

Kamla Prasad & Ors vs Sri Krishna Kant Pathak & Ors on 9 February, 2007

Equivalent citations: 2007 AIR SCW 1403, 2007 (4) SCC 213, 2007 (3) ALJ 165, AIR 2007 SC (SUPP) 618, (2007) 102 REVDEC 378, (2007) 2 ALL WC 1764, (2007) 2 SCALE 607, (2007) 2 SUPREME 173, (2007) 51 ALLINDCAS 50 (SC)

Author: C.K. Thakker

Bench: C.K. Thakker, Lokeshwar Singh Panta

CASE NO.:
Appeal (civil) 3659 of 2003

PETITIONER:
KAMLA PRASAD & ORS

RESPONDENT:
SRI KRISHNA KANT PATHAK & ORS

DATE OF JUDGMENT: 09/02/2007

BENCH:
C.K. THAKKER & LOKESHWAR SINGH PANTA

JUDGMENT:

J U D G M E N T C.K. THAKKER, J.

This appeal is filed by the appellant-original defendant Nos. 1 to 6 against an order dated August 10, 2001, passed by the High Court of Judicature at Allahabad in Civil Miscellaneous Writ Petition No. 386 of 1990.

One Kishna Kant Pathak-respondent No.1 herein, filed a suit against the appellant and respondent Nos. 2 to 12 in the Court of Civil Judge, Jaunpur being Suit No. 110 of 1984. It was averred in the suit that an agreement to sell dated June 18, 1981 entered into between the plaintiff and defendant Nos. 1 to 6, sale deed dated November 7, 1981 executed in their favour and another sale deed, dated December 16, 1981 executed by the plaintiff in favour of defendant Nos. 2 & 3 were illegal, without authority of law and null and void. A prayer was, therefore, made to cancel those documents. It was stated by the plaintiff in the plaint that he and defendant Nos.10 to 12 were co-bhoomidars of the disputed land and as such defendant Nos.10 to 12 had also right in the disputed property. The names of defendant Nos.10 to 12, however, were not entered in the Revenue Record and only the name of plaintiff was recorded. But in view of shares of defendant Nos.10 to 12, plaintiff alone had no right, title or interest to sell the property. It was also alleged in the plaint by the plaintiff that he had developed bad habits and defendant Nos.1 to 9 took undue advantage of the said situation. The

plaintiff was under intoxication and the documents got executed by contesting defendants. The plaintiff did not remember the execution of the sale deed and its presentation before the Sub-Registrar, Kerakat. He did not execute the sale deeds with his freewill and on his own accord. Nothing was paid to him. He was given tablets by defendant Nos. 1 to 9 and he became unconscious. At the time of execution of sale deed, the plaintiff was unconscious and was unable to understand judgment of his act. Defendant Nos. 1 to 9 became vendees on the basis of sale deeds but they were liable to be cancelled in view of the circumstances under which the documents were executed by the plaintiff.

The contesting defendants raised several contentions including the contention as to the jurisdiction of Civil Court to entertain, deal with and decide the suit. It was contended that in respect of cancellation of deeds as regards agricultural land, the suit was not entertainable by a Civil Court as only Court which had jurisdiction was Revenue Court under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "the Act"). It was prayed by the defendants to treat the issue as to jurisdiction of the Court as preliminary issue and decide it.

The Trial Court, after considering the contentions of the parties, held that the suit was cognizable by the Civil Court so far as abadi land was concerned. It had, however, no jurisdiction in respect of agricultural land and to that extent, the preliminary objection raised by the contesting defendants was well-founded and was upheld.

The aggrieved plaintiff preferred an appeal being Civil Miscellaneous Appeal No. 242 of 1986. The appeal came up for hearing before the III Additional District Judge, Jaunpur who confirmed the order passed by the Trial Court and dismissed the appeal. Dealing with submission of the parties, the Appellate Court observed that the Trial Court was right in holding that it had no jurisdiction to decide the question as to validity of sale- deeds in respect of agricultural land, particularly in view of the case put forward by the plaintiff in the plaint that over and above the plaintiff, defendant Nos.10 to 12 had also share therein. Such a suit, according to the Appellate Court could be entertained only by Revenue Court. According to the Appellate Court, how much share belongs to plaintiff in the disputed land was a question which could be determined only by Revenue Court. He was, therefore, obliged to file suit for declaration in Revenue Court under Section 229B of the Act.

The Appellate Court also observed that the record showed that mutation on the basis of the impugned sale deed had been effected by the revenue authority, name of the plaintiff had been deleted from Revenue Records and the names of contesting defendants had already been entered in his place. Observing that "title follows possession" and it would be presumed that plaintiff was not in possession over the disputed land, the Appellate Court observed that the question of possession of agricultural land could be decided only by Revenue Court and Civil Court had no jurisdiction to give any finding on possession over the agricultural land. Accordingly, the appeal was dismissed.

The plaintiff challenged the said order by filing a writ petition in the High Court which was allowed by holding that since the prayer of the plaintiff in the plaint was for cancellation of sale deed and declaration that they were void, only Civil Court had jurisdiction which could decide such question. The suit was, accordingly, held maintainable before Civil Court and the orders passed by both the

Courts were set aside.

The aggrieved defendants have approached this Court. We have heard learned counsel for the parties. The learned counsel for the appellants-defendants contended that the Trial Court as well as Appellate Court were right in holding that Civil Court had no jurisdiction to decide the question as to ownership of agricultural land and the only Court which could decide such question is Revenue Court and the High Court had committed an error in reversing the said orders which deserve interference by this Court. It was submitted that so far as abadi land is concerned, the Court was right that it could be decided by Civil Court but in respect of agricultural land, Civil Court has no jurisdiction. Plaintiff was bound to approach Revenue Court under the provisions of the Act. It was also submitted that the High Court had committed an error of law and of jurisdiction in not considering the fact that the case of the plaintiff in the plaint itself was that over and above plaintiff, defendant Nos. 10 to 12 had also right in the agricultural land. Such a question can be decided only by Revenue Court in a suit filed under Section 229B of the Act. It was also submitted that when the name of the plaintiff was deleted and of the purchasers entered in Revenue Records, Revenue Court alone could consider the grievance of the plaintiff. It was, therefore, submitted that the appeal deserves to be allowed by setting aside the order passed by the High Court and restoring the orders of the Courts below.

The learned counsel for the respondent-plaintiff, on the other hand, supported the order of the High Court and contended that it rightly decided that Civil Court has jurisdiction and the case deserves to be decided on merits by dismissing the appeal.

Having heard the learned advocates for the parties, in our opinion, the submission of the learned counsel for the appellants deserves to be accepted. So far as abadi land is concerned, the trial Court held that Civil Court had jurisdiction and the said decision has become final. But as far as agricultural land is concerned, in our opinion, the Trial Court as well as Appellate Court were right in coming to the conclusion that only Revenue Court could have entertained the suit on two grounds. Firstly, the case of the plaintiff himself in the plaint was that he was not the sole owner of the property and defendant Nos. 10 to 12 who were proforma defendants, had also right, title and interest therein. He had also stated in the plaint that though in the Revenue Record, only his name had appeared but defendant Nos. 10 to 12 have also right in the property. In our opinion, both the Courts below were right in holding that such a question can be decided by a Revenue Court in a suit instituted under Section 229B of the Act. The said section reads thus:

229B. Declaratory suit by person claiming to be an asami of a holding or part thereof. (1) Any person claiming to be an asami of a holding or any part thereof, whether exclusively or jointly with any other person, may sue the landholder for a declaration of his rights as asami in such holding or part, as the case may be.

(2) In any suit under sub-section (1) any other person claiming to hold as asami under the landholder shall be impleaded as defendant.

(3) The provisions of sub-sections (1) and (2) shall mutatis mutandis apply to a suit by a person claiming to be a bhumidhar, with the amendment that for the word 'landholder' the words "the State Government and the Gaon Sabha" are substituted therein.

On second question also, in our view, Courts below were right in coming to the conclusion that legality or otherwise of insertion of names of purchasers in Record of Rights and deletion of name of the plaintiff from such record can only be decided by Revenue Court since the names of the purchasers had already been entered into. Only Revenue Court can record a finding whether such an action was in accordance with law or not and it cannot be decided by a Civil Court.

In this connection, the learned counsel for the appellant rightly relied upon a decision of this Court in *Shri Ram & Anr. v. Ist Addl. Distt. Judge & Ors.*, (2001) 3 SCC 24. In *Shri Ram, A*, the original owner of the land sold it to B by a registered sale deed and also delivered possession and the name of the purchaser was entered into Revenue Records after mutation. According to the plaintiff, sale deed was forged and was liable to be cancelled. In the light of the above fact, this Court held that it was only a Civil Court which could entertain, try and decide such suit. The Court, after considering relevant case law on the point, held that where a recorded tenure holder having a title and in possession of property files a suit in Civil Court for cancellation of sale deed obtained by fraud or impersonation could not be directed to institute such suit for declaration in Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure holder is not under cloud. He does not require declaration of his title to the land.

The Court, however, proceeded to observe:

"The position would be different where a person not being a recorded tenure holder seeks cancellation of sale deed by filing a suit in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the revenue court, as the sale deed being void has to be ignored for giving him relief for declaration and possession".

The instant case is covered by the above observations. The lower Appellate Court has expressly stated that the name of the plaintiff had been deleted from Record of Rights and the names of purchasers had been entered. The said fact had been brought on record by the contesting defendants and it was stated that the plaintiff himself appeared as a witness before the Mutation Court, admitted execution of the sale deed, receipt of sale consideration and the factum of putting vendees into possession of the property purchased by them. It was also stated that the records revealed that the names of contesting defendants had been mutated into Record of Rights and the name of plaintiff was deleted.

In the light of the above facts, in our opinion, the Courts below were wholly right in reaching the conclusion that such a suit could be entertained only by a Revenue Court and Civil Court had no jurisdiction. The High Court by reversing those orders had committed an error of law and of

jurisdiction which deserves interference by this Court.

For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The order passed by the High Court is set aside and that of the Courts below is restored. In the facts and circumstances of the case, however, there shall be no order as to costs.