

(2015) 05 TP CK 0023

In the Tripura High Court

Case No : Regular Second Appeal No. 46 of 2008

Bakul Das (Suklabaidya) and Others

APPELLANT

Vs

Jyostna Suklabaidya and Others

RESPONDENT

Date of Decision : 28-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Evidence Act, 1872 — Section 65, 66
Penal Code, 1860 (IPC) — Section 109, 419, 420, 468, 471
Transfer of Property Act, 1882 — Section 122

Citation : (2015) 05 TP CK 0023

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant; P. Dutta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.C. Das, J.

1. This second appeal under Section 100 of the Code of Civil Procedure, 1908 is directed against the appellate judgment dated 11.07.2008 passed by learned Addl. District Judge(Fast Track Court), Kailashahar, North Tripura in Title Appeal No. 13 of 2008, whereunder the learned Addl. District Judge dismissed the appeal and upheld the judgment and decree dated 04.02.2008 and 08.02.2008 respectively passed by learned Civil Judge, Junior Division, Kailashahar in Title Suit No. 38 of 2005.

2. Heard learned counsel, Mr. D.K. Biswas for the appellants and learned counsel, Mr. P. Dutta for the respondents.

3. By order passed on 27.01.2009 the second appeal has been admitted by this Court on the following substantial question of law:

"Whether the learned trial court as well as the learned appellate court had the

jurisdiction to decide an issue, which is pending before the High Court for decision i.e. the matter relating to Survivorship Certificate."

3.1. At the time of hearing on the submission of learned counsel of the appellants another substantial question of law has been formulated, namely-

"Whether the alleged gift by Exbt.7 was at all acted upon specially for non-acceptance of the gift by the alleged donee as prescribed under Section 122 of the Transfer of Properties Act."

4. The second appeal has been filed against the concurrent findings of the trial Court and the first appellate Court. Pleadings of both side and the evidence have been elaborately discussed by the trial Court as well as the appellate Court. However, for the purpose of deciding the substantial questions formulated before this Court, the substance of the pleadings of both side is narrated hereunder for fair appreciation.

5. The appellants as plaintiffs (hereinafter mentioned as plaintiffs) instituted Title Suit No. 38 of 2005 seeking the following relief:

"(A) Granting declaration that the plaintiff No. 1 is the exclusive owner possessor of the suit land of the 1st schedule below and further declaration that the suit deed described in the 4th schedule below is illegal, fraudulent, vague and unspecific, not acted upon and not binding upon the plaintiffs;

(B) Granting and issuing perpetual injunction restraining principal defendant Nos. 1 and 2 from entering into this suit land and from disturbing possession of the plaintiff No. 1 therein;

(C) Granting all other reliefs deemed fit and proper;

(D) Granting full costs of litigation."

6. Respondent Nos. 1 and 2 and pro-respondent No. 4 (hereinafter mentioned as defendants) contested the suit by filing written statement and pro-respondent No. 3 did not turn up and did not contest the suit.

7. Plaintiffs, inter alia, contended that the suit land described in the Schedule 1, 2 and 3 of the plaint originally belonged to Matangini Suklabaidya. It is the case of the plaintiffs that plaintiff No. 2 is the daughter of Matangini Suklabaidya and plaintiff No. 1 is the daughter-in-law (son's wife) of plaintiff No. 2. Pro-defendant Nos. 3 and 4 are also sons of plaintiff No. 2. The plaintiffs further contended that defendant Nos. 1 and 2 in no way relates to the plaintiffs. Matangini Suklabaidya died on 09.09.1993 leaving behind plaintiff No. 2 as her only heir and accordingly plaintiff No. 2 inherited the suit land and she transferred the suit land described in Schedule 1(A) and 1(B) to plaintiff No. 1 and the land of Schedule 2 and 3 were also transferred to plaintiff Nos. 3 and 4. It is contended by the plaintiffs that plaintiff No. 1 after purchase mutated the land of Schedule 1(A) in her name but when she applied for mutation of the land described in Schedule 1(B), the defendant No. 1 filed objection contending that Matangini Suklabaidya by a

registered Gift Deed No. 1-715 dated 12.03.1982 gifted 0.80 acres of land to defendant No. 1 and therefore the mutation was not allowed and it was kept pending. The plaintiffs obtained certified copy of the Gift Deed on 08.09.2005 and thereafter came to know that a void, illegal, ineffective Gift Deed was created in collusion and in exercise of forgery which was never acted upon and as per that gift deed the defendant No. 1 never mutated her name in the records of right, nor even disclosed the same at the time of survey and settlement operation and the gift deed was never acted upon. It is also contended that defendant No. 1 claimed to be the granddaughter of Matangini Suklabaidya which was a false claim and that Matangini Suklabaidya left behind no other heir except the plaintiff No. 2. The plaintiffs also contended that the averments made in the gift deed were all false and contrary to truth. They have also contended that on 28.05.2003 defendant Nos. 1 and 2 taking advantage of infirmity, ignorance and illiteracy of plaintiff No. 2 took her to the court and sub-registrar's office and obtained an affidavit before notary public and also registered power-of-attorney in the name of defendant No. 2. The contents of those documents were never explained to plaintiff No. 2 and the wrong designs of the defendants could be understood by the plaintiffs in the year 2005 and on 08.10.2005 the plaintiff No. 2 revoked the general power-of-attorney dated 28.05.2003.

8. Defendant Nos. 1, 2 and 4 contended that Matangini Suklabaidya had two daughters, namely Pramila Suklabaidya (plaintiff No. 2) and Usha Suklabaidya (mother of defendant No. 1). Usha Suklabaidya died when defendant No. 1 was aged about seven months. The husband of Usha Suklabaidya, i.e. the father of defendant No. 1, namely Ananda Charan Suklabaidya also died thereafter and so the defendant No. 1 was brought up by Matangini Suklabaidya. The said Matangini Suklabaidya executed a registered Deed of Gift No. 1-715 dated 12.03.1982 in respect of 0.80 acres of land in favour of defendant No. 1 and handed over physical possession to the defendant No. 1 and the defendant No. 1 was possessing the same. After the death of Matangini Suklabaidya, Suresh Suklabaidya, husband of defendant No. 1 and son of plaintiff No. 2 in collusion with the plaintiffs fraudulently obtained a survivorship certificate from the office of the SDM wherein it was mentioned that plaintiff No. 2, Pramila Suklabaidya is the only heir of Matangini Suklabaidya and thereby the suit land allegedly sold out by plaintiff No. 2 in Schedule 1(A) was mutated but when the Schedule 1(B) land was also applied for mutation, the ill designs came to the notice of defendant No. 1 and they raised objection. Due to ignorance defendant No. 1 did not mutate the gifted land in her name immediately after the gift though the gift was acted upon. The defendant No. 1 applied for cancellation of the survivorship certificate issued in the name of the plaintiff No. 2 and prayed for issuing a fresh survivorship certificate in the name of defendant No. 1 as the legal heir of deceased Matangini Suklabaidya. It is also contended by the defendants that on 28.05.2003 defendant No. 2 realizing her wrong intended to rectify her misdeed and therefore on 28.05.2003 within the knowledge of her sons she went to the court and registration office and executed an affidavit

before the notary public and also executed a registered power-of-attorney empowering defendant No. 2 to do all acts and deeds in respect of her landed properties. Those documents were voluntarily executed by plaintiff No. 2 and no influence was exercised by the defendants on plaintiff No. 2. Subsequently, the registered power-of-attorney was revoked in the year 2005 but the affidavit sworn by plaintiff No. 2 remained as it is. The plaintiffs cannot claim the suit land and no decree can be passed in favour of the plaintiffs.

9. Following issues were framed for decision:

"1. Is the suit maintainable in its present form?

2. Have the plaintiffs any cause of action to institute the Suit?

3. Whether the plaintiff No. 2 is the sole legal heir of deceased Matangini Suklabaidya?

4. Whether deceased Matangini Suklabaidya has executed registered gift deed in favour of defendant No. 1?

5. Whether the said gift deed executed by deceased Matangini Suklabaidya is legally valid and acted upon?

6. Whether the plaintiff No. 1 is entitled to get declaration that she is exclusive owner and possessor of the suit land of 1st schedule?

7. What other relief/reliefs the parties are entitled to get?"

10. In course of trial, the plaintiff Nos. 1 and 2 examined themselves as PWs 1 and 2 and the plaintiffs also examined husband of plaintiff No. 1, namely Iresh Suklabaidya as PW5 and defendant No. 3, namely Kripesh Suklabaidya as PW3 and also examined two more witnesses, namely Subodh Nama as PW4 and Ranjit Kr. Dhar as PW6. The plaintiffs also proved the following documents:

"Ext. 1 Certified copy of Khatian No. 404/1,

Ext. 2 Xerox copy of survivorship certificate dated 15.2.96 issued by SDM, Kailashahar.

Ext. 3 Purchased deed bearing No. 1-143 dated 13.9.01 containing 2 sheets.

Ext. 4 Registered purchased deed vide No. 1-581, dtd. 1581, dtd. 29.4.03 containing 4 sheets.

Ext. 5 Certified copy of khatian No. 1625 in the name of plaintiff

Ext. 6 Registered General Power of attorney(certified copy) containing 2 sheets bearing No. IV-252, dated 28.5.03.

Ext. 7 Certified copy of Registered Gift deed bearing No. 1-715, dtd. 12.3.82 containing 3 sheets.

Ext. 8 Xerox copy of registered revocation deed bearing No. IV-613, dtd. 8-10-03

containing 3 sheets.

Ext. 9 Certified copy of FIR in c/w Kgt.P.S. Case No. 72/05, u/s. 420/468/109 IPC containing 6 sheets.

Ext.10 Certified copy of Final report(C/S) in c/w Kgt. P.S. Case No. 57/03, u/s. 468/471/419 IPC containing 11 sheets.

Ext. 11 Certified copy of registered kabala No. 1-582, dtd. 29.11.03 containing 3 sheets.

Ext. 12 Certified copy of deposition of P.W.1 in c/w G.R. 254/05 containing 4 sheets.

Ext. 13 Certified copy of judgment dated 4.6.07 in c/w G.R. 254/05 containing 9 sheets."

Defendant Nos. 1 and 2 examined themselves as DWs 1 and 2 respectively and also examined another witness, namely Brajendra Das as DW3 and proved the following documents:

"Ext. A Certified copy of FIR in c/w Kgt.P.S. case No. 72/05 containing 6 sheets.

Ext. B Original affidavit dtd. 28.5.03 of Smt. Pramila Suklabaidya containing 3 sheets.

Ext. C Certified copy of family register under panchayat Ashram Palli.

Ext. D Certified copy of judgment in c/w G.R.308/03 containing 10 sheets."

11. By impugned judgment dated 04.12.2007 the trial Court decided issue Nos. 1 and 2 in favour of the plaintiffs but decided issue Nos. 3 and 6 against the plaintiffs. Issue Nos. 4 and 5 were also decided in negative, i.e. against the defendants. The trial Court thereby dismissed the suit of the plaintiffs. The plaintiffs preferred Title Appeal No. 13 of 2008 challenging the judgment and decree of dismissal but the defendants did not prefer any appeal against the decision of the trial Court in respect of issue Nos. 4 and 5. The appellate Court upheld the judgment and decree passed by the trial Court.

12. At the time of hearing learned counsel, Mr. Biswas appearing for the appellants did not put much emphasis on substantial question No. 1. However, I have meticulously gone through the pleadings and the evidence on record and the concurrent findings of both the Courts below. There was no issue framed by the trial Court regarding pendency of any matter including survivorship certificate before High Court. There was no such definite pleading also to that effect. Unless there was a specific case pending before the superior Court and an order passed by the superior Court staying the suit pending before the Courts below, the trial Court was definitely within its jurisdiction to decide the suit according to law. The trial Court rightly decided the suit on the basis of the evidence adduced by both side and it is brought in the evidence on record that after the death of Matangini Suklabaidya a survivorship certificate was obtained

in the name of plaintiff No. 2 alone showing her as the sole heir of Matangini Suklabaidya which was challenged by defendant No. 1 and thereafter the SDM in cancellation of earlier survivorship certificate issued a fresh survivorship certificate in the name of plaintiff No. 2 and defendant No. 1 showing them as the legal heirs of Matangini Suklabaidya being plaintiff No. 2 as daughter and defendant No. 1 as granddaughter. PW5 who is the son of plaintiff No. 2 and husband of plaintiff No. 1 has categorically admitted the fact about the subsequent survivorship certificate in cancellation of earlier one and that is elaborately discussed by the trial Court as well as the appellate Court. I, therefore, find no infirmity in the judgment and there is no merit in respect of substantial question of law No. 1.

13. In respect of substantial question No. 2 formulated at the time of hearing of the appeal learned counsel, Mr. Biswas has submitted that the alleged gift deed was executed on 13.03.1982 but the defendant No. 1 kept it secret and did not disclose it to anybody. There is no averment or endorsement in Exbt.7, i.e. the gift deed that defendant No. 1 accepted the gift and got possession of the gifted land. The acceptance of gift is a primary ingredient as defined in Section 122 of the Transfer of Properties Act. Since there was no acceptance of gift and since by virtue of that gift deed the defendant No. 1 did not go for mutation, it should be treated as a sham document not acted upon at all.

14. Learned counsel, Mr. Dutta on the other hand has submitted that the gift deed was a registered deed and defendant No. 1 was put in possession pursuant to that gift deed and plaintiff No. 2 also by executing an affidavit which is marked as Exbt.B has clearly contended that Matangini Suklabaidya executed the gift deed donating 0.80 acres of land to defendant No. 1. The trial Court as well as the appellate Court fairly appreciated the evidence on record and rightly dismissed the suit of the plaintiffs.

15. On perusal of the judgment passed by the trial Court, I find that issue Nos. 4 and 5 have been decided by the trial Court in negative. The plaintiffs produced certified copy of the gift deed dated 13.03.1982. The defendants did not produce the original gift deed nor even produced the copy thereof. The certified copy has not been proved according to the provision prescribed in Sections 65 and 66 of the Evidence Act and therefore the trial Court arrived at a finding that it is not proved that Matangini Suklabaidya executed the gift deed in favour of defendant No. 1 and that it was acted upon. While the issue Nos. 4 and 5 already decided in negative and the decision has not been challenged by the defendants, I do not understand why the learned counsel of the appellants, i.e. the plaintiffs agitated the issue that the gift deed was not acted upon. Already it is decided by the Court that the gift deed was not acted upon and that decision has not been challenged by the aggrieved party, i.e. the defendants and therefore I find no merit in the submission of learned counsel, Mr. Biswas on the second substantial of law formulated at the time of hearing and therefore I find no merit in the second appeal and I find nothing to interfere in the judgment and decree passed

by the trial Court and upheld by the appellate Court.

16. The second appeal is accordingly dismissed with costs.