

Court No. - 10

Case :- MATTERS UNDER ARTICLE 227 No. - 506 of 2024

Petitioner :- Amrendra Pratap Singh

Respondent :- Anoop Kumar And 3 Others

Counsel for Petitioner :- Puneet Chandra, Jay Prakash Singh, Mohit Chandra

Counsel for Respondent :- Mohammad Ehtesham Khan

Hon'ble Mrs. Sangeeta Chandra, J.

1. Heard Shri Puneet Chandra, learned counsel for the petitioner and Shri Mohammad Ehtesham Khan, learned counsel for the respondent nos.1 and 2. The opposite party nos.3 and 4 are proforma respondents, hence there is no need to issue notice to them.

2. This petition has been filed with a prayer to set aside the impugned judgment and order dated 25.11.2023 passed by the District Judge, Ayodhya (Faizabad) in Misc. Civil Appeal No. 73 of 2015, Anoop Kumar and others vs. Shital Das and others, contained as Annexure no.1 to the petition.

3. Learned counsel for the petitioner has argued that a suit for specific performance was filed by the opposite party nos. 1 and 2 with regard to certain land situated in village Kot Saray, Pargana Magalsi, Tehsil Sadar, District Ayodhya. The respondent nos.3 and 4 had executed unregistered agreement to sale on 22.10.1986 in favour of respondent nos. 1 and 2. Since the respondent no.4 was minor at the time of execution of such agreement to sale, it was recorded in such agreement that when permission is granted by the appropriate authority then actual sale deed shall be made out. Consolidation proceedings were initiated in the village and the old Gata nos. 502, 501 and 504

were changed to Gata nos.178, 181 and 187, respectively. At the time of execution of the agreement to sale, the names of respondent nos.3 and 4 were also not recorded in the revenue records, as is evident from the perusal of the said agreement to sale, a copy of which has been filed as Annexure no.2 to the petition. When the respondent no.4 became major, respondent nos.3 and 4 executed a sale deed on 30.07.2010 in favour of the petitioner after receiving full consideration, a copy of the sale deed as been filed as Annexure no.3 to the petition. After the execution of sale deed dated 30.07.2010, the name of petitioner was also recorded in the revenue records, a copy of the Khatauni has been filed as Annexure no.4 to the petition. The petitioner came into possession after the sale deed dated 30.07.2010 was executed in his favour and he was using the land according to his own will and without any hindrance, when respondent nos.1 and 2 filed a civil suit for specific performance bearing Original Suit No.341 of 2010 for agreement to sale dated 22.10.1986 without explaining delay of 24 years in filing the said suit. The respondent nos.1 and 2 also filed an application under Order 39 Rule 1 of the Code of Civil Procedure, paper no. 6 ga 2. The respondent nos.3 and 4 filed their objections stating that respondent no.4 was minor at the time of such agreement to sale and therefore it was null and void ab initio and also that no permission was taken from the District Magistrate, Ayodhya for such sale to be effected.

4. Learned counsel for the petitioner also pointed out that agreement to sell was not in respect of Gata No.187 therefore it could not be made effective regarding Gata No.187. Similarly, one another Gata no.519 was mentioned in agreement to sell was recorded as Parti and Nala in the revenue records after consolidation proceedings and the agreement to sell could not be made effective regarding Gata No.519 also. The application

under Order 39 Rule 1 of the Code of Civil Procedure was considered by the learned trial Court and was rejected vide order dated 31.03.2014 finding that sale deed had already been effected on 30.07.2010 for the land in dispute and *prima facie* case for the plaintiffs was not made out herein, therefore, there was no question of considering balance of convenience and irreparable loss and undue hardship. The respondent nos.3 and 4 filed an appeal registered as Misc. Civil Appeal No.73 of 2015, which appeal had been allowed on 23.11.2023 without looking into the records and giving a perverse finding. Such appeal has also been allowed after a delay of 8 years. In the meantime the nature of land has also been changed. As a result whereof the order of the appellate Court will have an adverse effect on the petitioner (defendant in the said Original Suit).

5. It has also been submitted by learned counsel appearing on behalf of the petitioner that the plaintiffs knew all along that a sale deed has been executed on 30.07.2010 for the land in dispute but the plaintiffs did not challenge the sale deed. It has also been submitted that without recording the finding of perversity in the order passed by the trial Court the said order has been set aside and interim injunction has been granted when final relief could not be granted without challenge being raised to the sale deed which was a registered document executed after payment of full consideration on 30.07.2010.

6. Shri Mohammad Ehtesham Khan, learned counsel appearing for respondent nos.1 and 2, has during the course of his argument stated on the basis of agreement to sale that when the agreement to sell was made out in 1986, the executant did not have his name recorded in the revenue records and one of the parties on whose behalf he was making such an agreement was a minor and therefore permission was required. Therefore,

taking into account this fact no time limit was mentioned in the said agreement to sale and therefore the question of limitation would not arise. It has also been argued that a total of 3 Bigha 17 Biswa and 19 Biswansis of grove land was agreed to be sold off and therefore the land being agreed to be sold off was kept out of consolidation operations. Nevertheless, an objection was filed by opposite party nos.3 and 4 that their names be recorded in the revenue records before the consolidation officer and in the pleadings before the consolidation officer it was admitted by the opposite party nos.3 and 4 that after agreement to sell having been made out they had delivered possession to opposite party nos.1 and 2.

7. Learned counsel for respondent nos.1 and 2 has also referred to the order of the consolidation officer dated 06.04.2011 wherein mention has been made of affidavit filed by the vendor, i.e. opposite party nos.3 and 4, along with their objections, in which it was stated that the opposite party nos.1 and 2 were in possession. He has also referred to order passed by the Deputy Director of Consolidation and Division, Sultanpur, copy of which has been filed as Annexure no.10 to the petition at page 119, that the agreement to sell was admitted by the executant and possession having been delivered in pursuance of the agreement to sell was also admitted before the consolidation authorities. Lastly, it has been argued that for grant of interim injunction a mini trial is not to be held, only a *prima facie* case has to be made out and when the plaintiff had made out a *prima facie* case that he was in possession of the property in question after agreement to sell was executed, then an interim injunction for maintaining status quo could have been passed, as has been rightly done by the District Judge, Ayodhya in the order impugned.

8. This Court, having gone through the order passed by the trial Court and also by the appellate Court, is of the opinion that the appellate Court may have passed order on the basis of legal arguments raised by the plaintiff/ appellant before him but he sadly did not notice that sale deed had already been executed of the land in this Court on 30.07.2010 and it was not as if the plaintiff was unaware of the sale deed having been executed, as the plaintiff had impleaded the vendees as defendants in his suit, yet the plaintiff chose not to file a suit for cancellation of sale deed or for its declaration as void, instead the plaintiff chose to file a suit for specific performance of agreement to sell along with an application under Order 39 Rule 1 of the Code of Civil Procedure for grant of temporary injunction. Temporary injunction cannot be granted against owner of land on the basis of registered sale deed executed after full consideration having been paid for the same. There was no *prima facie* case made out and the trial Court in its order had rightly observed that in the absence of *prima facie* case having been made out by the plaintiff there was no reason to look into balance of convenience and irreparable loss or undue hardship as pleaded by the plaintiff.

9. The order dated 25.11.2023 is, consequently, set aside and the order of the trial Court stands affirmed.

10. The petition stands **allowed**.

Order Date :- 7.2.2024

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