

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5891 OF 2004

MOHD. AKBAR & OTHERS

.....APPELLANTS

VERSUS

GAJJU

.....RESPONDENT

O R D E R

The brief facts which are necessary for the disposal of this appeal are that Gajju, respondent No.3 (respondent herein) filed a Original Suit No. 777 of 1993 in the court of Munsif, City Jaunpur with the allegations that Ali Hussain, father of the defendants-appellants executed a sale deed on 24.11.1966 in his favour. Later on the said sale deed was set aside and ultimately a sale deed dated 29.10.1985 was obtained having been signed by the respondent No. 3. The name of the plaintiff-respondent was not recorded as bhumidhar in the revenue record. The plaintiff-respondent claimed declaration in the garb of injunction and the cancellation of sale deed. The court below recorded the finding of fact that since the name of the plaintiff-respondent was not recorded over the land in dispute, hence no relief can be granted in his favour that he is tenure holder of the land in dispute. The defendants-appellants made an application that the suit is not maintainable in the

civil court and prayed that the point of maintainability of the suit be

decided as a preliminary issue but the trial court refused to decide the

said issue as preliminary issue by order dated 11.3.1997. Aggrieved

2

against this order, a Civil Revision was filed before the District Judge,

Jaunpur. The District Judge, by order dated 3.3.1998, allowed the

Revision Petition and remanded the matter to the trial court to decide the

issue in question in accordance with the objections of the defendants-

appellants. The trial court by order dated 14.9.1998 held that the civil

court has the jurisdiction to decide the suit. Since the names of the

defendants/appellants were not recorded as bhumidhar over the land in

dispute in the revenue record, the civil court has jurisdiction to try the

suit. This was challenged before the High Court and the High Court

affirmed the order passed by the trial court. Hence, the present appeal.

2. We have heard learned counsel for the parties and have perused

the record.

3. The question for adjudication in the present case was that the sale

deed was obtained by fraud and, therefore, the same should be

cancelled and a declaration to that effect may be given. The question is

whether this issue is to be decided by the civil court or by the revenue

court. This Court in an identical situation has taken a view that it is the

revenue court which has the jurisdiction to decide the matter. In this

connection, reference may be made to the decision of this Court in Shri

1250. Our attention was invited to para 7 which reads as under:

"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

3

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."

4. In view of the aforesaid decision, we have no option but to follow the same and hold that the civil court has no jurisdiction to decide the dispute in question and it is only the revenue court alone which has the jurisdiction to decide the dispute in question. Thus, the view taken by the learned Single Judge does not appear to be correct. Consequently, we set-aside the impugned order passed by the learned Single Judge and hold that the revenue court alone will have the jurisdiction to decide the dispute in question. Appeal is, accordingly, allowed. There

shall be no order as to costs.

....J.

.....
[A.K.MATHUR]

.....J.

.....
[H.S. BEDI]

NEW DELHI

MAY 9, 2007

4

ITEM NO.101

COURT NO.8

SECTION XI

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5891 OF 2004

MOHD. AKBAR & ORS.

Appellant (s)

VERSUS

GAJJU

Respondent(s)

(With appln(s) for exemption from filing O.T. and office report)

Date: 09/05/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR

