

A.F.R.

Neutral Citation No. - 2024:AHC:175219

Reserved on 6.11.2024

Delivered on 8.11.2024

Court No. - 49

Case :- WRIT - B No. - 504 of 2023

Petitioner :- Mahendra Singh

Respondent :- Board Of Revenue U.P. And 5 Others

Counsel for Petitioner :- Ashish Kumar Srivastava

Counsel for Respondent :- Azad Rai, Dhiraj Singh, Ragvendra Singh
Rathour, Rahul Sahai, Siya Ram Sahu

Hon'ble Saurabh Shyam Shamsbery, J.

1. Heard Mr. V.K. Ojha, Advocate, holding brief of Sri Ashish Kumar Srivastava, learned counsel for the petitioner and Mr. Rahul Sahai, learned counsel for respondent nos.4 and 5.
2. In the present case, father of the contesting respondent nos.4 and 5 has filed a suit under Section 38(1) of the Uttar Pradesh Revenue Code, 2006 (in short 'the Code') for correction of errors in the records of rights i.e. *Khatauni*. The said suit was contested by the present petitioner and the same was allowed by a reasoned order dated 28.5.2016 and entries made in the name of present petitioner was expunged and name of the contesting respondents were directed to be entered.
3. It is not in much dispute that there was no challenge to said order at the instant of the petitioner. Accordingly, it has attained finality and claim of the present petitioner on basis of a sale-deed in regard to the land in dispute was rejected so far as correction of record was concerned.
4. The petitioner concealing details of above referred proceedings as well as its outcome has subsequently filed a suit under Section 144 of the

Code on 3.11.2016 and claimed land in dispute on basis of a possession on oral baynama as well as on plea of adverse possession.

5. It appears that a purported application under Order VII Rule 11 C.P.C. was filed by the defendants/contesting respondents for rejection of the plaint on a ground that petitioner/plaintiff has not come up before the Court with clean hands and concealed a material fact i.e. outcome of the earlier proceedings that his claim on basis of alleged sale-deed was rejected in a proceedings arising out of Section 38(1) of the Code, which has attained finality and has bearing on suit also.

6. The learned Trial Court by an order dated 27.5.2017 rejected the suit as not maintainable. The relevant part thereof is mentioned hereinafter:

"संदर्भित वाद में पोषणीयता के बिन्दु पर उभयपक्षों के विद्वान अधिवक्ता द्वारा प्रस्तुत तर्कों को सुना गया तथा वादी पक्ष को पोषणीयता पर लिखित बहस भी प्रस्तुत करने हेतु अवसर प्रदान किया गया। प्रतिवादीगण संख्या 1 व 2 के विद्वान अधिवक्ता की ओर से अपनी लिखित बहस प्रस्तुत की गयी है, जो संलग्न पत्रावली है, किन्तु पर्याप्त अवसर दिये जाने के बावजूद वादी के विद्वान अधिवक्ता की ओर से कोई भी लिखित बहस प्रस्तुत नहीं हुई है।"

मैंने पत्रावली पर उपलब्ध समस्त अभिलेखों का सम्यक परिशीलन किया तथा लिखित बहस का अध्ययन किया। पत्रावली पर उपलब्ध अभिलेखीय साक्ष्यों के परिशीलन से स्पष्ट होता है कि वादग्रस्त भूखण्ड के बावत पक्षों के मध्य न्यायालय तहसीलदार करछना, न्यायालय अपर आयुक्त (द्वितीय) इलाहाबाद मण्डल, इलाहाबाद एवं न्यायालय उपजिलाधिकारी करछना में वाद संस्थित होकर निर्णीत हो चुका है, किन्तु वादी द्वारा तथ्यों को छिपाकर नये सिरे से प्रश्नगत घोषणात्मक वाद योजित किया गया है, जो विधिसम्मत न होने के कारण पोषणीय नहीं है एवं निरस्त किये जाने योग्य है।"

7. The aforesaid order was challenged by the petitioner by way of filing a revision petition before the Board of Revenue. However, the same was rejected by an order dated 6.6.2022. The relevant part thereof is mentioned hereinafter:

"मैंने उभयपक्ष के विद्वान अधिवक्ताओं द्वारा प्रस्तुत तर्कों एवं साक्ष्यों को विस्तारपूर्वक सुना एवं पत्रावली पर उपलब्ध आलोच्य आदेशों एवं अधीनस्थ न्यायालय के अभिलेखों का भली भांति परिशीलन किया।

उपरोक्त वर्णित तथ्यों से स्पष्ट है कि प्रश्नगत प्रकरण तहसीलदार करछना द्वारा पारित आदेश दिनांक 08.07.2014 से प्रारम्भ हुआ। जिसके विरुद्ध निगरानीकर्ता ने अपर आयुक्त द्वितीय इलाहाबाद मण्डल इलाहाबाद के न्यायालय में निगरानी प्रस्तुत की जिसका निस्तारण कर अपर आयुक्त ने अपने आदेश दिनांक 30.11.2015 के द्वारा आदेश दिनांक 08.07.2014 को निरस्त कर वाद परीक्षण न्यायालय को गुणदोष के आधार निस्तारित किये जाने हेतु प्रत्यावर्तित कर दिया जिसके क्रम में उपजिलाधिकारी ने वाद संस्थित कर अंतिम आदेश दिनांक 28.05.2016 पारित किया जिसके द्वारा निगरानीकर्ता को दावा निरस्त कर दिया गया। निगरानीकर्ता को उपजिलाधिकारी करछना द्वारा पारित आदेश दिनांक 28.05.2016 के विरुद्ध आयुक्त /अपर आयुक्त अथवा राजस्व परिषद न्यायालय में वाद योजित किये जाने की स्वतन्त्रता प्राप्त थी परन्तु निगरानीकर्ता ने उपरोक्त तथ्यों को छिपाकर उपजिलाधिकारी करछना के ही न्यायालय में धारा 144 उ०प्र० राजस्व संहिता 2006 के अन्तर्गत दिनांक 05.11.2016 को एक नवीन वाद योजित किया। जिसे पोषणीय न पाते हुए उपजिलाधिकारी करछना ने अपने आदेश दिनांक 27.05.2017 के द्वारा निरस्त कर कोई त्रुटि नहीं की है। अतः उपजिलाधिकारी करछना द्वारा पारित आदेश दिनांक 27.05.2017 में किसी प्रकार का हस्तक्षेप किया जाना न्यायोचित प्रतीत नहीं होता है। अतएव प्रस्तुत निगरानी बलहीन एवं सारहीन होने के कारण निरस्त किये जाने योग्य है।

अतः प्रस्तुत निगरानी बलहीन एवं सारहीन होने के कारण निरस्त की जाती है। निगरानी के लम्बनकाल में पारित स्थगन आदेश दिनांक 06.07.2017 निरस्त किया जाता है। अधीनस्थ न्यायालय के अभिलेख वापस भेजे जायें। वाद आवश्यक कार्यवाही पत्रावली दाखिल दफतर हो।"

8. Mr. V.K. Ojha appearing on behalf of the petitioner has submitted that the learned Trial Court as well as the Revisional Court has not considered that the issue of maintainability could be considered only after framing of preliminary issue. However, without framing of any issue the suit was rejected, and as such the relevant provisions of C.P.C. i.e. Order

XIV Rule 1 (1 to 6) were not complied with. Learned counsel also submitted that since nature of the proceedings under Section 38(1) of the Code does not create any right, therefore, its disclosure was not mandatory.

9. *Per contra*, Mr. Rahul Sahai appearing on behalf of the contesting respondents has submitted that the petitioner has not denied that details of earlier proceedings concluded under Section 38(1) of the Revenue Code, 2006 were not disclosed in the plaint and since its finding may have relevance, therefore, both the Courts have rightly held that the suit was not maintainable.

10. I have heard learned counsel for the parties and perused the records.

11. Before adverting to the rival submissions, few paragraphs of the judgments passed by the Supreme Court in the case of *Kum. Geetha, D/o Late Krishna & Ors. Vs. Nanjundaswamy & Ors. (2023) INSC 964*, and *Eldeco Housing and Industries Limited Vs. Ashok Vidyarthi and others (2023) INSC 1043* being relevant on issue of consideration of an application filed under Order VII Rule 11 C.P.C., are respectively reproduced hereinafter:

Kum. Geetha (supra)

“23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137)”

Eldeco Housing (supra)

“26. However, the fact remains that all the aforesaid documents, referred to by the respondent in support of his plea for rejection of the plaint, cannot be considered at this stage as these are not part of the record with the Court filed along with the plaint. This

is the stand taken by the respondent-defendant in the application filed under Order VII Rule 11 C.P.C. As noticed above, no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order VII Rule 11 C.P.C. Hence, in our view, the impugned order of the High Court passed in the Review Application deserves to be set aside. Ordered accordingly.”

12. It is well settled that the proceedings arising out of Section 38(1) of the Revenue Code are summary in nature and its finding may not be final adjudication on the issue. Still, since the suit was filed on basis of a oral sale-deed and alleged possession thereon as well as on plea of adverse possession, therefore, any finding in regard to the sale-deed must be part of the suit as well as the petitioner ought to have come before any Court with clean hands, therefore, he was under legal obligation to disclose the earlier proceedings, but admittedly he has not done so, therefore, he has not come with clean hands before the Court, which is a adverse factor.

13. So far as other argument is concerned, that to consider the application under Order VII Rule 11 C.P.C., issues are required to prove has no merit and for that a reference is taken from the above referred judgments that at the stage of consideration of application under Order VII Rule 11 C.P.C., merit of the case is not required to be considered, since it is an application for rejection of the plaint.

14. In the aforesaid circumstances, the Court is of considered opinion that there is no illegality in the impugned orders dated 6.6.2022 and 27.5.2017. However, under Order VII Rule 13 C.P.C., the petitioner has still liberty to present a fresh plaint in respect of the same cause of action. Therefore, while rejecting the prayers of this writ petition, it is observed that the petitioner can take benefit of Order VII Rule 13 C.P.C., if so advised. However, he has to disclose all the facts including the earlier proceedings also.

15. In pursuance to the previous order passed by this Court, concerned S.D.M. and the S.H.O. were present in Court and they have tendered unqualified apology that they have acted in haste without considering that the present writ petition was pending before this Court. However, they assure that such acts will not be repeated in future.

16. The District Magistrate, Prayagraj as well as the Commissioner of Police, Prayagraj are directed to communicate their officers that if the manner of doing a particular act is prescribed under a provision of law, the act must be done in that manner or not at all.

17. Present writ petition is, accordingly, **disposed off**. Legal consequence shall follow.

18. Registrar (Compliance) to take steps.

Order Date :- 8.11.2024

CS/-

(Saurabh Shyam Shamsbery, J.)