

Court No. - 36

Case :- SECOND APPEAL No. - 437 of 2024

Appellant :- Kr Faiz Qadir And 3 Others

Respondent :- Smt Shahjahan Khanam And 7 Others

Counsel for Appellant :- Akanksha Sharma

Counsel for Respondent :- Ashok Trivedi,Manu Mishra

Hon'ble Kshitij Shailendra,J.

1. Two counter affidavits filed on behalf of the respondents are taken on record.
2. Heard Sri Manish Goyal, learned Senior Counsel, assisted by Ms. Akanksha Sharma, learned counsel for the plaintiff-appellants and Sri T.P. Singh, learned Senior Counsel, assisted by Sri Ashok Trivedi, learned counsel for the defendant-respondents.
3. The plaintiff-appellants instituted a suit claiming a decree for permanent prohibitory injunction and declaration of a lease deed dated 17.06.1972 as null and void. The plaint was amended and relief of possession was also claimed.
4. The case of the plaintiff-appellants was that lease deed executed by one Wazid Ali, father of the defendant no.1 in her favour, on 17.06.1972 was a void document as the said deed was executed at the strength of power of attorney dated 28.08.1969 executed by one Mohd. Abdul Qadir in favour of Wazid Ali, although no such power was attorned upon the latter. The plaintiffs, who claim to be natural successors of Mohd Abdul Qadir, therefore, claimed possession over the property as rightful owners thereof.
5. Both the courts below have held execution of power of attorney as well as lease deed as valid and thereby non suited the plaintiffs.
6. Sri Manish Goyal, learned Senior Counsel submits that the

power of attorney was executed in respect of pursuing his and for other various purposes but there was no mention in the power of attorney that Wazid Ali would be competent to execute any title deed or a lease deed and, therefore, lease deed was invalid. He has referred to a document dated 02.06.1972 annexed as Annexure No.7 to the affidavit supporting stay application. The said document was executed by Mohd. Abdul Qadir 15 days prior to executing the disputed lease deed in which the words "Takeena" and "Nazrana" were used. The contention is that neither the word "Nazrana" nor "Takeena" means a lease deed and, therefore, both the courts below have erred in interpreting the word "Takeena" as a perpetual lease. It is also contended that once there was no serious dispute regarding natural succession of the plaintiffs flowing from late Mohd. Abdul Qadir, the finding of the trial court dislodging the title while deciding Issue No.1 is perverse and unsustainable.

7. On the other hand, Sri T.P. Singh, learned Senior Counsel has vehemently opposed the appeal and the main contention is that the dispute regarding the lease deed has been raised after so many decades and not only Civil Court but also District Court and this Court, in proceedings arising out of Original Suit No.9 of 1974, have held the lease deed as a validly executed document and even the word "Takeena" has been interpreted in favour of the defendants. Sri Singh otherwise interprets the document independently also and submits that the power attorned upon Wazid Ali included a power to execute a lease deed.

8. Having heard learned counsel for the parties, *prima facie*, this Court is of the view that in so far as the previous litigation is concerned, the defendant no.1 Shahjahan Khanam, i.e. the

daughter of Wazid Ali, was plaintiff in the said suit which was instituted against one Gajpal Singh, Headmaster of Primary School. It appears that, later on, some more parties were added, like Zila Parishad, Basic Shiksha Parishad and few other persons like teachers of the school etc., however, none from the family of Mohd. Abdul Qadir was made a party to the said proceedings.

9. Under such circumstances, a question would arise as to whether any finding recorded in the said proceedings would be binding upon the natural successors of Mohd. Abdul Qadir so as to divest them of the property which they claim through succession, particularly when the initial suit was filed for a relief of injunction alone or whether the interpretation of any document made in between the parties to that litigation would prejudice the rights of the appellants is also a question to be considered in the present proceedings. It is not disputed that the plaintiffs are out of possession and that is why they claimed decree for possession.

10. The matter requires consideration.

11. The instant second appeal is **admitted** on the following substantial questions of law:-

(a) Whether the power of attorney dated 28.08.1969 executed in favour of Wazid Ali Khan by Nawab Mohd. Abdul Qadir was specific power of attorney granted for a specific objective for entering contest before various Courts on behalf of Nawab Mohd. Abdul Qadir and his brother Munnavar Ali Khan and to settle or compromise in various litigations pending in the Courts at Hathras, Bulandshahr, Meerut, Agra etc., and as such was not a power of attorney granting any further right to Wazid Ali Khan to execute any instrument that was not part of the litigation ?

(b) Whether the terms of the alleged lease deed having been flouted, the plaintiff becomes entitled to enter upon the plot in question by seeking a declaration that the alleged lease be declared to be void and plaintiffs have right to occupy the property in question ?

(c) Whether interpretation of any document made by the Civil Court, District Appellate Court as well as this Court in proceedings arising out of Original Suit No.9 of 1974 in which the natural successors of Mohd. Abdul Qadir were not parties, would be binding in the present proceedings as far as evidentiary value of documents dealt with is concerned ?

12. Since all the respondents are represented by Sri Ashok Trivedi, learned counsel, notice need not be issued.

13. Summon the record of the appellate court as well as trial court.

14. List this appeal for final hearing on 18.09.2024.

15. Until further orders of this Court, the respondents are restrained from creating third party rights in respect of the property forming subject of Original Suit No.392 of 2002 (Kr. Faiz Qadir and others Vs. Smt. Shahjahan Khanam and others) without leave of the Court.

Order Date :- 19.7.2024
AKShukla/-