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(2021) 04 OHC CK 0005

In the Orissa High Court

Case No : First Appeal No. 121 Of 1990

Hemalata Panda @ Dibya & Others — APPELLANT

Vs

Kuntala Dei & Others — RESPONDENT

Date of Decision : 06-04-2021

Acts Referred:
Code Of Civil Procedure, 1908 — Section 10, 96, Order 44 Rule 1

Citation : (2021) 04 OHC CK 0005

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

Bench : Single Bench

Advocate : Bhaktahari Mohanty, D.P. Mohanty, R.K. Nayak, R.N. Panda, S.C. Mohanty, P.K. Dhal, A. Deo, R.Ray, B.C. Ray, P.K. Mohapatra, B.B. Bhuyan

Final Decision : Dismissed

Judgement

K.R. Mohapatra, J

1. This appeal under Section 96 of the Code of Civil Procedure,1908 (for short 'C.P.C.') has been filed assailing the judgment dated 28th April, 1983 and decree dated 5th May, 1983 passed by learned Subordinate Judge, Jajpur in Money Suit No. 3 of 1981, whereby he decreed the suit in favour of the Plaintiff holding that the Plaintiff is entitled to recover Rs.5,950/- together with pendente lite interest and future interest @ 6% per annum on the principal amount from the defendants, who are jointly and severally liable to pay the decreetal amount.

2. The Defendants filed this appeal on 11th August, 1983 along with MJC No. 102 of 1983 under Order XLIV Rule 1 C.P.C. to prosecute the appeal as indigent persons. The said application was rejected vide order dated 28th March, 1990. Accordingly, this appeal has been registered as such (F.A. No. 121 of 1990) and the appellants paid the requisite court fees.

3. For the sake of convenience, parties are described as per their status before learned trial court. The Defendants are Appellants and the Plaintiff, namely, Pachei Nayak, is the Respondent No.1 in this appeal. During pendency of the

appeal, the Respondent No.1 died and his successors have been substituted as Respondent Nos. 1(a) to 1(g) in his place. The Plaintiff filed Money Suit No. 3 of 1981 for recovery of Rs.5,950/- together with pendente lite interest and future interest at the rate of 12% per annum from the Defendants.

4. The case of the Plaintiff before learned trial court was that the property on which the claim of the Plaintiff rests belonged to common ancestor, namely, Ananta. Hadibandhu was the son of Ananta. Both of them are dead since long. The Defendant No.1 is the widow and Defendant Nos. 2 to 6 are the sons and daughter of said Hadibandhu. On 23 rd June, 1972, Ananta sold Ac.0.35 decimals to the Plaintiff by a registered sale deed under Ext.9. On 25th June, 1973, Hadibandhu sold Ac.1.17 decimals to the Plaintiff by a registered sale deed under Ext.10. Again on 3rd August, 1973 and 24th August, 1973, said Hadibandhu sold Ac.0.78 decimals to Bansidhar Panda and Siba Charan Panda vide registered sale deeds under Exts.11 and 12 respectively. On 28th November, 1973, said Hadibandhu again sold Ac.0.40 decimals to the Plaintiff by means of a registered sale deed under Ext. 14. On 28th February, 1975, the Plaintiff purchased Ac. 0.78 decimals from said Bansidhar and Siba Charan as per the registered sale deed under Ext. 13. Thus, the Plaintiff acquired a total extent of Ac.2.70 decimals of land belonging to the family of Ananta and Hadibandhu during the period in between 23rd June, 1972 and 28th February, 1975. After that, the Plaintiff also purchased Ac.0.51 decimals from Arjun (Defendant No.2) on 28th February, 1975 pursuant to registered sale deed under Ext. 15. While the matter stood thus, the Plaintiff came to know that the aforesaid properties purchased by him from the family of Ananta and Hadibandhu have been mortgaged by Ananta and Hadibandhu with the Land Development Bank as a collateral security for sanction of an agricultural loan of Rs.6,000/-. When the Defendants did not repay the loan amount and the properties were about to be sold in a public auction, the Plaintiff in order to save the property repaid the loan amount in different phases. In total, he paid Rs.5,450/- as per Ext.7 series and Rs.5,950/- as per Exts. 4 and 6 series and obtained the money receipts from the Bank. In spite of repeated requests, the Defendants did not pay the said amount to the Plaintiff, which he paid to the Land Development Bank on their behalf. As the payment made by the Plaintiff under Ext.7 series was barred by limitation by the time the suit was filed, he confined his claim to Rs.5,950/- only.

The Defendant No. 6, who is the married daughter of Hadibandhu, did not contest the suit and was set ex parte. The Defendant Nos. 1 to 5 filed their written statement on the plea that since the time of Ananta, the Plaintiff was enjoying the confidence of the family of Defendants as a 'Mamaltakar' of the locality. In that capacity, the Plaintiff had the opportunity to look after and manage the affairs of the family of Defendants. The Defendants are illiterate and innocent persons. Taking advantage of the same together with the fact that properties were not recorded in the name of the Plaintiff by then, the Plaintiff incurred the loan from the Land Development Bank in the name of Ananta and Hadibandhu. Ananta and Hadibandhu were mere name lenders to the said loan.

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Ananta and Hadibandhu executed the deed of mortgage in favour of the Bank in good-faith. They had neither any idea of the loan nor did they ever receive any amount from the Bank towards the loan. Since the Plaintiff had incurred the loan for his personal requirement, he repaid the loan and taking advantage of the situation, he filed the suit, which is not maintainable in the eyes of law. Hence, they prayed for dismissal of the suit.

5. Taking into consideration the rival pleadings of the parties, learned Subordinate Judge, Jajpur framed the following issues:

1. Is the suit maintainable?

2. Has the Plaintiff cause of action to file the suit?

3. Is the Plaintiff entitled to the amount claimed from the Defendants?

4. To what relief, if any, the Plaintiff is entitled?

6. In order to substantiate their respective cases, the Plaintiff examined three witnesses out of whom P.Ws. 1 and 3 are the officers of Land Development Bank. The Plaintiff examined himself as P.W.2. The Plaintiff also exhibited documents, marked as Exts. 1 to 21, in support of his case. On the other hand, the Defendants examined four witnesses out of whom D.W.1 is the Defendant No.1 and D.W.2 is the Defendant No.2. D.W. 3 was an attesting witness to Ext.1, i.e. loan bond dated 19th January, 1970 executed by Ananta and Hadibandhu. D.W. 4 is an attesting witness to Exts. 11 and 12 by which Hadibandhu sold the land to Banshidhar and Siba Charan. The Defendants also exhibited certain documents in support of their case marked as Exts. A and B. Learned Subordinate Judge taking into consideration the rival contentions of the parties as well as the materials available on record passed the impugned judgment and decree, which are under challenge in this appeal.

7. On the date of hearing of the appeal, none appeared on behalf of the Respondents. As such, this Court proceeded with the hearing of the appeal in their absence.

8. Mr. Mohanty, learned counsel for the Appellants submitted that in the facts and circumstances of the case, learned trial court ought to have held the sale deeds executed by Ananta and Hadibandhu to be sham and fraudulent transactions and the Plaintiff had acquired no title under the said sale deeds. The Appellants (Defendants) have already filed T.S. No. 176 of 1980, which is pending before learned Civil Judge (Junior Division), Jajpur, for declaring said sale transactions to be null and void. Thus, learned trial court ought to have stayed the proceedings of the Money Suit awaiting disposal of T.S. No. 176 of 1980 in exercise of power under Section 10 of the C.P.C. He further submitted that since the Plaintiff had incurred the loan and repaid it, the Defendants are not liable to pay the decreetal amount to the Plaintiff, more particularly when the Defendants had never received a single pie from the Land Development Bank out of the sanctioned loan amount. The Plaintiff had knowledge about the loan

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incurred at the time of purchase of the suit land by him. Thus, the liabilities in respect of the suit land ought to have been saddled on the Plaintiff and the Defendants are not liable to pay the said loan amount. That apart, the suit is barred by limitation. Learned trial Court without considering these material aspects from its proper perspective passed the impugned judgment. As such, the same is not sustainable in the eyes of law. He, therefore, prayed that the impugned judgment and decree are liable to be set aside.

9. Heard Mr. Mohanty, learned counsel for the Appellants and perused the materials available on record.

10. The issue of limitation raised by the Defendants-Appellants is not sustainable in view of the fact that Exts. 4 and 6 by which the Plaintiff repaid the loan amount to the tune of Rs.5,950/- were issued in between 20th June, 1978 and 28th June, 1978 (Exts. 4 to 4(b)) and the suit (M.S. No. 3 of 1981) was filed on 12th January, 1981. Thus, the suit is well within the statutory period and is not barred by limitation.

11. The next question arises as to whether the sale deeds executed by Ananta and Hadibandhu in between 23rd June, 1972 to 28th February, 1975 (Exts. 9 to 15) are sham and nominal transactions and were obtained fraudulently as alleged by the Defendants. The allegation of fraud must be specifically pleaded and proved by adducing evidence to that effect. On perusal of the plaint, no specific allegation of fraud appears to have been pleaded. The only allegation made in the plaint in that regard is that the Plaintiff had good relationship and acquaintance with the family of the Defendants as a 'Mamaltakar' and taking advantage of such relationship and the innocence of the Defendants, the sale deeds were executed. From the evidence adduced by the Defendants, it appears that the Defendant No.1 (D.W.1), the widow of Hadibandhu, had no knowledge about the transactions in question. The Defendant No.2, who had executed the sale deed (Ext. 15) in favour of the Plaintiff on 28th February, 1975 does not utter a single word either about the alleged fraud or that the transaction was a nominal one. D.W. 4 is an attesting witness to the sale deeds under Exts. 11 and 12 executed by Hadibandhu in favour of Banshidhar and Siba Charan from whom the Plaintiff purchased the land vide Ext. 13. D.W. 6 does not utter a single word, which would suggest that the transactions in question were fraudulent, nominal or conclusive one. There is no material on record to come to a conclusion that in fact, the sale transactions as per Exts. 9 to 15 are sham transactions and were nominal one. Hence, the contention of Mr. Mohanty, learned counsel for the Appellants is without any basis.

12. Mr. Mohanty, learned counsel for the Appellants further raised an issue to the effect that Ananta and Hadibandhu were mere name lenders to Ext.1 and the loan amount was, in fact, received by the Plaintiff and not by said Ananta and Hadibandhu. In support of his case, he relied upon the testimony of D.W.3, who was an attesting witness to Ext.1, executed on 19th January, 1970. In his deposition, he has testified that he became an attesting witness to Ext.1 on the

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request of the Plaintiff. The solitary statement made by D.W.3 is not supported by any other material. Even if for the sake of argument, it is assumed that D.W.3 became an attesting witness to the Ext.1 at the instance of the Plaintiff, that by itself is not sufficient to come to a conclusion that the loan amount was received by the Plaintiff and not by Ananta and Hadibandhu, as alleged. On the other hand, the Plaintiff relied upon Exts. 1 to 7, which are documents relating to loan transactions and were produced by P.Ws.1 and 3, who are officials of the Land Development Bank. The documents marked as Exts. 1 to 7 clearly establishes that the loan in question was sanctioned in favour of Ananta and Hadibandhu who executed Ext.1 by mortgaging the land purchased by the Plaintiff. It is well established that Exts. 1 to 7 are produced from the custody of the Bank. Ext. 8 is an application dated 26th June, 1979 made by the Plaintiff to the Sale Officers of Bank seeking permission to deposit Rs.2,000/- towards the part satisfaction of the loan amount and further seeking four to eight days time to deposit the balance amount. The said application under Ext. 8 clearly shows that consequent upon failure on the part of the Plaintiff to repay the loan amount, the Plaintiff made such an application for repayment of the loan amount to save the property. No rebuttal evidence has been adduced by the Defendants to disbelieve the same. Thus, it is clearly established that the loan amount was, in fact, received by Ananta and Hadibandhu and for non-payment of the loan amount, the properties were going to be sold in public auction for which the Plaintiff in order to save the property made an application under Ext.8. As such, the contention raised by Mr. Mohanty, learned counsel for the Appellants to the effect that the loan amount was received by the Plaintiff is not believable, more particularly when the loan transaction was made much prior to the sale transactions under Exts.9 to 15.

13. The next question that arises for consideration is whether learned trial Court should have stayed further proceedings of the present suit and waited till disposal of T.S. No. 176 of 1980 filed by the Defendants for setting aside the aforesaid sale transactions. Suffice it is to say that no prayer under Section 10 of the C.P.C. was made by the Defendants to stay the further proceedings of the present suit on the ground of pendency of T.S. No. 176 of 1980. Further, the result of the suit if decreed in favour of the Defendants will not influence the impugned judgment and decree, as the issue involved in the present suit is with regard to recovery of the loan amount paid by the Plaintiff on behalf of Ananta and Hadibandhu, who had incurred the loan. Thus, the question of stay of further proceedings of the present suit awaiting disposal of T.S. No. 176 of 1980 does not arise at all.

14. In that view of the matter, I find no infirmity in the impugned judgment and decree.

15. Accordingly, this appeal being devoid of any merit stands dismissed. Parties shall bear their own cost.

16. Registry is directed to send back the L.C.R. forthwith to the trial Court.

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