

Court No. - 8

Case :- WRIT - C No. - 3900 of 2024

Petitioner :- Doober

Respondent :- Addl. Commissioner Iii, Devi Patan Mandal, Gonda And Others

Counsel for Petitioner :- Shitla Prasad Tripathi, Amresh Singh

Counsel for Respondent :- C.S.C., Amrendra Nath Tripathi, Nagendra Pratap Singh

Hon'ble Jaspreet Singh, J.

Heard learned counsel for the petitioner and Shri Amrendra Nath Tripathi, learned counsel for the private respondents.

Under challenge are two orders one dated 08.02.2024 passed by the Additional Commissioner-III Devi Patan Mandal, Gonda, whereby the revision preferred by the petitioner was dismissed while the other one was the order passed by the Sub-Divisional Officer dated 25.02.2000 in mutation proceedings.

To put the matter in a perspective, certain facts leading up to the petition are being noticed first.

The dispute in question relates to the property, which belonged to Mata Deen, who was survived by his two sons Ram Asrey and Kallu. Ram Asrey was the recorded tenure holder of plot Nos.150 and 683 situated in Village- Kakraha, Pargana and Tehsil- Nanpara, District- Bahraich. Ram Asrey is said to have executed an unregistered Will dated 16.07.1984 in favour of his nephews- Jokhan Lal and Kripa Ram (who are now represented by private respondent Nos.3 and 4). It is the case set up by the petitioner that Ram Asrey during his life time had executed a Will in the name of his daughter Smt. Sahiba.

The dispute arose once Ram Asrey died on 15.11.1984. Jokhan and Kripa Ram on the basis of the Will dated 16.07.1984 claimed rights over the property and sought their mutation. Simultaneously, during pendency of these proceedings, Smt. Sahiba executed a sale deed in favour of Irfan. In turn, Irfan sold the property to the present petitioner- Doober, who then came on to contest the proceedings. It will be worthwhile to notice that initially the claim of Jokhan and Kripa Ram was rejected against which an appeal came to be filed. The appeal was also rejected, whereafter the matter came up before the

Additional Commissioner, wherein an order was passed directing the parties to maintain status quo on 15.12.1988. At some point of time, the said proceedings were dismissed for want of prosecution and it is in the aforesaid interim period that the sale deed is said to have been executed by Smt. Sahiba in favour of Irfan and then Irfan in favour of Doober. The said proceeding before the Additional Commissioner was thereafter restored. There were two separate other claims of certain other third parties Bansi Lal and Sipahi Lal, who also derived rights from Smt. Sahiba. All these proceedings came up before Additional Commissioner.

In the aforesaid backdrop, a suit under Section 229-B of the U.P.Z.A. & L.R. Act, 1950 (hereinafter referred to as 'the Act, 1950') was also instituted by Smt. Rajrani (wife of Jokhan) and Kripa Ram. In the said suit which relates to the year 2000 also had Irfan, Bansi Lal, Sipahi Lal and Doober inter alia as the defendants. It is not disputed by the parties that the said suit under Section 229-B of the Act, 1950 still continues to remain pending and is engaging the attention of the appropriate court, wherein, as informed by learned counsel for the parties the suit is at evidence stage and the plaintiffs have examined their witnesses and the matter is fixed for leading of evidence of the defendants which includes the present petitioner.

It is in the aforesaid backdrop that the Additional Commissioner by means of the order dated 08.02.2024 rejected the revision of the petitioner and has remitted the matter to be decided on merits between the parties and affirmed the order passed by the SDO, Nanpara dated 25.02.2000 and the present petitioner assails the two orders.

The primary submission of learned counsel for the petitioner is that both the courts have misdirected themselves by resorting to Section 52 of the Transfer of Property Act, 1882 and in this regard it is submitted that the said section has not been applied appropriately and merely by placing reliance on the aforesaid section, the revision could not have been dismissed nor the proceedings could have been remitted and, therefore, two courts, i.e., the court of SDO as well as of the Additional Commissioner have committed an error of jurisdiction.

In support of his submission he has relied upon a decision of the Apex Court in **T.G. Ashok Kumar Vs. Goovindammal and another (2010) 14 SCC 370**.

It has further been urged that despite the fact that the suit for declaration of rights was pending and in this regard two other proceedings were also decided by the order dated 08.02.2024 but the fact remains that in light of the contesting claims of the parties, it was not appropriate to have remitted the matter, where the rights of the petitioner had already been crystalized in light of the Will executed by Ram Asrey in favour of his daughter Smt. Sahiba and once the rights of Smt. Sahiba were not disputed, any property sold by her in favour of Irfan and later in favour of present petitioner Doober would not be affected and thus in summary proceedings an attempt has been made to decide the title, which is also not an appropriate exercise of jurisdiction both by the SDO as well as by the Additional Commissioner. Hence, for the said reasons, the impugned orders are bad and the writ petition deserves to be allowed.

Shri Amrendra Nath Tripathi, learned counsel appearing for the private respondents has raised a two pronged defence. At the outset, it is submitted that the petition suffers from the vice of concealment of material fact, inasmuch as, in the entire petition there is no reference to the suit filed by the private respondents, wherein the present petitioner is a party under Section 229-B of the Act, 1950. It has also been pointed out that the entire chronology of litigation which has unfolded at different tiers have also not been mentioned and it has also not been disclosed that on the very same day, i.e., 08.02.2024, the Additional Commissioner had decided three matters and the petitioner has assailed only one order and not the other two nor there is any reference to the same and this is nothing but material concealment and misrepresentation as it was incumbent upon the petitioner to have disclosed all the facts regarding the litigation going on between the parties.

The other limb of the argument of learned counsel for the private respondents is that these are summary proceedings of mutation, wherein title is not decided. The suit under Section 229-B of the Act, 1950 is pending, which is not disputed. In such circumstances any finding given by any of the authorities in summary proceedings is not going to bind the regular forum, who is seized with the suit under Section 229-B of the Act, 1950. For the said reason also the writ petition would not be maintainable apart as it arises out of summary proceedings

unless certain exceptions, which have been carved out by this Court are demonstrated till then, the petition itself would not be maintainable and for the said reasons, the petition deserves to be dismissed at the outset.

It has also been submitted that even while the private respondents had filed a short counter affidavit bringing on record the necessary facts as well as the orders to indicate that the proceedings were already engaging the attention of the competent court and also the facts which were concealed by the petitioner but the petitioner did file his rejoinder affidavit but he did not dispute the same. This clearly indicates that a selective disclosure has been made by the petitioner and for the aforesaid reasons, the writ petition deserves to be dismissed.

It has also been informed that an order passed by the court dated 16.04.2001 directing the parties to maintain status quo is already subsisting, which adequately protects the rights of both the parties. Thus for all the said reasons, the petition be dismissed.

The Court has heard learned counsel for the parties and also perused the material on record. Certain undisputed facts are that the petitioner claimed right to the property in question on the basis of a Will said to have been executed by Ram Asrey in favour of his daughter Smt. Sahiba, whereas the private respondents claimed their rights on the basis of the Will executed by Ram Asrey in favour of his nephews dated 16.07.1984. Whether the said Will has been proved in accordance with law as per requirements in terms of Section 63 of the Indian Succession Act, 1925 and in terms of Section 68 of the Indian Evidence Act, is an issue which can be gone into by the court seized of the matter under Section 229-B of the Act, 1950. The proceedings for mutation needless to say are of summary nature, which do not decide the right, title or interest of any of the parties. Moreover, the matter insofar, which is before this Court is the order dated 08.02.2024 passed by the Additional Commissioner, which has upheld the order passed by the SDO dated 25.02.2000, whereby the matter has been remitted to be decided by the competent court. Neither of the impugned orders affect the rights of any of the parties as the matter has been remitted to be decided and even otherwise if it would have been it would still be subject to the final outcome of the regular suit proceedings pending before the SDO in terms of

Section 229-B of the Act, 1950.

The Submission of learned counsel for the petitioner regarding Section 52 of the Transfer of Properties Act, and that the reference made to it by two courts while passing the impugned order does not have any merit for the reason that Section 52 is an enabling provision, which only recognizes a fact that during the pendency of any proceedings if a property is transferred, it does not adjudge the transaction to be valid or invalid. It only binds the party who has purchased the property during the litigation and prevents him to take a different stand than his transferor and that the transferee is bound by the outcome of the litigation. The same proposition has also been reiterated in the decision of the Apex Court in **T.G. Ashok Kumar (supra)**. Mere reliance on the decision does not help the petitioner in any manner especially when the suit under Section 229-B of the Act, 1950 is pending.

This Court is reminded of the decision of the Apex Court in the case of **Jitendra Singh v. State of M.P. & Ors., 2021 SCC OnLine SC 802**, wherein it has been held that the writ petitions against orders arising out of summary proceedings are not maintainable as the mutation proceedings are of fiscal nature and do not decide the right title or interest. The same has been followed by a co-ordinate Bench of this Court in the case of **Smt. Kalawati v. Board of Revenue** reported in **2022 SCC Online All 193**, wherein certain exceptions have carved out. In the light of the decision of **Smt. Kalawati (supra)**, this Court does not find that the case of the petitioner is covered by any of the exceptions so carved out and for the aforesaid reasons, does not find that there is any merit in the petition.

Before parting with the case, this Court observes that the petitioner has not disclosed true and correct facts. It was the duty of the petitioner to disclose all the facts relating to the litigation, which had transpired between the parties. In this regard, the observations of the Apex Court in the case of **Bhaskar Laxman Jadhav & Ors. Vs. Karamveer Kakasaheb Wagh Education Society & Ors.** reported in **(2013) 11 SCC 531** is relevant, which reads as under:-

"44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention

of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.

45. We may only refer to two cases on this subject. In **Hari Narain v. Badri Das [AIR 1963 SC 1558]** stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows: (AIR p. 1560, para 9).

'9. ... It is of utmost importance that in making material statements and setting forth grounds in applications for special leave care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent.'

46. More recently, in **Ramjas Foundation v. Union of India (2010) 14 SCC 38** the case law on the subject was discussed. It was held that if a litigant does not come to the court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said: (SCC p. 51, para 21)

21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty-bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case."

Considering the aforesaid, this Court is constrained to note that despite the present petitioner having contested the proceedings for decades and also noticing that he is a party to the suit under Section 229-B of the Act, 1950, there was no reason for him not to disclose the aforesaid facts. It is not for for a litigant to adjudge as to what is material or not. He is duty bound to disclose all facts relating to the litigation in between the parties.

Considering the aforesaid facts and circumstances including the fact that the Court is exercising jurisdiction under Article 226 of the Constitution of India, which is purely discretionary in nature and as the petitioner has not come to Court with clean hands, hence, this Court does not find any circumstances, which may persuade this Court to entertain the petition at the behest of the petitioner. Accordingly, the petition is **dismissed**.

Order Date :- 31.7.2024

Ashutosh