
(2013) 08 PAT CK 0095
In the Patna High Court
Case No : Second Appeal No. 518 of 2011

Deva Devi	Vs	APPELLANT
Suvadra Devi		RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 4 BBCJ 200

Hon'ble Judges : Mungeshwar Sahoo, J.

Bench : Single Bench

Advocate : Mr. Amrendra Kumar Jha, Advocate, for the Appellants; None, for the Respondents

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.— Heard learned counsel Mr. Rajnandan Prasad appearing on behalf of the appellants and learned counsel Mr. Rajan Kumar Jha appearing on behalf of the respondents under Order XLI Rule 11 of the Code of Civil Procedure.

2. The defendants-appellants-appellants have filed this Second Appeal against the judgment and decree dated 23.06.2011 passed by the learned Additional District Judge, Fast Track Court No.2, Banka in Title Appeal No.95 of 2005 whereby the lower appellate court dismissed the appeal and confirmed the judgment and decree dated 03.06.2005 passed by the learned Subordinate Judge-III, Banka in Title Suit No.28 of 1993.

3. The plaintiffs-respondents filed the aforesaid suit for declaration of their title and for permanent injunction with respect to the suit property.

4. The plaintiffs' claim, in short, is that the plaintiffs' ancestor had purchased the suit property by registered sale deeds dated 30.06.1929 and 01.10.1929 from the admitted owner Masudi Choudhary and since then after purchase they are coming in possession of the same. However, in the revisional survey record of right the property has been recorded in the name of the defendants.

5. On the contrary, the defendants' case is that in fact Masudi Choudhary, the recorded tenant, had already sold the land on 06.02.1929 in favour of Tilakdhari Singh, who was a benamidar of Ram Murat Singh. The defendants have purchased the property from the heirs of Ram Murat Singh orally on 20.10.1953 for Rs.48.00 and they are coming in possession since then, therefore, the names have been recorded in the revisional survey record of right correctly.

6. The trial court recorded the finding that the plaintiffs have been able to prove their title and possession on the basis of sale deeds dated 01.10.1929 and 30.06.1929. The trial court also recorded the finding that the defence of the defendants that Tilakdhari Singh was benamidar of Ram Murat Singh is hit under the provision as contained in Section 4 (2) of the Benami Transactions (Prohibition) Act, 1988, accordingly, dismissed the plaintiffs' suit. On appeal, the lower appellate court confirmed the finding of the trial court and dismissed the appeal.

7. The learned counsel appearing for the appellants submitted that the courts below have misinterpreted the decision of the Hon'ble Supreme Court in the case of R. Rajagopal Reddy and others v. Padmini Chandrasekharan, reported in A.I.R.1996 SC 238. According to the learned counsel, since the provision as contained in Section 4 (2) of the Benami Transactions (Prohibition) Act, 1988 is not retrospective, the defence raised by the defendants regarding transaction of the year 1929 cannot be held to be barred under the said provision. The learned counsel further submitted that the revisional survey record of right was published in the year 1982 whereas the suit has been filed in the year 1993, therefore, the suit itself was barred by law of limitation but both the courts below have wrongly considered the question of limitation and held that it is not barred by law of limitation. On this ground, learned counsel for the appellants submitted that the judgment of the lower appellate court is vitiated.

8. On the other hand, learned counsel for the respondents submitted that the defence raised by the defendants in the suit filed after coming into force of the Benami Transactions (Prohibition) Act, 1988 is barred by the provision as contained in Section 4 (2). So far the limitation is concerned, the learned counsel submitted that the plaintiffs are praying for declaration of title, therefore, this is not a simpliciter suit for declaration that the entry in the revisional survey record of right is wrong or be set aside, as such the suit is not barred under the Limitation Act.

9. So far the first point raised by the learned counsel regarding the bar under Section 4 (2) of the Benami Transactions (Prohibition) Act, 1988 is concerned, it may be mentioned here that the Act came into force on 19th May 1988. The provisions of Section 3 and Section 4 have been interpreted by the Hon'ble Supreme Court in the case of R. Rajagopal Reddy (supra) wherein it has clearly been held that the provision will not apply in the case of proceeding which has been initiated prior to coming into force of the Act but it will apply if the suit is instituted after coming into force of the Act. So far the defence is concerned, in

the said decision it has been held that if the suit has been filed prior to coming into force of the Act, 1988 but the defence is filed by the defendants after coming into force of the Benami Transactions (Prohibition) Act, 1988 then also it will apply and the defence will be barred. In such view of the matter, the question has now already been settled by the Hon"ble Supreme Court, as such it needs no further decision on this question.

10. So far the point raised by learned counsel for the appellants regarding limitation is concerned, the plaintiffs have filed the suit for declaration of title and for further issuance of permanent injunction. No relief has been claimed regarding the entry in the revisional survey record of right. Moreover, since the relief is for declaration of title, the suit will be barred only if the defendant shows that he has already prescribed title by adverse possession as required under Article 65 of the Limitation Act. In my opinion, therefore, the suit is also not barred by law of limitation.

11. In view of the above facts, the points raised by learned counsel for the appellants are not at all substantial questions of law. Therefore, in my opinion, no substantial question of law is involved in this Second Appeal and accordingly, this Second Appeal is dismissed at the stage of admission itself.