

Neutral Citation No. - 2024:AHC-LKO:39414

Reserved on 19.12.2023

Delivered on 24.05.2024

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW

Court No. - 15

Case :- CRIMINAL MISC. WRIT PETITION No. - 637 of 2022

Petitioner :- Shail Kumari Bharti

Respondent :- State Of U.P. And Ors.

Counsel for Petitioner :- Deo Prakash Srivastava

Counsel for Respondent :- G.A.,Kaushal Kishor,Maya Ram Yadav,Sooraj Lal

Hon'ble Karunesh Singh Pawar,J.

1. Heard Shri Deo Prakash Srivastava, learned counsel for the petitioner, Sri Sooraj Lal, learned counsel for the private party and Shri Vivek Gupta, learned AGA for the State-respondent.

2. By this petition, the petitioner has prayed for the following main relief:-

"it is most respectfully prayed that this Hon'ble Court may graciously be pleased to issue, a writ, order or direction in the nature of Certiorari to quash the order dated 13.12.2021 as well as the order dated 08.11.2021, in the light of which, the private opposite parties are adamant to dispossess the petitioner from the property of trust. (The True/Photo Copy of the Order dated 13.12.2021 as well as 08.11.2021 is annexed as Annexure No.1 & 2 with the petition.)"

3. Learned counsel for the petitioner submits that a temple of Radha Krishna situated at Mohall Baluganj, P.S. Colonelganj, District Gonda is property of the trust which was gifted to the trust by Late Baba Pranpat son fo Asharfilal Goswami through a trust deed executed by him on 16.04.1960. By executing aforesaid trust deed dated 16.04.1960, Baba Pranpat has mentioned the conditions in it that

"during his lifetime, he would be the Sarvarakar of the aforesaid temple/trust and after his death, his wife Smt. Sarfaraj Kunwari would be the Sarvarakar of the temple/trust and later on after her death, his real brother namely Kamlapat and thereafter his son namely Hanuman and his heirs would be the Sarvarakar of the trust". Selling trust property by anyone shall be fraudulent.

4. It has been further submitted that after death of Kamlapat, Hanuman became the Sarvarakar of the temple. He tried to sell the land of trust by breaching the conditions of the trust dated 16.04.1960 and as such to save the property of the trust, daughter of Kamlapat namely Jai Shree Devi filed a civil suit No. 59 of 1994 and she became successful and the sale deed dated 21.12.1989, 02.03.1990 and 17.07.1990 executed by Hanuman was cancelled by the learned Civil Court vide its order dated 25.08.2000 and Jai Shree Devi was declared as the Sarvarakar of the temple as well as other property of the trust.
5. It has been further submitted that O.P. No. 3 and 4 who are the father and son have tried to take forcible possession over one portion of property of the trust by breaking locks of the doors of room and shop in which one tenant namely Rajendra Singh @ Raje is living and doing business, in absence of the husband of the petitioner i.e. Shri Ram Kumar Bharti and the tenant i.e. Rajendra Singh @ Raje. Due to alleged act of opposite party no. 3 and 4, the petitioner has moved an application before opposite party no. 2 for removal of the unauthorized possession over the property of the trust i.e. room and shop.
6. Upon the application filed under Section 145 Cr.P.C., a report was called from Tehsildar, Tehsil Colonelganj, District Gonda and after inquiry, he submitted his report in which it was mentioned that opposite party no. 3 and 4 have taken possession forcibly by breaking locks of the rooms and shops and, due to which, there is apprehension of breach of peace between the parties.

7. It has been further submitted that notice dated 03.11.2016 was issued to the parties for appearance and thereafter a report was again called from the concerned Revenue Inspector. The revenue inspector submitted its report dated 27.11.2016 wherein it was mentioned that due to the dispute of property, the proceedings under Section 145 Cr.P.C. is pending and further stated that the possession was forcibly taken on 16.10.2016. Objection was filed by opposite party no. 3 on 21.11.2016 alleging that the disputed land was purchased by him from Safaraj Kunwari through a sale deed and he is in possession over the property and there is no dispute of possession. O.P. No. 2 on the basis of the report of Tehsildar, Tehsil Colonelganj passed an order dated 16.12.2016 concluding that the proceedings under Section 146 (1) Cr.P.C. in respect of other adjacent portion property in dispute had already been done in past on 20.10.2011 and the property in dispute is trust's property and as per the trust deed dated 16.04.1960. O.P. No. 3 and 4 have no right over the property in dispute as alleged by them. Vide order dated 16.12.2016, O.P. No. 2 has passed the order for attachment of the disputed portion of trust property and the same was handed over to the in-charge police station Colonelganj, District Gonda with a direction to take care of the property in his supervision.
8. Aggrieved by the order dated 16.12.2016, O.P. No. 3 and 4 have filed a revision under Section 397/399 Cr.P.C. before the learned District Judge on 02.01.2017 numbered as criminal revision No. 15/2017.
9. It has been further submitted that the petitioner was under impression that the sale deed relating to the petitioner has been cancelled vide order dated 25.08.2000, however, she came to know that sale deed related to O.P. No. 3 and 4 was not cancelled, thereafter, she immediately moved a suit for cancellation of sale deed on behalf of the trust on 13.02.2027 which is still pending.
10. It is further submitted that learned District and Sessions Judge allowed the revision of opposite party no. 3 and 4 and remanded the matter for re-hearing of the case vide order dated 08.11.2021 without

providing proper hearing to the petitioner. Consequently, learned Sub Division Magistrate, Colonelganj, Gonda vide its order dated 13.12.2021 has restored the status quo as it was existed before 16.12.2016. Thus, this writ petition has been filed seeking quashing of the order dated 13.12.2021 passed by the learned Sub Divisional Magistrate, Colonelganj, District Gonda and the order dated 08.11.2021 passed by the learned Sessions Judge in criminal revision No. 15 of 2017.

11. In support of his contention, learned counsel for the petitioner has relied on the following judgments:-

- (i) Jhummamal v. State of M.P., (1988) 4 SCC 452.
- (ii) Ranbir Singh v. Dalbir Singh, (2002) 3 SCC 700 .
- (iii) Prakash Chand Sachdeva v. State, (1994) 1 SCC 471.
- (iv) R.H. Bhutani v. Mani J. Desai, 1968 SCC OnLine SC 5.

12. Learned counsel for opposite party no. 3 and 4 submits that Sarfaraj Kunwari widow of Baba Pranpat, resident of Town Colonelganj, District Gonda being absolute owner of the house and shop having been constructed double story over plot No. 211 situated in Ward Gandhi Nagar Municipal Corporation, Colonelganj, District Gonda and having transferable rights and the same after receiving full consideration amount, in her sound mind situation for her personal need, on 24.02.1989 executed a sale deed in favour of opposite party no. 3, which after completion of requisite formalities registered in the office of concerned Sub-Registrar dated 03.03.1989. After registration of the sale deed, opposite party no. 3 applied for mutation of the said house and shops in the office of Municipal Corporation Colonelganj, Gonda and after completion of necessary formalities on 14.09.1989, the order was passed and the said house and shop has been mutated in favour of opposite party no. 3. Thus after mutation, since 14.09.1989, opposite party no. 3 is regularly paying house tax of the said house and shop before the Municipal Board, Colonelganj. Copies of the house tax receipts dated 18.01.1990 as well as latest receipts are on

record as Annexure No. CA-3 (colly). Since date of execution of the aforesaid sale deed dated 24.02.1989/03.03.1989, opposite party no. 3 is in possession over the property in dispute and there is no dispute between the seller and purchaser and also prior to initiation of proceeding under Section 145 of CrPC. The aforesaid sale deed is neither challenged by any person before any Court of law nor till today the same has been declared null and void, on the other hand, it is intact.

- 13.** Learned counsel for opposite party no. 3 submits that on 13.02.2017, after much delay from filing of criminal revision No. 15/2017 "Dev Narayan Mishra and another Vs. State of U.P and others" against the attachment order dated 16.12.2016 passed by O.P. No. 2, under section 146 Cr.P.C., a regular suit No. 273 of 2017 "Sri Radha Krishna Ji Maharaj Vs. Dev Narayan" was filed before the learned Civil Judge (J.D.) Gonda for cancellation of sale-deed executed on 24.02.1989 duly registered on 03.03.1989. The suit is still pending at Gonda without any interim order.
- 14.** It has been further submitted on behalf of opposite party no. 3 that the Revenue Inspector in the proceedings under Section 145 Cr.P.C. submitted a report under the influence of the petitioner mentioning therein that O.P. No. 3 and O.P. No. 4 have taken forcible possession of the property in dispute and relying upon the said report, opposite party no. 2 passed the attachment order dated 16.12.2016 under section 146(1) Cr.P.C. which has been set aside by the learned Revisional Court and remanded the matter before the learned trial court with a direction to decide the matter afresh after affording opportunity of hearing to the parties.
- 15.** Perused the record.
- 16.** Perusal of the record shows that the order dated 16.12.2016 passed by opposite party no. 2 depicts that the said order has been passed on the premise that the competent Civil Court vide its order dated 25.08.2000 has cancelled all the sale deeds declaring petitioner to be the

Sarvasara of the trust. The Revisional Court vide its order dated 08.11.2021 has given specific finding that opposite party no. 2 while passing the order dated 16.12.2016 by which respondent 3 and 4 have been held to be in illegal possession and attachment order has been passed, on the premise of possibility of breach of peace, however, learned court below has not clarified as to on what facts, it arrived at a conclusion that respondent no. 3 and 4 are in illegal possession. Learned Revisional Court further gave the finding that sale deed executed in favour of respondent no. 3 and 4 has not been declared void or invalid by any Court of law whereas respondent no. 2 while passing the order has given a perverse finding that sale deed executed in favour of respondent no. 3 and 4 has been cancelled by the competent Court of law. The finding given by learned revisional Court is extracted below:-

"प्रस्तुत मामले में विद्वान अधीनस्थ कार्यपालक मजिस्ट्रेट के आदेश पत्रक एवं प्रश्नगत आदेश के अवलोकन से यह पाया जाता है कि उनके द्वारा राजस्व निरीक्षक की आख्या दिनांकित 27.10.2016, 18.11. 2016 के आधार पर धारा-145 के तहत कार्यवाही प्रारम्भ करते हुए यह निष्कर्ष दिया गया कि विवादित दुकान/मकान में सरदार सिंह किरायेदार थे। राजेन्द्र सिंह ने सहेन्द्र सिंह उर्फ राजे को मकान का बैनामा कर दिया किरायेदार राजेन्द्र सिंह मकान व दुकान में ताला लगाकर कहीं चले गए उनके जाने के बाद देव नरायन मिश्र व उत्तम मिश्र द्वारा दुकान का ताला तोड़कर अवैध कब्जा कर लिया गया जिससे मौके पर पक्षों के मध्य शान्तिभंग की सम्भावना बनी हुई है। मामले में यह उल्लेखनीय है कि विपक्षी देव नरायन द्वारा अपनी आपत्ति में प्रश्नगत सम्पत्ति पर स्वयं के कब्जे के सम्बन्ध में स्थिति स्पष्ट किये जाने के बावजूद निरानीकर्ता/विपक्षी देव नरायन मिश्र एवं उत्तम मिश्र को विवादित तत्पत्ति पर अवैध कब्जाधारी होने का निष्कर्ष देते हुए विवादित सम्पत्ति की कुर्की का आदेश पक्षकारों में तनाव व शान्तिभंग की प्रबल सम्भावना दर्शाते हुए दिया गया। परन्तु विद्वान अधीनस्थ न्यायालय द्वारा यह स्त्वष्ट नहीं किया गया कि विवादित दुकान पर निगरानीकर्ता / विपक्ष का अवैध कब्जा किन स्पष्ट तथ्यों के आधार पर माना गया। अधीनस्थ न्यायालय द्वारा यह उल्लिखित किया गया कि विवादित दुकान ट्रस्ट की भूमि है जिसके शर्तों का उल्लंघन कर निगरानीकर्ता के पक्ष में बैनामा किया गया जो न्यायालय द्वारा निरस्त घोषित किया जा चुका है। जबकि अधीनस्थ न्यायालय की पत्रावली पर ऐसा कोई प्रलेखीय साक्ष्य मौजूद नहीं है जिससे स्पष्ट रूप से यह पाया जाय कि निगरानीकर्ता के पक्ष में कथित बैनामा सक्षम न्यायालय द्वारा शून्य अथवा अवैध घोषित किया गया हो। त्वयं निगरानीकर्ता / विपक्षी द्वारा अपनी आपत्ति में स्पष्ट किया गया है कि बाबा प्रानपती व ट्रस्ट की सम्पत्ति के सम्बन्ध में एवं स्वयं वादिनी शैल कुमारी द्वारा दाखिल वाद दीवानी न्यायालय में विचाराधीन है।"

17. Thus, concluding that the order passed by opposite party no. 2 has been passed on the basis of incorrect facts and is perverse and contrary to the law and without application of mind.
18. So far as the judgment of *Jhummamal (supra)* relied by the petitioner's counsel is concerned, in that case after becoming unsuccessful in the proceedings under Section 145 Cr.P.C. and also before the Civil Court in the suit, the respondent moved the High

Court by filing a petition under Section 482 Cr.P.C. Here the facts are different.

19. In the case of ***Ranbir Singh (supra)***, the High Court erred in dealing with the petition. The question for determination before the High Court was one relating to the validity or otherwise of the preliminary order passed by the learned Sub Divisional Magistrate under Section 145(1) Cr.P.C. as well as attachment order under Section 146(1) Cr.P.C. It was held that while deciding the question, it was neither necessary nor relevant for the High Court to have considered the matters relating to title to and right of possession of the property. Both the parties in the case have filed suits seeking decree of permanent injunction against each other and there was an interim injunction order in the suit filed by the appellant and thus, leave was granted to the parties to approach Civil Court for appropriate interim order.
20. In the case of ***Prakash Chand Sachdeva (supra)***, there was no dispute of title between the appellant and respondent. The only claim which was to be decided was if the appellant had been forcibly or wrongly dispossessed within two months next before the date of which the information was received by the magistrate and the High Court instead of deciding this aspect failed to exercise its jurisdiction.
21. So far as the judgment of ***R.H. Bhutani (supra)*** is concerned, since the incident took place within the prescribed period of two months next before the date of the preliminary order, the appellant was deemed to be in possession on the date of that order and the magistrate was held to be competent to pass final order directing restoration of possession and restraining the respondent from interfering with that possession, until the appellant's eviction in due course of law.
22. Thus, all the judgments relied on by the learned counsel for the petitioner do not apply to the facts of this case. Here is the case where on account of misrepresentation and suppression of fact by the petitioner, learned magistrate was misled.

23. It is admitted case of the petitioner that the alleged sale deed executed on 24.02.1989 registered on 03.03.1989 have not been set aside by any competent Court of law till date and i.e. why on 13.02.2017 after much delay from the date of filing of criminal revision No. 15/2017 by opposite party no. 3 and 4 against the attachment order dated 16.12.2016 passed by O.P. No. 2, a regular suit No. 273/2017 "Sri Radha Krishna Ji Maharaj Vs. Dev Narayan" has been filed before the learned Civil Judge (J.D.) Gonda for cancellation of the said sale-deed executed on 24.02.1989 which is still pending before the Fast Track Court, Gonda without any interim order.
24. The instant petition has been filed by the petitioner Shail Kumari Bharti wife of Ram Kumar Bharti in her personal capacity without having any right or title to initiate the impugned proceedings under Section 145 Cr.P.C. beyond the trust/temple and admittedly she is not the Sarvakar of the same. It appears that the petitioner while moving application under Section 145 Cr.P.C. before opposite party no. 2 has not approached learned court below with clean hands and has concealed the factum that the alleged sale deed executed on 24.02.1989 registered on 03.03.1989 has not been cancelled by any Court of law which is evident from the further action of the petitioner where a suit bearing No. 273/2017 for cancellation of the sale deed has been filed by her husband Ram Kumar Bharti in the year 2017 which is pending after filing of criminal revision No. 15/2017 and respondent no. 2 i.e. Sub Divisional Magistrate, Colonelganj, Gonda was misled by the aforesaid conduct of the petitioner and under the impression that all the sale deeds have been cancelled by the competent Court vide order dated 25.08.2000 passed in regular suit No. 59/1994 "Jai Shree Vs. Sri Hanuman Prasad", O.P. No. 2 has passed the order for attachment of the disputed portion of trust property and the same was handed over to the in-charge police station Colonelganj, District Gonda.

- 25.** I find no illegality or impropriety in the impugned order dated 08.11.2021 as well as consequential order dated 13.12.2021.
- 26.** The petition is devoid of merits and is accordingly *dismissed*.

(Karunesh Singh Pawar,J.)

Order Date :- 24.05.2024/RC