

Court No. - 11

Case :- APPLICATION U/S 482 No. - 11778 of 2023

Applicant :- Smt. Bindu Devi

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil Sectr. Lko. And 2 Others

Counsel for Applicant :- Vijay Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard Sri Vijay Kumar Tiwari, learned counsel appearing for the applicant, learned AGA appearing for the State of U.P. and perused the record.

2. By means of this application under Section 482 Cr.P.C., the applicant has assailed the order dated 27.04.2023 passed by Judicial Magistrate, Utraulla, District Balrampur in Complaint Case No. 1345 of 2021, Computerized Case No. 13/2022 (Bindu Devi vs. Santosh Kumar and others) as well as the order dated 16.10.2023 passed by Sessions Judge, Balrampur in Criminal Revision No. 40 of 2023, CNR No. UPBP 010011592023 (Bindu Devi vs. State of U.P. and others).

3. Brief facts, as indicated, of the present case are as under:-

(i) The opposite party No. 2/Santosh Kumar claiming himself to be the owner in possession of the land/property in issue, i.e. Gata No. 786/09790 Hectare, situated at Village Kirtapur, Pargana Saadullanagar, Tehsil Utraulla, District Balrampur executed a registered sale-deed dated 11.07.2019 in favour of opposite party No. 3.

(ii) The applicant/Smt. Bindu Devi w/o Sri Jagdamba Prasad is also claiming her right over the land/property in issue, detailed above.

(iii) The claim of the opposite party No. 2 over the land/property in issue is based on registered adoption deed dated 08.11.1991. Based upon this deed dated 08.11.1991, the case of opposite party No. 2 is that he is the adopted son of Kunj Bihari s/o Vishwanath and three sons of Vishwanath namely Bankey Bihari, Kunj Bihari and Bhusaili (owner of the land/property in issue) were unmarried and accordingly after death of Bhusaili, he became the owner of the land/property in issue.

(iv) The claim of the applicant over the land/property in issue is based upon Will dated 29.03.2004 registered on 30.03.2009.

(v) The applicant also preferred an application dated 11.07.2019 before Sub-Registrar, Utraulla, District Balrampur inter alia praying therein that the sale deed be not registered, as the name of opposite party No. 2 is not entered in revenue records.

(vi) At the time of execution of sale-deed dated 11.07.2019, an application preferred by the opposite party No. 2 for recall of the order dated 14.10.2009, in compliance whereof the name of applicant was entered in revenue records, was pending consideration and this application was subsequently rejected vide order dated 17.06.2019.

(vii) Challenging the orders dated 14.10.2009 and 17.06.2019, a revision was filed by the opposite party No. 2 under Section 219 of U.P. Land Revenue Act, 1901 (in short "Act of 1901") registered as Case No. 00623/2019, Computerized Case No. C201908000000623 (Santosh Kumar vs. Smt. Bindu Devi and others), which was ultimately dismissed vide order dated 14.11.2023.

(viii) In aforesaid background of the case, the applicant preferred an application under Section 156(3) Cr.P.C., which was rejected vide order dated 16.10.2019 passed by Chief Judicial Magistrate, Balrampur in Criminal Case No. 306 of 2019 (Bindu Devi vs. Santosh Kumar and others).

(ix) Challenging the order dated 16.10.2019, a Criminal Revision No. 104 of 2019 (Bindu Devi vs. State of U.P. and others) was filed, which was also dismissed vide order dated 07.09.2020 passed by Sessions Judge, Balrampur.

(x) Challenging the aforesaid orders dated 16.10.2019 and 07.09.2020, the applicant preferred an application U/S 482/378/407 No. 2179 of 2020 (Smt. Bindu Devi vs. State of U.P. and others) before this Court, which was also dismissed vide order dated 31.08.2021, however, this Court provided liberty to the applicant to file a complaint case.

(xi) In the light of liberty granted by this Court vide order dated 31.08.2021, the applicant preferred a Criminal Complaint No. 1345 of 2021 (Bindu Devi vs. Santosh Kumar and others), which was dismissed vide order dated 18.02.2022 passed by Chief Judicial Magistrate, Utraulla, District Balrampur.

(xii) Thereafter, being aggrieved by the order dated 18.02.2022, a Criminal Revision No. 09/2022, Computerized Registration No. 10/2022 (Bindu Devi vs. State of U.P. and others) was filed by the applicant, which was allowed vide order dated 04.05.2022 by the Revisional Court/Sessions Judge, Balrampur. The Revisional Court interfered in the order dated 18.02.2022 and remanded the matter back with a direction to the trial court concerned to consider and decide the complaint case in view of observations made in the order itself. The relevant portion of the order dated 04.05.2022 on reproduction reads as under:-

"9. As per version of complaint the opposite party Santosh Kumar transferred the land belonging to complainant in favour of other person posing himself as its owner. At the time of passing impugned order the duty was incumbent upon Magistrate to ascertain the facts whether opposite party Santosh was owner of concerned property or he posed himself as its real owner. It requires also to inquire for assessing whether Santosh Kumar is claiming bonafide his title in respect of alleged property or he has nothing to do with it. Without

conducting Inquiry in detail regarding such aspect impugned order has been passed by Magistrate concerned which is not in consonance with law and procedure. Accordingly same is liable to be set aside.

ORDER

Present criminal revision No.09/2022 filed by revisionist Bindu Devi is hereby allowed. The impugned order dated 18.02.2022 passed in Criminal Complaint Case No. 1345/2021 is set aside. "The learned Magistrate is directed to inquire into the matter in the light of above observations collecting additional evidence/material and thereafter pass suitable order in such respect. Let lower court record be transmitted along with the copy of such judgment and order."

(xiii) Thereafter, the Chief Judicial Magistrate, Utraulla, District Balrampur dismissed the Criminal Complaint No. 1345 of 2021, Computerized Registration No. 13/2022 (Bindu Devi vs. Santosh Kumar and others) vide order dated 27.04.2023. The relevant observations made in the order dated 27.04.2023 on reproduction reads as under:-

"परिवाद कथानक में केवल यह कथन किया गया है कि गाटा सं 0 786 रकबा 0.979 हे० स्थित ग्राम कितरपुर, परगना सादुल्लानगर तहसील उतरौला जनपद बलरामपुर (विवादित भूमि) की स्वामी परिवादी हैं तथा विपक्षी सं० 1 के द्वारा उक्त सम्पत्ति को अपना बताते हुए दिनांक 11.07.2019 को पंजीकृत विक्रयपत्र निष्पादित कर विक्रय कर दिया गया।

मो० इब्राहीम व अन्य बनाम बिहार राज्य व अन्य 2010, क्रिमिनल लॉ जर्नल 2223 की विधि व्यवस्था इस सम्बन्ध में सुसंगत है, जिसमें माननीय उच्चतम न्यायालय द्वारा यह अवधारित किया गया है कि यदि किसी सम्पत्ति को किसी व्यक्ति द्वारा अपना बताकर विक्रय किया जाता है परन्तु वह व्यक्ति उस सम्पत्ति का स्वामी न हो, तो भी इससे उस व्यक्ति द्वारा सम्पत्ति के वास्तविक स्वामी के साथ कोई भी अपराध कारित किया गया नहीं माना जायेगा क्योंकि ऐसे विक्रय पत्र से सम्पत्ति के स्वामित्व का अंतरण नहीं होता। यदि कोई अपराध कारित हुआ है, तो वह ऐसे विक्रय पत्र के क्रेता के साथ हुआ है। उक्त वाद के तथ्य व परिसंस्थितियां प्रश्नगत मामले में सटीक लागू होती हैं, जिसमें माननीय उच्चतम न्यायालय द्वारा यह सुस्थापित किया गया है कि परिवाद कथानक के अनुसार धारा 420, 467, 471 भा०दं०सं० का कोई भी मामला नहीं बनता है। परिवाद कथानक एवं उसके समर्थन में धारा 200 तथा धारा 202 दं०प्र०सं० के तहत प्रस्तुत साक्ष्य के अवलोकन से यह स्पष्ट है कि विवादित भूमि को दोनों पक्ष अपना

बता रहे हैं। विवादित भूमि का असली स्वामी कौन है , इसका निर्धारण सक्षम न्यायालय/सिविल न्यायालय ही कर सकती है। आपराधिक न्यायालय इस बावत कोई भी निर्धारण नहीं कर सकती है। विपक्षी सं० 1 संतोष कुमार पर क्रेता शतोहन मिश्रा द्वारा कोई परिवाद दाखिल नहीं किया गया है। परिवादी द्वारा अपने साक्ष्य में गाली-गलौज तथा मारने की धमकी की बात कही है , परन्तु इस बावत परिवाद पत्र में कोई कथानक नहीं है। अतः सम्पूर्ण परिवाद कथानक को यदि सत्य भी मान लिया जाए तो प्रथम दृष्टया कोई भी अपराध परिवादी के विरुद्ध कारित किया जाना दर्शित नहीं होता है। फलस्वरूप परिवादी का परिवाद धारा 203 दं०प्र०सं० के तहत निरस्त किये जाने योग्य पाया जाता है।

आदेश

परिवादिनी का परिवाद पत्र अन्तर्गत धारा 203 दं०प्र०सं० के तहत निरस्त किया जाता है। पत्रावली नियमानुसार अभिलेखागार प्रेषित हो।"

(xiv) Being aggrieved by the order dated 27.04.2023, applicant preferred a Criminal Revision No. 40 of 2023, CNR No. UPBP 010011592023 (Bindu Devi vs. State of U.P. and others), which was dismissed by the Revisional Court/Sessions Judge, Balrampur vide order dated 16.10.2023. The relevant portion of the order dated 16.10.2023 on reproduction reads as under:-

"9. मैंने आक्षेपित आदेश दिनांक 27-04-2023 का परिशीलन किया।

10. आक्षेपित आदेश में विद्वान अवर न्यायालय ने यह अवधारित किया है कि परिवाद के अनुसार गाटा संख्या 786 रकबा 0.979 हे० ग्राम किरतापुर विवादित भूमि है और पुनरीक्षणकर्त्री / परिवादिनी उसकी स्वामिनी है, जबकि विपक्षी संख्या 1 के द्वारा उक्त सम्पत्ति को अपना बताते हुए पंजीकृत बैनामा निष्पादित किया गया है। विद्वान अवर न्यायालय ने मो० इब्राहिम व अन्य बनाम बिहार राज्य व अन्य 2010 (1), जेआईसी 133 (एस०सी०) के विधिक दृष्टान्त का संदर्भ देते हुए यह निष्कर्ष निकाला है कि यदि वादग्रस्त सम्पत्ति को विपक्षी संख्या 1 ने अपनी भूमि बताते हुए विक्रय किया है तो यह अपराध पुनरीक्षणकर्त्री / परिवादिनी के विरुद्ध न होकर क्रेता के सम्बन्ध में हुआ है। मो० इब्राहिम की उपरोक्त विधिक दृष्टान्त में माननीय न्यायालय ने पेरा-14 में निम्न प्रकार से अभिमत व्यक्त किया है :-

When a sale-deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale-deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver, any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale- deeds. Therefore, it cannot be said that the first accused by the act of executing sale-deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale-deeds, deceived the complainant in any manner. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

11. इस प्रकार यह स्पष्ट हो जाता है कि विवादित सम्पत्ति को विक्रय करने से पुनरीक्षणकर्ती/परिवादिनी क्रेता नहीं है। क्रेता के द्वारा किये गये किसी आपराधिक कृत्य से सम्बन्धित वर्तमान प्रकरण नहीं है।

12. उपरोक्त परिस्थितियों में मैं इस मत का हूँ कि आक्षेपित आदेश में हस्तक्षेप करने का पर्याप्त आधार नहीं है।

अतः दायित्व पुनरीक्षण याचिका निरस्त किये जाने योग्य है।

आदेश

दायित्व पुनरीक्षण याचिका निरस्त किया जाता है।

अवर न्यायालय का आदेश दिनांक 27-04-2023 पुष्ट किया जाता है।

निर्णय एवं आदेश की एक प्रमाणित प्रति, मय अवर न्यायालय की

पत्रावली यदि हो, संबंधित न्यायालय को अविलम्ब प्रेषित की जाये।"

4. In the aforesaid background of the case, the present application under Section 482 Cr.P.C. has been filed by the applicant assailing the orders impugned dated 27.04.2023 and 16.10.2023.

5. Learned counsel for the applicant says that the trial court concerned while dismissing the Criminal Complaint No. 1345 of 2021 vide order dated 27.04.2023 failed to take note of the observations made by the Revisional Court in the order dated 04.05.2022. He further says that the trial court was under obligation to consider the observations made by the Revisional Court while deciding the case after order of remand dated 04.05.2022, as such, indulgence of this Court is required in the order passed by the trial court dated 27.04.2023.

6. He further says that even the Revisional Court/Sessions Judge, Balrampur failed to consider the observations made in the order dated 04.05.2022, whereas, the trial court as also the Revisional Court were under obligation to ascertain the facts whether the opposite party No. 2/Santosh Kumar was owner in possession of the property, in issue, or he posed himself as its real owner and also whether he is claiming his bonafide title in respect of alleged property or he has nothing to do with it. Both the courts i.e. trial court as also the revisional court failed to take note of the same and accordingly, indulgence of this Court is required in the matter.

7. Learned AGA opposed the instant applicant under Section 482 Cr.P.C. He says that the judgment of the trial court is based upon the judgment passed by the Hon'ble Apex Court in the case of **Mohd. Ibrahim and others vs. State of Bihar and others** reported in **2010 (1) JIC 133 (SC)**, as such, no interference is required in the matter. He further says that in the entire application, the applicant has not pleaded that the judgment relied upon by the trial court as also by the revisional court passed in the case of **Mohd. Ibrahim (supra)** would not apply in the instant case.

8. He further says that admittedly the applicant is claiming her right over the property, in issue. The opposite party No. 2 had executed a sale deed, as such, the complaint on behalf of applicant was not maintainable. It is in view of the judgment passed by the Hon'ble Apex Court in the case of **Mohd. Ibrahim (supra)**. It is the vendor, who can file a complaint case in view of observations made by the Hon'ble Apex Court in the judgment passed in the case of **Mohd. Ibrahim (supra)**. He further submitted that to a civil dispute, the applicant wants to give a criminal colour, which is impermissible under the law.

9. At this stage, on being asked as to how the judgment passed in the case of **Mohd. Ibrahim (supra)** would not apply in the instant case, learned counsel for the applicant failed to provide any reason as to how the judgment passed in the case of **Mohd. Ibrahim (supra)** would not apply in the instant case. Moreover, no judgment contrary to the principles settled by the Hon'ble Apex Court in the judgment passed in the case of **Mohd. Ibrahim (supra)** could be

placed by the applicant's counsel before this Court. However, he says that civil and criminal proceedings can proceed simultaneously and in support of his submissions, the applicant's counsel placed reliance on a judgment dated May 06, 2009 passed by the Hon'ble Apex Court in the case of **Devendra v. State of U.P., (2009) 7 SCC 495**.

10. It would not be out of place to indicate here that the Hon'ble Apex Court in the judgment passed in the case of **Devendra (supra)** observed that "*if somebody is aggrieved by the false assertions made in the said sale deed, he would be the vendees and not the co-sharers*".

11. Considered the rival submissions and perused the record.

12. The issue before the Court in the present case is that whether the complaint case filed by the applicant, who is also claiming her rights over the land/property in issue, has rightly been rejected vide impugned order dated 27.04.2023 affirmed vide order dated 16.10.2023.

13. The principles settled in the judgment passed by the Hon'ble Apex Court in the case of **Mohd. Ibrahim (supra)** are not in dispute.

14. Admittedly, the applicant is claiming her rights over the land/property in issue on the basis of Will dated 29.03.2004 registered on 30.03.2009. The opposite party No. 2 is also claiming himself to be the owner in possession of the land/property in issue, indicated above, on the basis of registered adoption deed dated 08.11.1991 and he executed a sale deed on 11.07.2019.

15. As per the observations of the Hon'ble Apex Court in the judgment passed in the case of **Mohd. Ibrahim (supra)** and **Devendra (supra)**, a vendee can be an aggrieved person and accordingly, not the applicant herein, who is also claiming her rights over the land/property in issue.

16. For the aforesaid reason, in view of this Court, the criminal complaint filed by the applicant has rightly been rejected vide impugned order dated 27.04.2023 affirmed vide order dated 16.10.2023.

17. It appears from the pleadings on record that at the relevant time, the dispute was pending before the mutation court concerned and it is settled law that in mutation proceedings, issue of title cannot be decided and further, entry in revenue record is fiscal in nature and does not confer title. It further appears that to a civil dispute, the applicant intends to give a criminal colour.

18. For all the aforesaid reasons, this Court does not find any merit in this case. Accordingly, the instant application under Section 482 Cr.P.C. is hereby **dismissed**. There shall be no orders so as to costs.

Order Date :- 5.12.2023/Arun/-