

(2019) 09 GAU CK 0032

In the Gauhati High Court

Case No : Regular Second Appeal No. 167 Of 2011

Hemen Das Doctor And Ors @APPELLANT@Hash Dilima Das And Ors

Date of Decision : 12-09-2019

Acts Referred:

Registration Act, 1908 — Section 17(1)(b)

Citation : (2019) 09 GAU CK 0032

Hon'ble Judges : Mir Alfaz Ali, J

Bench : Single Bench

Advocate : B C Das

Final Decision : Dismissed

Judgement

1. This second appeal is by the defendant, against the judgment and decree dated 29.04.2011 passed by the learned Civil Judge, Bongaigaon in Title Appeal No. 4/2010.

2. The respondent, as plaintiff filed a suit being TS No. 6/2007 for declaration of their share in the ancestral property, partition and other reliefs.

3. The case of the plaintiff was that Late Jogendra Nath Das, predecessor in interest of the parties was the owner of the land measuring 4 bigha 2 katha 10 lessa situated at Bijni covered by Patta No. 161, Dag No. 851(ka) and 851 (kha). Jogendra Nath Das died in the year 1978 leaving behind five sons and three daughters along with his wife as legal heirs. Late Amarendra Nath das, the elder son of Jogendra Nath Das was the predecessor in interest of the plaintiffs. Amarendra Nath Das died in the year 1985 leaving behind the plaintiffs as his legal heirs and successors. After the death of Amarendra Nath Das, when the plaintiffs were claiming their share in the ancestral property, the defendants on various pretexts refused to give their share and stated that the land has been mutated in the name of the defendants No. 1 to 4 and as such they are the absolute owner of the land. The plaintiffs thereafter made an enquiry in the Circle Office and came to know that the defendants No. 1 to 4 got their names mutated in respect of the suit land behind the back of the plaintiffs. Hence the

suit was filed.

4. The pleaded case of the defendants was that the predecessor in interest of the plaintiffs, late Amarendra Nath Das by executing a deed of relinquishment, pursuant to an amicable settlement, relinquished his share in the ancestral property and therefore the plaintiffs have no title and interest in the suit property.

5. On the basis of the above pleadings of the parties, learned trial court framed the following issues:

"1. Whether there is cause of action for the suit?

2. Whether the suit is barred by law of limitation and principle of estoppels, waiver and acquiescence?

3. Whether the suit is properly valued and proper court fee is paid?

4. Whether suit is bad for non-joinder and mis-joinder of necessary parties?

5. Whether the amicable partition agreement dated 12.09.75 is valid? And Amarendra Nath Das voluntarily executed the deed of declaration in presence of witnesses?

6. Whether the plaintiff No. 2 to 6 were minor at the time of death of his father?

7. Whether the suit properly are joint property of defendants No. 1, 2, 3 & 4 inheriting from their father predecessor-in-interest of Late Jogendra Nath Das after relinquishing the share of late Amarendra Nath Das?

8. Whether defendants refused to give the share of plaintiffs?

9. To what relief plaintiff is entitled to?"

6. Both the parties adduced evidence and after hearing the parties, the learned trial court decreed the suit declaring the share of the plaintiffs and other reliefs. Aggrieved, the defendants preferred an appeal, which also stood dismissed.

7. Aggrieved by the judgment of the first appellate court, the defendants preferred the instant regular second appeal, which was admitted to be heard on the following substantial questions of law.

"Whether Exhibit-Ka is compulsory registerable document under Section 17(1)(b) of the Registration Act?"

8. I have heard Mr. B.C. Das, learned Sr. Counsel for the appellant and Mr. S.S. Sarma, learned counsel for the respondent.

9. From the pleadings of the parties, it is apparent that both the plaintiffs and defendants were legal heirs and successors of Late Jogendra Nath Das. There was also no dispute that the suit property was ancestral property of the plaintiffs and defendants. The claim of the plaintiffs for their share and partition was sought to be resisted by the defendants on the sole ground, that the predecessor

of the plaintiff, Late Amarendra Nath Das executed a deed of relinquishment, which was proved as Ext. Ka, whereby Late Amarendra Nath Das relinquished his right, title and share in the ancestral property.

10. Both the courts below held that Ext. Ka was not a valid document and on the basis of Ext. 'ka' thereby the plaintiff's right to inherit the ancestral property could not be denied. Learned first appellate court held, that since the alleged deed of relinquishment (Ext.Ka) was not registered, it could not be read in evidence as registration of such document was compulsory in view of Section 17(1)(b) of the Registration Act. By the said Ext. Ka, Amarendra Das, the predecessor in interest of the plaintiffs purportedly relinquished his title in the ancestral property, which amounted to transfer or alienation of the property, and therefore, such deed of relinquishment may operate as conveyance. Since the relinquishment amounts to transfer or conveyance, of right on the immovable property, value of which was more than Rs. 100/-, obviously, such document was required to be registered compulsorily.

11. Section 17(1)(b) of the Registration Act provides that "other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees, and upwards, to or in immoveable property" shall be registered. The Ext. 'Ka' as indicated above falls within the category of documents referred to in Section 17(1)(b) of the Registration Act and therefore its registration is compulsory. Since the document, Ext. Ka, the purported deed of relinquishment was not registered, it was rightly held by the learned appellate court that Ext.'Ka' was inadmissible in evidence and the same could not take away the plaintiff's right and title in the ancestral property, inasmuch as, transfer of immovable property, value of which is more than one hundred, can be effected only by a registered document.

12. What is further to be noted in the instant case is that Ext. Ka was purportedly executed by Amarendra Nath Das during the life time of his father Late Jogendra Nath Das, who was the original owner of the suit property. Admittedly, the parties in the instant case are governed by Dayabhaga School of Law. Therefore, during the life time of his father, Amarendra Nath Das could not have acquired any title over the property of Jogendra Nath Das, who was still alive and therefore, at the relevant time, when Amarendra Nath Das allegedly executed the Ext. Ka, he did not have any right, title or interest in the property of his father Jogendra Nath Das. The person transferring or alienating any immovable property by way of relinquishment must have right, title and interest over the same. If a person executes any deed of relinquishment in respect of immovable property, over which he has no title or transferable interest at the relevant time, such deed irrespective of the question of registration, cannot, in my considered view, convey any right title or interest in the property for the simple reason that the transferor did not have any right or title. Therefore, from this angle also, the Ext. Ka irrespective of its being registered or un-registered,

could not convey or transfer any right title and interest over the suit property, reason being that the father of Amarendra Nath Das was still alive and therefore Amarendra Nath Das had no title over the suit property, inasmuch as, there was no question of inheritance at that point of time as the original owner of the property was still alive. In view of the above situation, the claim of the respondent/plaintiff could not have been denied by virtue of the so called Ext. 'Ka'. The substantial question of law is accordingly answered in the affirmative and against the appellant.

13. In view of the decision and answer to the substantial questions of law, this second appeal is without merit and accordingly dismissed.

14. Send down the LCR.