
(2007) 08 JH CK 0069
In the Jharkhand High Court

B. Kantamma and Others

APPELLANT

Vs

B. Krishna Reddy

RESPONDENT

Date of Decision : 28-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2008) 1 JCR 176

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

R.K. Merathia, J.—Mrs. Jaya Roy, relying on the judgment of this Court in 2003(2) JLJR 71 (Jagendra Kaur v. Kali Prasad @ Kalu Prasad), submitted that the Second Appeal is maintainable against the impugned judgment.

Mr. B.V. Kumar, appearing for the respondents does not dispute this position.

Accordingly, it is held that the Second Appeal is maintainable.

2. Appellants have preferred this appeal against the order dated 21.5.2007 passed in Misc. Appeal No. 30 of 2006, affirming the judgment dated 27.9.2006 passed in Misc. Case No. 1 of 2006 and rejecting the petition filed by the appellants under Order XXI Rule 97/101 read with Section 151 of the C.P.C. (hereinafter to be referred as Misc. Case).

3. A suit for specific performance of the agreement for sale dated 11.1.1980, was filed by the father of the respondent herein- B. Laxmayya, being Title Suit No. 5 of 1983 against one B. Narsingh Rao s/o B. Appal Swami, the defendant, who admitted execution of the said agreement, but pleaded ignorance about the contents thereof. He also took a plea that the suit was bad for non-joinder of parties as his brothers and sisters were necessary parties in the suit who inherited the property in question after death of his father B. Appal Swami. The suit was decreed on contest. The defendant B. Narsingh Rao filed an appeal being F.A. No. 119 of 1985(R) in the High Court. The appellants filed a petition under Order 1 Rule 10 C.P.C. in the said First Appeal, contending that the

defendant, alone was not entitled to enter into the said agreement, as the appellants were also the co-sharers. But the appellants did not pursue the said petition, filed under Order 1 Rule 10 C.P.C. The said First Appeal was dismissed by judgment dated 24.6.2002, the relevant portion of which reads as follows:

12. Now it is relevant to consider whether defendant was the absolute owner of the suit property or he was only a co-sharer along with his brothers and sisters and defendant alone was competent to enter into agreement for sale in question.

13. It is not in dispute that defendant had two more brothers, B. Laxmipati Naidu and B. Appa Rao and two sisters, R. Balamain and Y. Pushpa Veni, but the suit property stood recorded exclusively in the name of defendant and according to plaintiff, it was acquired by him alone during life time of his father, B. Appalswami.

14. In this regard, defendant brought on record, Exhibit C, a deed of relinquishment dated 14.12.1982 whereby his both brothers, B. Appa Rao and B.L.P. Naidu released their right, title, interest and claim over the property in question and declared that they or their heirs have no interest therein and present defendant is absolute owner thereof. In view of the fact that property in question was acquired in the name of defendant, B. Nageshwar Rao alone, there was no question of mutation of his name in records of Tata Iron and Steel Company Limited, after death of his father B. Appal Swamy. It was never standing in the name of B. Appal Swamy. Exhibit C was prepared, during pendency of the present suit by defendant in league with his bothers to create evidence that he was not exclusive owner of the property under agreement rather his brothers were also co-sharers therein. Not only this, at his instance, his brothers and sisters also filed application under Order 1 Rule 10 of the CPC in the present Appeal to be added as parties, to support the appellant, after the suit was decreed.

15. I, therefore, find no reason to interfere with the impugned judgment and decree. There is no merit in this Appeal. It is dismissed accordingly but without costs.

4. Then the appellants filed the said Misc. Case praying for dismissal of the Execution Case No. 5 of 1985, filed by the plaintiff, for executing the decree passed in the said Title Suit No. 5 of 1983 raising similar contentions raised in the said petition under Order 1 Rule 10 C.P.C.

5. Mrs. Jaya Roy, appearing for the appellants submitted that the said judgment of F.A. No. 119 of 1985(R) is not binding on the appellants; and that all the questions raised by the appellants have not been decided by the learned courts below.

6. Mr. B.V. Kumar, learned Counsel, appearing for the respondents, on the other hand, submitted that the said Misc. Case itself was not maintainable on behalf of the appellants as only the decree holder or purchaser of the property can file an

application under Order XXI Rule 97/101 C.P.C. in case of obstruction and in such application all the question arising between the parties are to be determined, whereas the appellants were neither the decree holder nor the purchaser. In support of this contention, he relied on Gopalji Prasad Keshari Vs. Md. Rayez alias Fulan and Others etc. He further submitted that the concurrent findings of facts should not be interfered by this Court in this Second Appeal in which no substantial question of law is involved. He further pointed out that in the application being Misc. Case No. 1 of 2006 in paragraph 15, the appellants stated that their ancestors had filed Tile Suit No. 67 of 1986 but the same was not maintainable and which will be withdrawn, whereas in paragraph 8 thereof the appellants stated that only on 20.1.2006 for the first time they came to know about the said agreement of sale. He further submitted that the appellants were knowing about the agreement of sale but they filed the said Misc. Case after about ten years. He further submitted that the said petition filed by the appellants under Order 1 Rule 10 C.P.C. was considered by this Court in the said judgment of F.A. No. 119 of 1985 (R). He further submitted that the appellants have been trying to abuse the process of law.

7. I find substance in the submissions of Mr. Kumar, learned Counsel, appearing for the respondents. It will appear from the said judgment that it was affirmed that the defendant B. Narsingh Rao acquired the suit property alone during the life time of his father B. Appal Swamy. It was further held that Exhibit C, a purported deed of relinquishment dated 14.12.1982 brought on record by the defendant B. Narsigh Rao was prepared during pendency of the suit by the defendant in league with his brothers to create evidence that he was not the exclusive owner of the property under agreement, rather they were also co-sharers therein. It was further held that not only at the instance of the defendant, but his brothers and sisters also filed an application under Order 1 Rule 10 C.P.C. to support the defendant after the suit was decreed.

The appellants filed the said application under Order 1 Rule 10 CPC in the First Appeal raising similar pleas as raised in the present Misc. Case. The appellants did not pursue the said application. However, the same was considered as an attempt on behalf of the appellants to delay the execution of the decree. The appellants did not challenge the said findings recorded in the said First Appeal. It is also true that the present Misc. Case was not maintainable at the instance of the appellants as contended by Mr. Kumar.

Mrs. Jaya Roy submitted that the defendant B. Narisingh Rao in collusion with the plaintiff entered into the said agreement of sale, but on going through the application of Misc. Case it appears that there is no pleading of any fraud or collusion.

8. After considering all the questions raised by the appellants the said Misc. Case was dismissed with cost by the impugned order dated 27.9.2006, against which the appellants filed Misc. Appeal No. 30 of 2006 which was also dismissed by the appellate court after considering the materials on the record. Moreover, no

substantial question of law is involved in this Second Appeal.

9. From the facts and circumstances noticed above, it is clear that the appellants have been abusing the process of law. I find no merit in this Second Appeal which is dismissed with cost of Rs. 5,000/- payable to the decree holder. The interim order dated 16.8.2007, which was ordered to continue on 21.8.2007, stands vacated and the trial court is directed to execute the decree without any delay.