
(2012) 04 MP CK 0143
In the Madhya Pradesh High Court
Case No : C.R. No. 38 of 2012

Aruna Gautam (Smt.) and Others

APPELLANT

Vs

Smt. Arti and Others

RESPONDENT

Date of Decision : 03-04-2012

Acts Referred:

Registration Act, 1908 — Section 49
Specific Relief Act, 1963 — Section 6

Citation : (2012) ILR (MP) 1410

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Atul Upadhyay, for the Appellant; T.K. Modh for the non-applicant No. 1, for the Respondent

Judgement

K.K. Trivedi, J.—This Revision is directed against the judgment and decree dated 11/01/2012 passed in Civil Suit No. 34A/2011 by the First Additional District Judge, Shahdol. The controversy in short involved in this Revision is that the respondent no. 1/plaintiff filed a Civil Suit u/s 6 of Specific Relief Act, 1963 (hereafter referred as Act) against the petitioners-defendants no. 1 to 7 and the respondent no. 2 for restoration of possession of the house situated at Burhar General, 739, Patwari Halka No. Budhar 101, Revenue Inspector Circle Burhar, Tehsil Sohagpur, District Shahdol allegedly constructed on land of Khasra No. 1186/2 of Ward no. 15 and also claimed compensation of Rs. 1,000/- per month. It was alleged that the said property was recorded in the name of the respondent no. 2/defendant no. 8, Abhayraj which was sold to the father of respondent no. 1/plaintiff by said respondent no. 2/defendant no. 8 for a consideration of Rs. 27,000/-. After the sale the said house and the land was given in possession of the father of the respondent no. 1. However, the sale deed of the said house and land could not be registered. The respondent no. 2/defendant no. 8 executed an acknowledgement to this effect before the Notary on 22/04/2006 and delivered it to the father of the respondent no. 1. A house was constructed over the said land by the father of the respondent no. 1 after obtaining permission from the Nagar

Panchayat, Burhar. The electricity connection was also obtained by the father of the respondent no. 1. The marriage of the respondent no. 1 -plaintiff was performed on 18/06/2002 at Paraswar and she was residing in matrimonial home. As the respondent no. 1 -plaintiff was the only living legal heir of her father, she was looking after her father. The father of the plaintiff died on 16/06/2009. It was alleged that in the intervening period between 19 and 20th June 2009, taking advantage of the absence of respondent no. 1 /plaintiff, petitioners have taken forceful possession over the land in suit and have stolen valuable property. A complaint was lodged in the police but since nothing was done and since petitioners were having good hold in the society no action was taken against them, therefore, she was required to file the present suit. The relief claimed in the suit was that petitioners-defendants no. 1 to 7 be dispossessed from the suit property and the possession of the said property be restored to the respondent no. 1/plaintiff. She also claimed damages at the rate of Rs. 1,000/- per month from the petitioners. Such a suit of the respondent no. 1 was contested by petitioners and they filed their detailed written-statement contending categorically that the suit property was purchased jointly by Girja Shankar and petitioner no. 1/ defendant no. 1 from the respondent no. 2 by unregistered sale deed. The father of the respondent no. 1 Girja Shankar has paid only Rs. 17,000/- and rest of Rs. 10,000/- was paid by the petitioner no. 1. In fact, the wife of said Girja Shankar had died and his daughter respondent no. 1/plaintiff was married in other village, therefore, he was living with respondents in the same house. The respondents were looking after Girja Shankar and he was so much pleased with their services that he made declaration before the members of the societies on many occasion that after the death of Girja Shankar, only the petitioners no. 5 to 7 will be his legal representatives and legal heirs and will succeed him in the suit property. It is also contended that this fact was admitted by the respondent no. 2-defendant no. 2 and because of such fact the sale deed was never executed. Thus, entire claim made by the respondent/plaintiff was misconceived and the suit was liable to be dismissed.

2. The Trial Court framed issues recorded the evidence of the parties and thereafter came to the conclusion that the claim made by the respondent no. 1-plaintiff was proved and therefore decreed the suit in favour of respondents, only with respect to the possession of the property in suit and refuse to grant the relief of damages as claimed as the same was not maintainable in view of the provisions of Section 6 of the Specific Relief Act The petitioners are aggrieved by this judgment and decree and therefore have come before this Court in this Revision.

3. Heard Learned Counsel for parties at length and examine the record.

4. Undisputedly, the provisions of Section 6 of the Act are attracted only if a person is dispossessed of immovable property of which he is legal owner or is in possession of the said property by virtue of law. To establish such fact it is necessary to be examined whether the claim made by the respondent no. 1/

plaintiff in this respect was sustainable in the eye of law or not. Undisputedly, as both the parties have contended, the property was said to be purchased from the respondent no. 2/defendant no. 8 by an unregistered sale deed. The value of the said property is also categorically set forth which is Rs. 27,000/-. If that being so, whether any claim could have been made on the basis of such unregistered document in the Court of law, as per the provisions of the Registration Act, 1908 or not, which in fact confers right title or interest on a person claiming such benefits. If an instrument of transfer of immovable property of more than Rs. 100/- is not duly stamped, and is registered, is inadmissible in evidence. If the said document could not have been admitted in the evidence, no claim could have been made on the basis of such document. It is the case of the respondent no. 1 that land in dispute was purchased by her father by unregistered document. It is also the provisions of Transfer of Property Act that a document of transfer if the immovable property is required to be transferred of more than Rs. 100/- of value should be registered otherwise no right can be claimed on the basis of such a document. This what specifically provided in section 49 of the Registration Act. The Apex Court in case of Suraj Lamp and Industries Pvt. Ltd Vs. State of Haryana and another, 2009 (4) MPLJ 315 was categorically held that such unregistered document of transfer confers no rights. Thus, admittedly the plaint as submitted by the respondent no. 1 was not to be accepted at all unless the document of sale was impounded under the Stamp Act and the same was admitted in evidence by the Court below merely because a claim of possession was made u/s 6. These important aspects of law of the Specific Relief Act, the Registration Act, the Indian Stamp Act and Contract Act were not to be ignored. The Court below was not right in not considering the aforesaid aspects of the claim made by the respondent no. 1/plaintiff. It was to be seen by the Court below whether the claim made by the respondent no. 1/plaintiff was in accordance to the law or not The restoration of possession of property can be ordered under the provisions of Section 6 of the Specific Relief Act, only if the said person was in lawful possession of the property and was dispossessed unlawfully by the persons against whom the claim is made not otherwise.

5. Now it is necessary to examine the evidence to this effect available on record. The respondent no. 1 has not examined herself in the court, on the other hand she executed a power of attorney in favour of her husband who was examined in the Court. He himself has admitted that all such information had come to his knowledge from other sources and no transaction had taken place between Girja Shankar and the respondent no. 2/defendant no. 8 in his presence. There was no other witnesses examined to this effect except one Ram Shankar who too was not aware of such transaction. The claim of the respondent no. 1/plaintiff was that the house in dispute was having only two rooms whereas her own witness has deposed that there were four rooms in the said house out of which three were having tiles on the floor. He simply said that on 19th June 2010 he came to know that possession of house was taken by the petitioners. He was not in a position to depose as to how the respondent no. 1/plaintiff was put in lawful

possession of the disputed house.

6. On the other hand the petitioners have examined the respondent no. 2/ defendant no. 8 as a witness who has deposed that the house was sold to Girjashankar and petitioner no. 1 herein jointly by him. Nothing more has been placed before the Court below but the statement of DW-2, Abhay Raj further indicates that father of respondent no. 1/plaintiff and petitioner no. 1 both were put in joint possession of the land in dispute. From such evidence also it is not proved whether the respondent no. 1 /plaintiff was at any point of time in lawful possession of the disputed property and therefore no decree under the provisions of Section 6 of Specific Relief Act could have been granted in favour of the respondent no. 1/plaintiff. Consequently this Revision is allowed. Impugned Judgment and Decree dated 11/01/2012 passed in Civil Suit No. 34-A/2011 by the First Additional District Judge, Shahdol is hereby set aside. The suit filed by the respondent no. 1/plaintiff is hereby dismissed. However the parties to the suit will bear their own costs.