

Court No. - 10

Case :- WRIT - C No. - 4631 of 2021

Petitioner :- Kavita Jain And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Akanksha Mishra, Fazal Kareem Zafari, Kshitij Shailendra (Elevated), Tarun Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

1. Heard learned counsel for the petitioners and Sri Siddharth Singh, learned Additional Chief Standing Counsel for the State-respondents.
2. By means of instant writ petition, the petitioners have assailed the order dated 03.02.2020 passed by the Assistant Inspector General of Stamps/Assistant Commissioner (Stamps), Saharanpur as well as the order dated 21.12.2020 passed by the Commissioner/Chief Controlling Revenue Authority, Saharanpur.
3. Learned counsel for the petitioners submits that on 08.08.2009, the husband of the petitioner no.1 and father of the petitioner no.2, who got expired on 19.02.2010 leaving behind the petitioners, executed an unregistered will bequeathing his rights and title in the properties in favour of the petitioners in equal proportion. Thereafter, in order to properly manage the properties left behind by the husband of the petitioner no.1 and father of the petitioner no.2, the petitioners executed a document dated 14.09.2011 titled as 'Memorandum of Oral Family Settlement' wherein it was specifically mentioned that with effect from 06.09.2011, the petitioners would take possession of their respective shares.
4. He further submits that the specific averment has also been made therein that with effect from 06.09.2011, the petitioners ceased to be the absolute owner of the property in dispute and therefore, the proceedings initiated against the petitioners are bad in the eyes of law.
5. In support of his submission, he has placed reliance upon the judgment of this Court delivered in the case of ***Somansh Prakash and 8 others Vs. State of U.P. and 3 others (Writ-C No. 5229 of 2021)***.
6. *Per contra*, learned Standing Counsel supports the impugned orders.
7. Upon hearing the parties, the Court has perused the record.
8. It is not in dispute that by the husband of petitioner no.1 and father of the

petitioner no.2, a will deed was executed in their favour. Thereafter, on 06.09.2011 an oral family settlement/partition took place between them and they took the possession over their respective shares and become the absolute owner of the property, in turn, ceased to be the co-owner of the property at the time of execution of Memorandum of Family Settlement dated 14.09.2011. The relevant part of the aforesaid memorandum of oral family settlement dated 14.09.2011 is being quoted below:-

"इस प्रकार आपस में विवाद व तनाव, रहने लगा। इस पर पक्षगण ने अपने मिलने जुलने वालों को इकट्ठा किया और उनके समक्ष अपना उक्त विवाद रखा तो उनके द्वारा दिनांक 06.09.2011 को आपस में निम्न विवर्णित सम्पत्ति को लेकर एक जुबानी पारिवारिक समझौता करा दिया। जिसके माध्यम से मद (अ) में वर्णित सम्पत्ति प्रथम पक्ष के हिस्से में आयी और मद (ब) में वर्णित सम्पत्ति द्वितीय पक्ष के हिस्से में आयी। दोनों पक्षों ने अपने हिस्से में आयी सम्पत्ति पर कब्जा प्राप्त कर लिया और मालिक काबिज हो गये।"

9. The record shows that the proceedings have been initiated against the petitioners on the basis of Memorandum of Family Settlement dated 14.09.2011 as mentioned in the impugned orders dated 03.02.2020 (Annexure No.1, page 34) and 21.12.2020 (Annexure No.2, page no.52). The relevant part as noticed in the impugned order dated 03.02.2020 is quoted as below:-

"मैंने पत्रावली पर उपलब्ध अभिलेखों का गहनता पूर्वक अध्ययन, अवलोकन एवं परिशीलन किया गया। पत्रावली पर उपलब्ध याददाश्त जुबानी पारिवारिक समझौता विलेख श्रीमती कविता जैन व श्री वैभव जैन के मध्य दिनांक 14.09.2011 को निष्पादित है। विलेख में सम्पत्ति का वर्णन दो परिशिष्ट बनाकर मद अ और मद ब के रूप में प्रदर्शित है जिसमें सम्पत्तियों के मकान नम्बर दर्शाए गए हैं, अन्य विवरण दर्ज नहीं है।"

10. Similarly, the relevant part of the impugned appellate order dated 21.12.2020 is quoted as below:-

"मेरे द्वारा अपीलीय पत्रावली तथा अवर न्यायालय की तलविदा पत्रावली पर उपलब्ध अभिलेखीय साक्ष्यों का उभय पक्षों के विद्वान अधिवक्ताओं द्वारा प्रस्तुत तर्कों के आलोक में अनुशीलन किया गया। अपीलार्थीगण का मुख्य कथन है कि याददाश्त जुबानी पारिवारिक समझौते पर कोई भी स्टाम्प शुल्क कानूनन नहीं लगाया जा सकता। स्टाम्प अधिनियम के अन्तर्गत याददाश्त जुबानी पारिवारिक समझौते का पंजीकरण कराने का कोई उल्लेख नहीं है, अवर न्यायालय द्वारा स्टाम्प अधिनियम की धारा-2 (15) का उल्लेख गलत किया गया है। अवर न्यायालय द्वारा स्टाम्प अधिनियम की अनुसूची-1 (बी) के अनुच्छेद-45 के अनुसार कमी स्टाम्प शुल्क व अर्थदण्ड आरोपित करने का आदेश गलत व नियम विरुद्ध पारित किया है आदि जबकि पत्रावली पर उपलब्ध अभिलेखीय साक्ष्यों से स्पष्ट है कि श्रीमती कविता जैन, श्री वैभव जैन के मध्य दिनांक 14.09.2011 को विलेख निष्पादित हुआ है। विलेख में सम्पत्ति का वर्णन दो परिशिष्ट बनाकर मद 'अ' और मद 'ब' के रूप में प्रदर्शित है जिसमें सम्पत्तियों के मकान नम्बर दर्शाये गये हैं, अन्य विवरण दर्ज नहीं है।"

11. The perusal of the two paragraphs quoted here-in-above shows that the proceedings were initiated against the petitioners on the basis of Memorandum of Settlement dated 14.09.2011 and before executing the same, the petitioners on the basis of oral settlement dated 6.3.2011 not only took over the possession of their respective share, but ceased to be the co-owner of the property at the time of execution of the written memorandum of family settlement dated 14.09.2011.

12. The issue in hand is no longer *res-integra*.

13. This Court in the case of **Somansh Prakash (supra)** has already decided the same, the relevant paragraph whereof is quoted below:-

"9. Learned counsel for the petitioners further submits before reducing the memorandum of settlement in writing, the petitioners occupied their respective share of properties pursuant to the oral partition which took place way back in July/August, 2011. He further submits that at the time of execution of Memorandum of Settlement dated 23.05.2012, they were already in possession of their respective share of property as per oral settlement between them.

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23. Once the shares of each family member were divided and separate possession of their respective shares were occupied by them, they cease to be co-owners of the property on the date of execution of memo of partition in written. In other words, once the respective parties had taken possession of their shares, they cease to be the co-owner of the property.

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29. Further, no cogent material was brought on record by the State-respondents to show that the partition was not complete on the date of execution of settlement of memorandum as well as petitioners were not in possession of their respective shares of the property.

30. In the case in hand, the petitioners, on an oral settlement, had already put in possession of the respective shares, the partition was completed much before the date of reducing in writing the memo of partition.

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36. The record shows that in view of the oral family settlement, the respective parties not only divided their shares but also taken possession of their respective shares by metes and bounds, then at the time of reducing in writing the memorandum of settlement, will not be treated as instrument which is covered under Section 2 (15) (iii) of the Act."

14. The perusal of the afore-quoted paragraphs of the judgment passed in the case of **Somansh Prakash (supra)** shows that once the share has been divided amongst the family members and possession of their respective shares have been taken by them, they ceased to be the co-owner of the property at the time of execution of the memorandum. In contrary thereto, no material has been brought on record, therefore, they are not liable to make the payment of due stamp duty.

15. In the case in hand, specific pleadings have been taken that on 06.09.2011, the petitioners have taken possession of their respective shares and therefore, they ceased to be the co-owner of the property at the time of execution of the memorandum in writing dated 14.09.2011.

16. The record further shows that no contrary material has been brought by the State-respondents to show that the partition was not complete before the date of execution of the aforesaid memorandum and the petitioner were not in possession of their respective shares over the property in question before 14.09.2011.

17. Further, the record shows that the petitioners on 06.09.2011 not only divided their shares but also took their respective shares by metes and bounds before reducing in writing the aforesaid memorandum dated 14.09.2011, and therefore, it will not be treated as an instrument, which is covered under Section 2 (15) of the Indian Stamp Act.

18. In view of the above peculiar facts and circumstances of the case, the impugned orders cannot be sustained in the eyes of law and the same are hereby quashed.

19. Accordingly, the writ petition succeeds and is ***allowed***.

20. Any amount deposited by the petitioner pursuant to the impugned orders, shall be refunded to the petitioner along with interest @ 4% per annum from the date of its deposit till the actual payment is made, within a month from the date of production of certified copy of this order.

Order Date :- 21.3.2025

Pravesh Mishra