

Court No. - 8

Case :- WRIT - B No. - 901 of 2024

Petitioner :- Ashok Kumar

Respondent :- Deputy Director Of Consolidation, Sitapur And Others

Counsel for Petitioner :- Hemant Kumar Mishra, Abhishek Mishra, Arti Ganguly

Counsel for Respondent :- C.S.C.

Hon'ble Jaspreet Singh, J.

Heard learned counsel for the petitioner. Notice on behalf of respondent nos. 1 to 3 has been accepted by the office of the learned Chief Standing Counsel.

Under challenge is the order dated 02.08.2024 passed by the Deputy Director of Consolidation, Sitapur whereby the order passed by the Settlement Officer of Consolidation dated 23.02.2024 and 16.11.2022 passed by the Consolidation Officer has been affirmed.

Assailing the aforesaid three orders, the learned counsel for the petitioner has submitted that the three Consolidation Authorities have committed a patent illegality in ignoring the impact of the judgment passed in favour of the predecessor-in-interest of the present petitioner namely Ram Bharose and the reason given by the Consolidation Courts that there was a registered sale deed in favour of Sri Sazzad Hussain, the predecessors-in-interest of the private respondent no. 4 to 8 dated 24.01.1981 which could not be ignored and since as per the said sale deeds, the rights were with Sazzad Hussain (thereafter on his successors). The three Authorities have erred in relying upon the same whereas the said sale deed as per the petitioner had been declared void in proceedings under Section 229-B of the U.P.Z.A. & L.R. Act, 1950 by means of judgment and decree dated 29.11.2009.

In order to appreciate the aforesaid contention, certain brief facts giving rise to the instant petition are being noticed as under:-

It is apparently the undisputed case that the disputed property in question was initially recorded in the name of Ram Bharose who was the father of the present petitioner. As per the case of the private respondents, Sri Ram Bharose has executed a registered sale deed in favour of Sri Sazzad Khan who was the father of the private respondent nos. 4 to 7 by means of a registered sale deed dated 24.01.1981. On the basis of the said

sale deed, the name of Sajjad Khan was duly mutated in the revenue records.

After more than two decades, Ram Bharose instituted a suit for declaration of his rights under Section 229-B of the U.P.Z.A. & L.R. Act, 1950.

The record reflects that the private respondents have put in appearance at one point of time and filed their written statements but thereafter did not participate in the proceedings and as such the Revenue Court in the suit under Section 229-B of the Act of 1950 passed a decree on 29.11.2009.

This order of the Trial Court came to be assailed in an appeal preferred before the Additional Commissioner, Lucknow Division bearing No. 799/2009-10. The said appeal was partly allowed on 25th February, 2012 whereby the matter was remanded to the Trial Court for decision afresh.

This order of the First Appellate Court was assailed before the Board of Revenue in a Second Appeal by the present petitioner bearing No. 26 of 2011-12. The said second appeal came to be dismissed on 02nd May, 2016 upholding the order passed by the First Appellate Court.

It is in the aforesaid backdrop that in so far as the challenge to the sale deed is concerned that was not in the favour of the petitioner, however, it has been contended by the learned counsel for the petitioner that from the perusal of the order passed by the First Appellate Court, even though, the appeal was partly allowed and the matter was remanded but in the said order, it has not been indicated that the judgment dated 29.11.2009 passed by the Trial Court has been set aside.

Therefore, the submission is that since the order passed by the Trial Court has not been set aside then despite the order of remand, the judgment dated 29.11.2009 of the Trial Court would continue to subsist and its impact would be imperative to be noticed by the courts.

It is further stated that even though the Second Appeal was dismissed but the order of the First Appellate Court was upheld meaning thereby that even the Second Appellate Court did not set aside the order dated 29.11.2009.

In the interregnum, the consolidation proceedings commenced and the matter came to be contested before the Consolidation Officer. The Consolidation Officer by means of his judgment dated 16.11.2022 did not find favour with the objections of the

petitioner solely on the ground that there was a registered sale deed in favour of Sajjad Khan, the predecessors-in-interest of the private respondents and the Consolidation Authorities could not ignore the aforesaid document. The aforesaid finding has been affirmed by the Settlement Officer of Consolidation so also the Deputy Director of Consolidation.

It is in the aforesaid backdrop that the learned counsel for the petitioner submits that once the said sale deed had been declared void by the Revenue Court, consequently, the order of the First Appellate Court as well as the Second Appellate Court who did not specifically set aside the order dated 29.11.2009 would continue to subsist and having ignored this aspect, the rights of the petitioner have been jeopardized by not appropriately noticing, the legal position, hence, the orders require interference.

The Court has heard the learned counsel for the petitioner and considered the aforesaid submissions.

At the outset, it may be noticed that the sale deed in question dated 24.01.1981 was executed by Ram Bharose himself. In pursuance of the said sale deed the name of the Sajjad Khan was also to be recorded in the revenue records and till about two decades and odd, there was no challenge to the said sale deed. It is only in the year 2006 that Ram Bharose filed a suit under Section 229-B of the U.P.Z.A. & L.R. Act, 1950.

At this stage, it will be relevant to notice that once Ram Bharose who was admittedly the recorded owner has executed the sale deed and the suit seeking the declaration of the said sale deed to be void, if instituted, the appropriate forum would have been the Civil Court which has been vested with the power to set aside/cancel any instrument or a deed as void. This suit under Section 229-B of the U.P.Z.A. & L.R. Act, 1950 was apparently not maintainable. ***{See Kamla Prasad Vs. Krishana Kant Pathak; 2007 (4) SCC 213 as well as Mangoo Singh and Others Vs. Ram Autar; MANU/UP/3069/2024}***

It would have been a different situation, had the said suit been filed by the heirs of Ram Bharose but that is not the situation there. Significantly, the suit itself filed by Ram Bharose was not maintainable before the Revenue Court. Though, a copy of the plaint has been brought on record but apparently no clear reason has been indicated as to why the said suit could not be filed before the Civil Court.

Even though, the First Appellate Court and the Second Appellate Court affirmed the order of remand without

specifically setting aside the decree dated 29.11.2009 but the fact remains that at no point of time these orders were ever assailed before any superior court.

It is alleged that in the meantime in the year 2015, the notification under Section 4 of the Uttar Pradesh Consolidation of Holdings Act, 1953 was notified. Despite the same, there is no order of abatement rather the Second Appellate Court has decided the appeal on merits. It appears that none of the parties had informed the Second Appellate Court regarding the notification under Section 4 of the Act of 1953.

Be that as it may, the issue still remains that the initiation of the proceedings before the Revenue Court in a suit under Section 229-B of the Act of 1953 was apparently not maintainable, therefore, even if there was some technical error in the judgment passed by the First Appellate Court which was affirmed by the Second Appellate Court, nevertheless, it would be assumed that the order passed by the Trial Court dated 29.11.2009 would have been set aside since without setting aside the order, there was no purpose of remand.

Significantly, the grounds upon which the petitioner had filed the second appeal before the Board of Revenue did not include any such ground, thus, he is prevented from taking this ground at this stage in collateral proceedings.

The position as obtained is that the sale deed dated 24.01.1981 which was declared void on 29.11.2009 by a judgment but this judgment was of no avail in light of the judgment of the First Appellate Court dated 25.02.2012 by which the matter was remanded, hence, the judgment dated 29.11.2009 was implicitly set aside and the judgment of the first appeal dated 25.02.2012 was confirmed by the judgment of the Board of Revenue passed in Second Appeal dated 24.06.2016. Thus, the sale deed remained intact and hence was a binding document and could not have been ignored by the Consolidation Courts.

Considering the aforesaid that the sale deed dated 24.01.1981 still continues to remain valid, therefore, it cannot be said that the Consolidation Authorities have committed any error in placing reliance on the said sale deed.

For all the aforesaid reasons, this Court does not find that there is any merit in the present petition which is accordingly ***dismissed*** at the admission stage itself. Costs are made easy.

Order Date :- 5.9.2024
Asheesh