the plaintiffs to the petitioner on 30.01.1990, but despite notice no sale deed was got registered and it is the case that plaintiffs were forcibly dispossessed from the said property on 05.08.1990. The suit under Section 6 of the Specific Relief Act was instituted on 20.01.1990 before the Trial Court. The petitioner/defendant put in appearance and submitted that he is of schedule caste category and no such sale agreement could have been entered between Ram Gulam and plaintiffs. It was further stated that in the light of provisions of Section 209 of U.P. Z.A. & L.R. Act even possession of the said property could not be given to the plaintiffs and consequently,

relief claimed under Section 6 of the Specific Relief Act cannot be granted and prayed for rejection of suit.

5. The trial Court finding merit in the objection raised by the petitioner and on the aforesaid two grounds dismissed the suit by means of order dated 24.04.1992.

6. The respondents-plaintiffs preferred revision against the said order before IIIrd Additional District Judge, Raebareilly. In the revisional proceedings the Court held that question to be decided under Section 6 of the Specific Relief Act is regarding possession and not title. If the plaintiffs were able to demonstrate that they were in possession of the disputed property and they have been dispossessed, otherwise than in accordance with law, then, even under Section 6 of the Specific Relief Act, relief could have been granted, in case suit is filed within six months of their dispossession. The revisional Court by means of order dated 14.08.1996 allowed the revision and remanded the matter back to the Trial Court for fresh adjudication.

6. At this stage it is relevant to notice that the petitioner did not assail the order of the revisional Court dated 14.08.1996 and participated in the remand proceedings before the Trial Court. In the remand proceedings the plaintiffs-respondents were able to demonstrate that consideration for purchase of plot no. 490 was given to Ramgulam - father of the petitioner for which three receipts were given to them. All the three receipts were produced before the trial Court to indicate that father of the petitioner had agreed to sell half portion of plot no. 490 in favour of plaintiffs. The plaintiffs had appeared before the trial Court and gave their testimony stating that said receipts were executed in their presence. The Court had found that there was discrepancy in the receipts being in the name of person who had authored the receipts, but execution of the said receipts could not be disputed and consequently considering the documentary and oral evidence lead by the plaintiffs the trial court was of the view that plaintiffs are able to establish that they had obtained possession of half portion of plot no. 490 on an agreement to sell entered into between Ramgulam and plaintiffs. On the basis of said agreement they were in possession and subsequently, after the death of Ramgulam, the petitioner refused to execute the sale deed in favour of plaintiffs and consequently they were forcefully evicted from the property on 05.08.1990.

7. It is in the aforesaid facts, it is found that all the ingredients required under Section 6 of the Specific Relief Act were fulfilled by the plaintiffs and consequently the Court decreed the suit by means of order dated 01.08.1998, whereupon the

Court directed the petitioner to put the plaintiffs back in possession over half portion of plot no. 490 within a period of five months.

8. Aggrieved by the order dated 01.08.1998, the petitioner preferred revision. The revisional Court considered the arguments of the petitioner and affirmed the findings recorded by the trial Court and consequently dismissed the revision by means of order dated 07.11.2003. Both the orders dated 01.08.1998 and 07.11.2003 have been assailed before this Court in the present writ petition.

9. It is submitted by learned counsel for the petitioner that the trial Court as well as revisional Court has misdirected itself by not considering the arguments of the petitioner. It is submitted that land which is subject matter of U.P. Z.A. and L.R. Act could not have been given possession of and consequently the respondents were not entitled to the prayer sought for in the said suit. The second ground raised was that the respondents could not demonstrate that they had ever been in possession of the disputed property and on this count also the findings recorded by the trial Court as well as revisional Court are illegal and arbitrary and deserve to be set aside.

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

11. With regard to first contention of the petitioner that as per provisions of Section 209 of U.P. Z.A. & L.R. Act the trial Court could not have granted relief to the respondents, it is noticed that this aspect of the matter was duly considered in appeal preferred by the respondents which was decided by order dated 14.08.1996. The District Judge had not accepted the contention of the petitioner, stating that the dispute under Section 6 pertains only to the question of possession and not of the title. Bar of Section 209 of U.P.Z.A. & L.R. Act would be a bar only when the property is to be transferred in favour of a person other than Scheduled Caste, while in the present case while deciding the case under Section 6 of the Specific Relief Act, only question of possession has to be seen and consequently provisions of Section 209 of U.P.Z.A. & L.R. Act would not bar the said proceedings.

12. Despite giving clear finding on the arguments raised by the petitioner in appeal, which the petitioner duly accepted and participated in the remand proceedings. It is in the aforesaid facts that the trial Court as well as revisional Court did not further go into the question of applicability of Section 209 of U.P. Z.A. & L.R. Act and rightly so because the petitioner

himself had accepted the findings of the appellate Court and only challenged the findings thereof.

13. This Court is also of the considered view that once the petitioner has accepted the findings recorded by the appellate Court he could not appropriate and re-appropriate in the same matter and consequently said findings are binding on the subsequent proceedings of the trial Court.

14. The other aspect adjudicated by the petitioner is regarding adequacy of evidence. It is noticed that the trial Court has duly taken into consideration the evidence adduced by the plaintiff with regard to three receipts executed by Ram Gulam – father of the petitioner. The plaintiffs had given testimony before the trial Court where it was stated that receipts were executed in their presence.

15. There was sufficient evidence for the trial Court to take into account the fact that receipts were infact executed by Ram Gulam and consideration was taken by him for transfer of half portion of plot no. 490 and consequently it cannot be said that there was no evidence or there is any perversity in the findings recorded by the trial Court as well as revisional Court.

16. Submissions of plaintiffs were also considered, where they had stated that notice was given to the plaintiff for execution of sale deed on 30.01.1990. This aspect of the matter has also not been denied by the petitioner either before the trial Court or before the appellate Court or even before this Court. Lastly there was evidence on record with regard to forcible dispossession of the plaintiffs on 05.08.1990.

17. In view of the discussion made above, this Court is of the view that both the Courts below have adequately considered the relevant evidence adduced. There is no averment or evidence indicating perversity in the findings recorded by the Court's below.

18. Accordingly, present writ petition being devoid of merits is **dismissed**.

Order Date :- 1.11.2023

A. Verma

(Alok Mathur, J.)