

CASE NO.:
Appeal (civil) 4596 of 1997

PETITIONER:
SHRI RAM AND ANOTHER

Vs.

RESPONDENT:
IST ADDL. DISTT. JUDGE & ORS.

DATE OF JUDGMENT: 07/02/2001

BENCH:
S.N.Variava, V.N.Khare

JUDGMENT:

V. N. KHARE, J.
L.....I.....T.....T.....T.....T.....T.....T..J

The question for decision in this appeal is whether a suit laid in the civil court by a recorded tenure holder in possession for cancellation of the sale deed in favour of the respondents executed by some imposters in respect of the land is barred under Section 331 and Schedule II of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the the Act). The aforesaid question has arisen out of a suit brought by the plaintiff-appellants for cancellation of sale deed alleged to be executed in favour of respondent Nos.3 and 4. The case of the plaintiff-appellants is that one Smt. Vidyawati Devi, who was the owner and Bhumidar of the land in dispute, transferred the said plot of land by a registered sale deed dated 12th July, 1984 in their favour. Subsequently, the vendor Smt. Vidyawati Devi delivered the possession of the said plot of the land to the appellants and accordingly their names got mutated in the revenue records. The further case of the appellants is that, subsequently, defendant-respondent Nos. 3 & 4 forged an agreement for sale of the said plot of land in their favour. It is also the case of the appellants that on 24th July, 1984, respondent Nos. 3 & 4 got the sale deed executed in their favour by projecting some imposter as Smt Vidyawati Devi for an alleged consideration of Rs. 60,000/- and on the strength of the said forged sale deed, defendant-respondent Nos. 3 & 4 attempted to interfere with the possession of the appellants over the said plot of land. It is under such circumstances the appellants brought a suit in civil court for cancellation of the sale deed dated 24th July, 1984 as well as for grant of injunction. Before the trial court, defendant-respondents took up the plea that the suit filed by the appellant is barred by Section 331 and Schedule II of the Act and the remedy available to the appellants is to file a suit in the revenue court. This plea of the defendant-respondents was treated as a preliminary issue and was decided in favour of the appellants. The respondents thereafter preferred an appeal against the order of the trial court which was dismissed. However, the writ petition

filed by the respondents against the appellate order was allowed by the High Court and the orders passed by the trial court as well as the appellate court were set aside. The appellants thereafter filed a review petition which was dismissed by an order dated 4th October 1996. The High Court, while allowing the writ petition was of the view that since Smt. Vidyawati Devi the original owner (vendor) has not filed any suit for cancellation of the sale deed dated 24th July, 1984 in the civil court, the suit filed by the appellants was barred by Section 331 and Schedule II of the Act and the remedy available to the appellants is to file suit in the Revenue Court. The validity of the said order and judgment of the High Court is impugned in the present appeal.

Learned counsel appearing for the appellants urged that the view taken by the High Court that since vendor Smt. Vidyawati Devi has not filed any suit for cancellation in the civil court and, therefore, the suit filed by the appellants was not maintainable in civil court is erroneous and based on no evidence. He further argued that there was ample evidence on record to show that Smt. Vidyawati Devi has also filed a suit in civil court praying for cancellation of the sale deed dated 24th July, 1984. We have looked into the record and find that Smt. Vidyawati Devi has also filed a suit in civil court for cancellation of the alleged sale deed dated 24th July, 1984. This is not disputed by learned counsel for the respondents. We, therefore, find that the very premise on which the writ petition was allowed is based on no evidence.

Learned counsel appearing for the respondents then urged that assuming that Smt. Vidyawati Devi did file a suit for cancellation of the sale deed dated 24th July, 1984 in the civil court still the suit filed by the appellants in the civil court was not maintainable as the same is barred under section 331 of the Act. In other words argument is that as per allegation in the plaint if the document is void there is nothing to cancel or set aside. It is simply to be ignored. The document is not voidable and, therefore, the civil court has no jurisdiction to entertain and decide the suit and it is only Revenue court which has jurisdiction to decide the suit for declaration. Learned counsel strongly relied upon the decision in *Gorakh Nath Dube vs. Hari Narain Singh and others* (1973) 2 SCC 535, in support of his argument.

In the present case what we find is that vendor Smt. Vidyawati Devi admitted that she had executed a registered sale deed in favour of the appellants on 12th July, 1984. She also admitted that she delivered the possession of the said land to the appellants and the appellants are in possession over the said plot of land. It is also on record that the names of the appellants have been ordered to be recorded as a tenure holder in the revenue record. The aforesaid facts show that the appellants are the recorded tenure holder in possession of the plot in dispute in pursuance of the sale deed dated 12th July, 1984. The question that now arises for consideration is whether a recorded tenure holder having prima facie title in his favour and in possession is required to file a suit in the revenue court or the civil court has jurisdiction to entertain and decide the suit seeking relief for cancellation of a void document. In *Ram Padarath vs. Second ADJ, Sultanpur* (1989) RD p.21, a Full Bench of

Allahabad High Court considered this aspect of the matter and held thus:

We are of the view that the case of Indra Dev vs. Smt. Ram Pyari, has been correctly decided and the said decision requires no consideration, while the Division bench case, Dr. Ayodhya Prasad vs. Gangotri Prasad is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void document will lie in the revenue court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status and a tenure holder is necessarily needed in which event relief for cancellation will be surpluses and redundant. A recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court. (emphasis supplied)

The correctness of the decision in the above case has not been challenged before us. In fact, the said decision was approved in Smt. Bismillah vs. Janeshwar Prasad and others (1990) 1 SCC 207. In Gorakh Nath Dubé (supra) which is strongly relied upon by learned counsel for the respondents, it was held thus.

.but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it..

The said decision is distinguishable and is of no help to the case of the respondents. The observation quoted above has to be understood in the context of the fact of the case. In the said case, the plaintiff had filed a suit for cancellation of the sale deed to the extent of half share claimed by the plaintiff and also an award of possession of the plaintiffs share. In the suit, it was alleged that the vendor had no title to the extent of half share in the land and, therefore, the sale deed to that extent is void. In the said case there was no prima facie title in favour of plaintiff and his title to the land and delivery of possession was required to be adjudicated.

On analysis of the decisions cited above, we are of the opinion that where a recorded tenure holder having a prima facie title and in possession files suit in the civil court for cancellation of sale deed having obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the revenue court 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 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.

For the aforesaid reasons, we are of the opinion that the view taken by the High Court in allowing the writ petition suffers from serious infirmity. The appeal, therefore, deserves to be allowed. Consequently, the judgment under appeal is set aside. The trial court is directed to proceed with the suit on merits. There shall be no order as to costs.

JUDIS