

Daya Chand and others

Vs

Om Dutta Sharma and others

Civil Appeal No. 1244 of 1985

(K. N. Singh, P. B. Sawant JJ)

01.05.1991

JUDGMENT

JUDGMENT:-

1. This appeal is directed against the judgment and order of a learned single Judge of the High Court of Allahabad dated January 25, 1985 setting aside the judgment and order of the Board of Revenue in dismissing the respondents' suit filed under S. 229(B) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and upholding the order of the trial Court decreeing the suit.

2. The respondents filed a suit under S. 229-B of the U. P. Zamindari Abolition and Land Reforms Act, 1950 for declaration of Bhumidhari and Sirdari Rights in respect of the land in dispute which according to them had been gifted to them by Smt. Phoolu in 1963. The appellants who were defendants contested the suit, contending that the gift deed was invalid, and the defendants were entitled to the land as they were legal heirs of Smt. Phoolu. The defendants further contended that the Suit was barred by S. 49 of the U. P. Consolidation of Holdings Act as the dispute between parties relating to the land had already been adjudicated by consolidation authorities and in those proceedings gift deed had been found to be invalid. The respondent's claim had been rejected by all the consolidation authorities and their orders were affirmed by the High Court by its order dated 9-8-1966 in W.P. No. 2581/66 filed by Om Dutta respondent.

3. The trial Court decreed the plaintiff's suit but on an appeal the Addl. Commissioner set aside the order of the trial Court and dismissed the suit on the finding that the gift deed was invalid. On second appeal preferred by the respondent the Board of Revenue that held the respondent suit was barred by S. 49 of the U.P. Consolidation of Holdings Act, 1953, and the gift deed was invalid. The respondents challenged the order of the Revenue Courts before the High Court under Art. 226 of the Constitution, a learned single Judge of the High Court allowed the writ petition by the impugned orders dated 9-8-1966 and set aside the orders of the Addl. Commissioner and the Board of Revenue and restored the order of the trial Court on the finding that the suit was not barred under S. 49 of the U. P. Consolidation of Holdings Act and the gift deed executed by Smt. Phoolu in favour of Om Dutta, the plaintiff-respondent was valid.

4. After hearing learned counsel for the Parties and having considered the material on record we are of the opinion that this appeal must succeed. There is no dispute that the question relating to the title to the land in dispute had been raised and adjudicated by the authorities in proceedings under the Consolidation of Holdings Act, 1953. Parties produced their evidence and the matter was examined

at various levels and all the authorities under the Act held that the gift deed was invalid as no prior permission had been obtained for the transfer of the land from the settlement officer as required by S. 5 of the Act. This view was affirmed by the High Court, in the writ petition filed by Om Dutta himself, therefore, validity of the gift deed could not be reconsidered in subsequent suit. The learned Judge of the High Court committed error in holding that the dispute before the Consolidation authorities was with regard to mutation and not for title to the land. The learned Judge further erred in holding that the gift deed was valid ignoring the earlier binding decision of the Division Bench of the High Court holding the gift deed invalid as that order had become final between the parties.

5. Since the claim of the parties to the land in dispute had been adjudicated by the Consolidation authorities and the gift deed relied upon by Om Dutta respondent was held to be invalid, and since those findings of the Consolidation authorities were affirmed by the High Court in 1966, thereafter no suit could legally be maintained by Om Dutta for declaration of his title to the land in dispute. S. 49 of the Act clearly barred such a suit. The Board of Revenue rightly held that the respondent suit was not maintainable. The High Court wrongly interfered with the findings of the Board of Revenue. We, therefore, allow the appeal set aside the order of the learned single Judge of the High Court and dismiss the suit filed by the respondents u/ S. 229-B of the U. P. Zamindari Abolition and Land Reforms Act. During the pendency of the appeal the appellants furnished security for mesne profits before the District Judge. Since the appellants have succeeded the security furnished by them is discharged. Parties shall bear their own costs.

Appeal allowed.

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