

(2014) 05 GAU CK 0045
In the Gauhati High Court
Case No : RSA No. 71 of 2004

Abdul Matin alias Abdul Matlib

APPELLANT

Vs

Abdul Hussain (Deceased) by his legal heirs

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Evidence Act, 1872 — Section 64
Majority Act, 1875 — Section 3

Citation : (2014) 05 GAU CK 0045

Hon'ble Judges : Abhay Manohar Sapre, C.J

Bench : Single Bench

Advocate : B.R. Dey, Advocate for the Appellant; M.U. Mahmud, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Abhay Manohar Sapre, C.J.—This is a second appeal filed by the plaintiff u/s 100 of C.P. Code against the judgment/decreed dated 10.9.2002 passed by Civil Judge (Sr. Division), Nagaon in Title Appeal No. 25 of 2001 which in turn arise out of judgment/decreed dated 20.6.1991 passed by Civil Judge (Jr. Division), Nagaon in Title Suit No. 61 of 1993.

2. By impugned judgment, the two courts below dismissed the appellant's suit for declaration, confirmation of his possession or in the alternative for possession of the suit land and for injunction in relation to the suit land against the defendant.

3. This appeal was admitted for final hearing on following substantial question of law.

The Matriculation Certificate (Ext. 4) having been proved by the plaintiff, whether the learned courts below were justified in rejecting the age mentioned in the Matriculation Certificate (Ext. 4), in disregard to Section 64 of the Indian

Evidence Act, 1872 read with Section 3 of the Indian Majority Act, 1875, on the basis of oral evidence adduced by the defendants, in the facts and circumstances of the case.

4. Facts of the case are short.

5. The appellant filed the suit out of which this appeal arises against the respondent for a declaration that he is the owner of the suit land, that respondent has no right, title and interest in the suit land, that the sale deed 597 and 598 of 1962 executed in respondent's favour by his late uncle on his behalf is null and void and does not confer any right, title and interest in favour of respondent; that respondent should not interfere in appellant's possession over the suit land that appellant's possession over the suit land be confirmed or in the alternative, appellant be restored with possession of the suit land from the respondent, if he is not found in its possession.

6. The appellant claimed these reliefs on the factual assertion that the suit land belonged to his father and on his death, it devolved on him as his minor son. He alleged that taking advantage of his minority, his late uncle Abed Ali posing himself to be his natural guardian sold the suit land to defendant in the year 1962 without obtaining any prior permission from the competent court for such sale. It was alleged that such sale was not binding on the appellant, as it did not convey any right, title and interest in favour of respondent. The suit was filed in the year 1993.

7. The respondent denied the averments and claimed that he acquired a valid title on the strength of the registered sale deed bearing no 597/598 of 1962 for paying marketable price for the land and was placed in its possession since then. It was also alleged that the appellant was major on the date of execution of sale deed and was in a position to execute the sale deed in respondents' favour as its owner. It was also contended that suit was barred to claim the reliefs because the sale deed in question was executed in the year 1962 whereas the suit was filed in the year 1993. Parties adduced the evidence. The trial court dismissed the suit so also the first appellate court which dismissed plaintiff's appeal. It is against this concurrent dismissal of the suit, the plaintiff felt aggrieved and has filed this second appeal. As stated supra, the second appeal was admitted for final hearing on aforementioned substantial question of law.

8. Having heard the learned counsel for the parties and on perusal of the record of the case, I find no merit in this appeal.

9. In my considered view, two courts were justified on the basis of evidence for coming to a conclusion that firstly the appellant was major on the date of execution of sale deed in the year 1962 and secondly the sale deed contained his signature as vendor/owner. This finding is a question of fact, and being concurrent in nature is binding on the second appellate court. It is apart from the fact that finding is otherwise just and proper calling no interference.

10. In my view, It was a finding capable of being rendered on evidence adduced by the parties, secondly, it was neither against the pleadings, nor against the evidence adduced nor against any provision of law and lastly nor was such that no judicial man with average capacity could ever record. It is for all these reasons; I find no good ground to interfere in the concurrent finding of fact.

11. The matter can be looked into from yet another angle. Assuming that plaintiff (appellant) was minor (16 years or so) on the date of execution of sale deed (1962) as alleged by him, then he attained majority in the year 1963/64.

12. The law gives a minor (plaintiff in this case) a right to challenge all transactions entered and executed by him or/and his natural guardian during his minority within three years from the date he becomes major in case if he wants to avoid any such transaction. In other words, every minor has a right to challenge a transaction/deed which he or/and his natural guardian had entered into and executed during his minority within three years from the date he becomes a major. If the plaintiff does not choose to challenge such transaction in a court of law within 3 years then he has no right to then challenge on the expiry of the three years. It becomes immune from any challenge at his instance.

13. In the light of this settled legal position, in my considered view, the appellant had no right to challenge the transaction of sale made in the year 1962 by filing the suit in the year 1993 because his right to challenge the transaction, which accrued, to him in year 1965 on his attaining majority expired in the year 68/69. The appellant, if felt aggrieved of such sale, it was obligatory upon him to have filed the civil suit before year 1968/69. He did not do it. The present suit was filed in 1993 and hence it was hopelessly barred by time.

14. This being a pure question of law and based on undisputed facts, the same could not be ignored while deciding the appeal in addition to the issue already dealt with above against the appellant.

15. Now so far as the question of law is concerned, the same in my view also deserves to be answered against the appellant. In my view, if the oral evidence was adequate, sufficient and material and went against the appellant, then while appreciating the entire evidence (oral and documentary) the court could not ignore the oral evidence for recording a finding against the appellant.

16. In this case, both the courts recorded a finding that sale deed bore the signature of the appellant (plaintiff). It is apposite to mention the relevant finding of the first appellate court on this issue.

10. Though the plaintiff in his evidence clearly denied the execution of the sale deeds, i.e. Exts. Ka and Kha but after perusal of Exts. Ka and Kha, this court found that the plaintiff Abdul Matin has signed on Exts. Ka and Kha along with Abed Ali Fakir. Now, let me see whether the signatures of the plaintiff on Exts. Ka and Kha were genuine or not. After gone through the records, I found that in most of the hajiras as well as the plaint, the plaintiff signed in Assamese though

he is a literate person served as a school teacher but incidently in some of the hajiras the plaintiff signed in English. The signatures of the plaintiff in Exts. Ka and Kha are also found in English. The petition Nos. 1155 dated 11/05/93 and 2210 dated 23/11/94 filed by the plaintiff in which he has signed in English. If we compared his signatures of the said two petitions with the signature of Exts. Ka and Kha we found that his signatures in the said 2 petitions are similar to those of Exts. Ka and kha. Now, let me examined whether the court can compare the disputed signatures as per law of the land.

17. The aforesaid concurrent findings of fact is binding on second appellate court and it does not call for any interference. Once this finding is given effect to then it completely oust the appellant (plaintiff) from challenging the sale deed of 1962 in the year 1993. Indeed even if the suit had been held to be within limitation, yet, he had no right to successfully challenge the sale deed because once it was held that sale deed bears his signature then he was bound by such execution.

18. In the light of foregoing discussion and examining the issue from any angles, the appeal is found to be devoid of any merit. It accordingly fails and is dismissed.

19. No cost.