
(2011) 11 AHC CK 0405
In the Allahabad High Court
Case No : Second Appeal No. 951 of 2011

Dinesh Kumar Sharma and Another	Vs	APPELLANT
Smt. Renuka Sharma and Others		RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 2, Order 41 Rule 11, Order 7 Rule 11

Citation : (2012) 1 ADJ 333 : (2012) 2 AWC 1634

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.U. Khan, J.—Heard learned counsel for the appellants (two in number), who are real brothers.

2. This second appeal arises out of O.S. No. 493 of 2005 instituted by respondent Nos. 1 and 2 Smt. Renuka Sharma and Smt. Kunti Sharma. Both the appellants and proforma respondent Nos. 3 to 6 were defendants in the suit. All the parties except respondent Nos. 4 and 5 are real brothers and sisters. Respondent Nos. 4 and 5 are wife and daughter of late Sri Tajendra Dev Sharma who was real brother of the other parties. House in dispute were left behind by late Sri Rameshwar Dayal Sharma father and grand father of the parties. It was pleaded in the plaint that the mother late Smt. Anguri Devi gave her 1/8th share through registered Will dated 17.6.2000 to Smt. Kunti Sharma the plaintiff No. 2 hence her share was 2/8 and the share of plaintiff No. 1 was 1/8th (total share of both the plaintiffs 3/8th) and remaining 5/8th share was of the defendants. The trial Court held that the plaintiffs had 3/8th share in the property and they could seek partition. However, suit was dismissed under Order 32 Rule 2 CPC at the preliminary stage under Order 7 Rule 11 CPC by Additional Civil Judge (Senior Division) Court No. 2, Meerut on 4.4.2009.

3. Under Order 32 Rule 2 CPC provision for appointment of guardian of person of

unsound mind is provided. After deciding all the material issues in favour of the plaintiffs there was absolutely no sense in rejecting plaint under Order 7 Rule 11 CPC.

4. Against the judgment and decree passed by the trial Court plaintiffs filed Civil Appeal No. 67 of 2009. Additional District Judge/ Special Judge S.C./S.T. Act, Meerut allowed the appeal through judgment and decree dated 10.8.2011 set aside the judgment and decree passed by the trial Court and declared 1/8th share of plaintiff No. 1 and 2/8th share of plaintiff No. 2 in the property in dispute i.e. the houses bearing Nos. 428, 430, 431, 432 and 433 situate in Subhashpuri, Ranker Khera, Meerut and passed a preliminary decree to that effect. Lower Appellate Court mentioned in its judgment that during arguments in appeal plaintiff No. 2 Kunti Sharma remained present in Court and she was doing pairvi in appeal and on the date of the arguments also she was present in Court and the said fact was not disputed by the respondents in the appeal before the Lower Appellate Court.

5. Learned counsel for the appellants categorically admits that the shares which have been granted by the Courts below to the plaintiffs respondents are quite correct. The only argument is that plaintiff No. 2 was of unsound mind hence lower appellate Court should have either dismissed the appeal or at least should have appointed her guardian before deciding the appeal. The trial Court while dismissing the suit had held that she was of unsound mind. The action of the trial Court was rather a cruelty. It did not make any effort to appoint a guardian ad-litem. The lower appellate Court held that plaintiff No. 2 was slightly depressed but not of unsound mind. In any case this argument by the higher Court i.e. this Court hearing this Second Appeal could be entertained only if judgment had gone against Smt. Kunti Sharma. The provision of appointing guardian of minor or of persons of unsound mind has been made in order to protect but not to jeopardise their interest. Accordingly even if the argument of learned counsel for appellant that respondent No. 2 was not of perfectly sound mind is accepted, it will not make any difference. In the memorandum of this second appeal she has been made respondent without any guardian. The following authorities cited by the learned counsel for the appellant have got no application:

1. Smt. Godawari Devi Vs. Smt. Radha Pyari Devi and Others, .
2. Marci Celine D'Souza and Another Vs. Renie Fernandez and Others, .

6. Learned counsel for appellants stated that Smt Kunti Sharma was divorced by her husband due to her unsound mental state. It is worst form of cruelty on the part of the appellants brothers that they want to deprive their divorced, depressed sister of her share in their father's property.

7. The apprehension of the learned counsel for the appellants who are brothers is that plaintiff respondent No. 1 Smt. Renuka Sharma will prevail upon Smt. Kunti Sharma respondent No. 2 (both are sisters of the appellants) and will misuse the portion of the property in dispute which ultimately comes in the share of Smt.

Kunti Sharma. This question is wholly foreign to the scope of the suit hence it cannot be considered.

8. Moreover, respondent No. 1 Smt. Renuka Sharma deserves all praise for taking care of her divorced, depressed sister respondent No. 2. She is her best companion. No other error has been point out in the judgment of the lower appellate Court by the learned counsel for appellants.

9. Accordingly, I do not find any reason to interfere in the impugned judgment and decree passed by the lower appellate Court. No substantial question of law is involved. Second Appeal is dismissed under Order 41 Rule 11 CPC.