A NARENDRA KUMAR MITTAL & ORS.

v.

M/s. NUPUR HOUSING DEVELOPMENT PVT. LTD.

AND ANR.

B (Civil Appeal No. 5979 of 2019)

JULY 31, 2019

[N. V. RAMANA AND S. ABDUL NAZEER, JJ.]

U.P. Zamidari Abolition and Land Reforms Act, 1950 – C *s. 331 – First respondent-plaintiff purchased disputed property from the second respondent-first defendant under five sale deeds, all dated 17.10.1998 – Plaintiff found that first defendant had illegally sold the disputed property through four registered sale deed all dated 15.06.2006 in favour of defendant Nos. 2 to 5 – Suit filed by* D *plaintiff for cancellation of the sale deed dated 15.06.2006 and also for injunction restraining defendants from interfering with its possession – Appellant-defendant No.2 questioned the maintainability of the suit having regard to s.331 of the Act – Civil Court held the suit maintainable – Revision petition by the defendant No.2 was also dismissed by the High Court – On appeal, held: The* E *plaintiff had not sought any relief with respect to its own right and title as a tenure holder or declaration of its title or status – The only relief sought was for cancellation of the alleged sale deed dated 15.06.2006 – s. 331 of the Act does not deprive a party of his right to approach competent court of law for getting a document* F *cancelled, especially when, prima facie, the title of the recorded tenure holder is not under cloud – There is no bar u/s.331 of the Act for the plaintiff to approach the Civil Court and the suit filed by it was maintainable.*

Dismissing the appeals, the Court

G **HELD : 1. In the instant case, the plaintiff has pleaded that it had purchased the disputed property under five sale deeds all dated 17.10.1998 from the first defendant. The suit was filed for cancellation of the sale deed dated 15.06.2006 on the ground of**

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fraud and misrepresentation. The plaintiff had not sought any relief with respect to its own right and title as a tenure holder or declaration of its title or status. As stated above, the only relief sought in the suit filed was for cancellation of the alleged sale deed dated 15.06.2006. This Court is of the view that Section 331 of the U.P. Zamidari Abolition and Land Reforms Act, 1950 does not deprive a party of his right to approach competent court of law for getting a document cancelled, especially when, *prima facie*, the title of the recorded tenure holder is not under cloud. Revenue Court does not have jurisdiction of granting relief of cancellation of a deed on the ground of fraud and misrepresentation. [Para 7] [872-B-D]

2. In the instant case, since the plaintiff claims title under sale deeds of 1998 executed by the first defendant, it need not be forced to seek a declaration of its title. Therefore, the plaintiff had filed a suit for cancellation of the subsequent sale deed executed by the first defendant in favour of the second defendant. Hence, there is no bar under Section 331 of the Act for the plaintiff to approach the civil court and the suit filed by it was maintainable. [Para 10] [873-D-E]

Smt. Bismillah v. Janeshwar Prasad and Ors. **(1990) 1 SCC 207 – relied on.**

Ram Padarath & Ors. v. Second ADDL D.J., Sultanpur & Ors. **(1989) RD 21 (All)(FB) – approved.**

Shri Ram & Anr. v. Ist Addl. Distt. Judge & Ors. **(2001) 3 SCC 24 : [2001] 1 SCR 984 – referred to.**

Kamla Prasad & Ors. v. Kishna Kant Pathak & Ors. **(2007) 4 SCC 213 : [2007] 2 SCR 395 – inapplicable.**

Case Law Reference

(1990) 1 SCC 207	**relied on**	**Para 6**
[2001] 1 SCR 984	**referred to**	**Para 9**
[2007] 2 SCR 395	**inapplicable**	**Para 11**

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5979 of 2019.

From the Judgment and Order dated 17.11.2014 of the High Court of Judicature at Allahabad in Civil Revision Defective No. 128 of 2014.

With

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Civil Appeal No. 5980 of 2019.

H. C. Kharbanda, Jabar Singh, T. N. Saxena, Garvesh Kabra, Advs. for the Appellants.

Sanjay R. Hegde, Sr. Adv., Shariq, Aman Rastogi, Syed Abdul C Haseeb, Advs. for the Respondents.

The Judgment of the Court was delivered by

S. ABDUL NAZEER, J.

CIVIL APPEAL NO. 5979 OF 2019

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(Arising out of S.L.P. (C) No.8352 of 2015

1. Leave granted.

2. The question for consideration in this appeal is whether the suit filed by the first respondent-plaintiff for cancellation of the sale deed dated 15.06.2006 against the appellant-second defendant and second E respondent-first defendant, and for injunction restraining them from interfering with its possession of the property was maintainable?

3. The plaintiff is a private limited company, registered under the Companies Act, 1956. It had purchased from the first defendant certain properties (for short 'the disputed property') in Village Yakootpur, Pargana F and Tehsil Dadri, District Gautam Budh Nagar under five sale deeds, all dated 17.10.1998. The plaintiff submitted an application in the office of the Tehsildar for having its name entered in the record in respect of the disputed property. During the pendency of these proceedings, it came to the knowledge of the officials of the plaintiff that the first defendant had G illegally sold the disputed property through four registered sale deeds all dated 15.06.2006 in favour of defendant Nos. 2 to 5. Therefore, the plaintiff filed original suit No.55 of 2008 in the court of the Civil Judge (Sr. Division) Gautam Budh Nagar, for cancellation of the said sale deed

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and also for injunction against the first defendant and the second defendant restraining them from interfering with its possession and use of the property.

4. The second defendant questioned the maintainability of the suit, having regard to Section 331 of the U.P. Zamidari Abolition and Land Reforms Act, 1950 (for short 'the Act'). The Civil Court vide order dated 22.05.2014 held that the suit was maintainable. The second defendant challenged the said order before the Allahabad High Court. After considering the matter, the High Court dismissed the revision petition by its order dated 17.11.2014. The second defendant has called in question the legality and correctness of the said order in this appeal.

5. We have heard the learned counsel for the parties. It is not in dispute that the disputed property is an agricultural land. The contention of the learned counsel for the second defendant is that the suit in respect of agricultural land is barred under Section 331 of the Act. Learned senior counsel appearing for the plaintiff submits that the suit filed by the plaintiff was only for cancellation of the sale deed and for injunction and thus the bar contained in Section 331 of the Act is not attracted.

6. This Court in **Smt. Bismillah** v. **Janeshwar Prasad and Ors.**[1] has drawn a distinction between the suits cognizable by the civil court and the cases where Revenue Court has exclusive jurisdiction. It was also held that the statutory provisions ousting the jurisdiction of the civil court need to be strictly construed. It was held thus:

> **"7.** It is settled law that the exclusion of the jurisdiction of the civil court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. The provisions of a law which seek to oust the jurisdiction of civil court need to be strictly construed. Section 331 of the Act has been the subject of series of pronouncements of the High Court as to the circumstances and the nature of the suits in which its exclusionary effect operates. Distinction was sought to be drawn between the class of cases where the binding effect of a deed had had to be got rid of by an appropriate adjudication on the one hand and the class of cases in which a transaction could be said to be void in law where what the law holds to be void, there is nothing to cancel

[1] (1990) 1 SCC 207

A or set aside on the other. In the former case, it was held, a suit was cognisable by the civil court while in the latter, it was not, it being open to the statutory authority to take note of the legal incidents of what was non est."

7. In the instant case, the plaintiff has pleaded that it had purchased
B the disputed property under five sale deeds all dated 17.10.1998 from the first defendant. The suit was filed for cancellation of the sale deed dated 15.06.2006 on the ground of fraud and misrepresentation. The plaintiff had not sought any relief with respect to its own right and title as a tenure holder or declaration of its title or status. As stated above, the only relief sought in the suit filed was for cancellation of the alleged sale
C deed dated 15.06.2006. We are of the view that Section 331 of the Act does not deprive a party of his right to approach competent court of law for getting a document cancelled, especially when, *prima facie*, the title of the recorded tenure holder is not under cloud. Revenue Court does not have jurisdiction of granting relief of cancellation of a deed on the
D ground of fraud and misrepresentation.

8. A similar question in relation to the maintainability of the suit was considered by the Full Bench of the Allahabad High Court in **Ram Padarath & Ors.** v. **Second ADDL D.J.**, **Sultanpur & Ors.**,[2] and it was held thus:-

E "We are of the view that the case of *Indra Dev* v. *Smt. Ram Piari*,[3] has been correctly decided and the said decision requires no consideration, while the Division Bench case, *Ayodhya Prasad (Dr)* v. *Gangotri Prasad*[4] is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect
F 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 surplusage
G 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

[2] (1989) RD 21 (All)(FB)
[3] (1982) 8 ALR 517
H [4] 1981 AWC 469

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." A

9. This Court in **Shri Ram & Anr.** v. **Ist Addl. Distt. Judge & Ors.**,[5] considered the question relating to maintainability of a suit by a recorded tenure holder in possession for cancellation of the sale deed in favour of the respondents executed by some imposters. After noticing the aforesaid judgment of the Full Bench of Allahabad High Court, this Court held that where recorded tenure holder, having a *prima facie* title and in possession files suit in the Civil Court for cancellation of sale deed having been obtained on the ground of fraud or impersonation, it 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. However, if the plaintiff is required to seek a declaration of title, he has to approach the Revenue Court. B C

10. In the instant case, since the plaintiff claims title under sale deeds of 1998 executed by the first defendant, it need not be forced to seek a declaration of its title. Therefore, the plaintiff had filed a suit for cancellation of the subsequent sale deed executed by the first defendant in favour of the second defendant. Hence, there is no bar under Section 331 of the Act for the plaintiff to approach the civil court and the suit filed by it was maintainable. D E

11. In the judgment of this Court in **Kamla Prasad & Ors.** v. **Kishna Kant Pathak & Ors**.[6], relied on by the learned counsel for the appellant-second defendant, the plaintiff was the co-owner and not a recorded tenure holder. In the plaint, the plaintiff himself had stated that he was not the sole owner of the property and defendants 10 to 12 who were proforma defendants had also right, title and interest therein. He had also stated that though his name had appeared in the revenue record, defendants 10 to 12 also had a right in the property. In this factual background, this Court held that such a question can be decided by the Revenue Court in a suit instituted under Section 229-B of the Act. It was also held that the legality or otherwise of the insertion of names of purchasers in records of rights and deletion of the name of the plaintiff from such record can only be tested by Revenue Court, since names of F G

[5] (2001) 3 SCC 24
[6] (2007) 4 SCC 213 H

A the purchasers had already been entered into the record. This judgment has no application to the facts of the present case.

12. We do not find any merit in this appeal. It is accordingly dismissed. There will be no order as to costs.

B **CIVIL APPEAL NO. 5980 OF 2019**

(Arising out of S.L.P. (C) No. 8528 of 2015

13. Leave granted.

14. The issue in this appeal is squarely covered by the above judgment. Hence, this appeal is also dismissed. There will be no order as C to costs.

Ankit Gyan Appeals dismissed.