

(2011) 01 MP CK 0088
In the Madhya Pradesh High Court
Case No : S.A. No. 507 of 2001

Jagdish Prasad and Others

APPELLANT

Vs

Smt. Meera Devi and Others

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27, Order 41 Rule 27(1), Order 6 Rule 17, 100
Evidence Act, 1872 — Section 114, 120
Registration Act, 1908 — Section 17(1)
Specific Relief Act, 1963 — Section 34

Citation : (2011) ILR (MP) 1259

Hon'ble Judges : Alok Aradhe, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—This is an appeal by the Defendants. This Court vide order dated 22.11.2001 had formulated the following substantial questions of law:

(1) Are both the courts" below in the facts and circumstances of the case right in holding that the deed of relinquishment dated 15.1.1985 in favour of Jagdish Prasad A-I was valid or without consent of Smt. Meera Devi R-I?

(ii) Are the findings of the courts below perverse and arbitrary?

2. Thereafter, vide order dated 13.1.2011 following substantial questions of law were framed:

(a) Whether adverse inference can be drawn against the Plaintiff as the Plaintiff has failed to examine herself as witness?

(b) Whether the lower appellate Court has rejected the application under Order 41 Rule 27 of the CPC without conforming to the requirements laid down in Clauses (a) to (b) of Order 41 Rule 27(1) of the Code of Civil Procedure?

3. Facts giving rise to filing of this appeal are that the Plaintiff purchased the suit lands vide registered sale-deed dated 09.10.1984 for a consideration of Rs. 25,000/- from the original Defendant No. 1- Jagdish Prasad, and was placed in possession. However, subsequently Late Jagdish Prasad sold part of the suit lands admeasuring 0.092 hectares to Defendant No. 2 vide registered sale-deed dated 12.7.1991. Thereafter, the Defendant No. 1 also conveyed the land admeasuring 0.092 hectares forming part of suit lands to Defendant No. 3 by registered sale-deed dated 19.6.1992. The Defendant No. 3, in turn, conveyed the land sold to him to Defendant No. 4 by another sale-deed dated 30.11.1992. The Plaintiff sought the decree for declaration that sale-deeds in question are null and void, as well as the decree for permanent injunction, restraining the Defendants from either alienating the suit lands or creating any third party interest. The Defendant No. 1 filed the written statement, in which, inter alia it was pleaded that the Plaintiffs husband, namely, Devi Prasad had relinquished the Plaintiffs title in the suit lands by executing the relinquishment deed dated 15.1.1985 (Exhibit-D-I) for a consideration of Rs. 32,183/-. It was agreed that the Plaintiff would execute the sale-deed later on in favour of the Defendant No. 1's wife. It was also pleaded that the husband of the Plaintiff had executed the relinquishment deed in the capacity of an attorney and, therefore, the relinquishment deed binds the Plaintiff. It was further pleaded that the Plaintiffs husband is the necessary party and suit is barred by limitation. The Defendant No. 2 did not file the written statement. The Defendant No. 3 & 4 filed written statement, in which, it was pleaded that they are in possession of the suit lands by virtue of sale-deeds executed in their favour.

4. The Trial Court vide judgment and decree dated 02.11.1999, inter alia, held that the Plaintiff is the owner of the suit lands in view of the sale-deeds executed in her favour. It was also held that the Plaintiffs husband neither had authority nor had relinquished the Plaintiffs share in the suit lands in favour of Late Jagdish Prasad. The suit was found to be within limitation and subsequent sales in respect of the suit lands were held to be illegal.

5. In appeal, appellate Court vide judgment and decree dated 02.5.2001 held that the relinquishment deed dated 15.1.1985 (Exhibit-D-1) does not show that the sale has been executed by the husband of the Plaintiff in his capacity as an attorney of the Plaintiff. It was also held that the Plaintiff never authorized her husband to relinquish the right, title or interest of the Plaintiff in the suit lands in favour of Defendant No. 1. The alleged power of attorney executed by Plaintiff in her husband's favour was not produced by Defendants. No receipt has been filed on behalf of the Defendants to show that a sum of Rs. 32,183/- was paid to the Plaintiffs husband. The Plaintiff is the owner of the suit lands and is in possession of the same. Accordingly, decree passed by the trial Court was affirmed.

6. Shri P.R. Bhave, learned senior counsel submitted that the Plaintiff has not entered the witness box. Her son has been examined on her behalf as her attorney. The power of attorney was given for the limited purpose i.e. for filing

the suit. Therefore, an adverse inference ought to have been drawn against the Plaintiff on account of her non-examination. It was further submitted that the lower appellate Court erred in rejecting the application under Order 6 Rule 17 of the Code of Civil Procedure. The documents annexed with the application showed that the Plaintiff is not in possession of the suit lands and, therefore the suit was barred by proviso to Section 34 of the Specific Relief Act, 1963. In support of his submissions learned senior counsel has placed reliance on the decisions in *Janki Vashdeo Bhojwani v. Indusind Bank Limited and Ors.* 2005 (1) MPLJ 421, *Bandhu Mahto (dead) by L.Rs. and Another Vs. Bhukhli Mahatain and Others*, *Dina Ji and others Vs. Daddi and others*, and *Vidhyadhar Vs. Manikrao and Another*,

7. On the other hand, Shri M.L. Jaiswal, learned senior counsel for Respondent No. 1, submitted that the courts below on the basis of meticulous appreciation of record have recorded findings of fact which are not open to interference in the second appeal. No substantial question of law arises for consideration. It was further submitted that non-examination of the Plaintiff is of no relevance in view of Section 120 of the Evidence Act, 1872. In support of his submissions learned senior counsel placed reliance on the decisions in the cases of *Ram Singh and Others Vs. Ajay Chawala, Corporation of the City of Bangalore Vs. M. Papaiah and Another*, *Ramaswamy Kalingaryar Vs. Mathayan Padayachi*, *Boodireddy Chandraiah and Ors. v. Arigela Laxmi and another*, JT 2007 (11) SC 116 and *Smt. Prabha Devi Goyal v. Laxmikant* 2000 (1) MPJR 151.

8. I have considered the submissions made on both sides. The trial Court has taken into account the testimony of Defendant Witness No. 2-Babulal and Defendants Witness No. 3-Awadhesh. After taking into account the statements made by aforesaid witnesses who are witnesses to the relinquishment deed (Exhibit-D-1) the trial Court has discarded the testimony of Defendants Witness No. 2-Babulal on the ground that suit lands have been subsequently transferred to his son and, therefore, his testimony is not worthy of reliance as he is an interested witness. Similarly, the trial Court has found that Defendants Witness No. 3, another witness to Exhibit-D-I, is unable to disclose as to who was the scribe of the document. It has further been found that Defendants Witness No. 3 is not a witness to the transaction contained in Exhibit-D-I. No receipt of payment of an amount of Rs. 32,183/-, which was allegedly made to Plaintiffs husband has been produced. The signature of Devi Prasad has been denied on Exhibit-D-I, yet the Defendants have neither led any evidence to prove the signature of Devi Prasad on the sale-deed, nor to show that Devi Prasad had the authority to execute the document (Exhibit-D-I) as attorney, except the document (Exhibit-D-4) i.e. the power of attorney dated 19.8.1983 executed by the Plaintiff in favour of her husband which is in relation to the proceedings pending before Tahsildar. By aforesaid document (Exhibit-D-4) the Plaintiffs husband was not authorized to execute the relinquishment deed in favour of the Defendant No. 1. It has further been held that the relinquishment deed requires registration u/s 17(1)(b) of the Indian Registration Act, 1908. Thus, on meticulous appreciation of evidence on record the trial Court has recorded the

Finding that the relinquishment deed is neither valid nor executed with the consent of the Plaintiff. The aforesaid finding has been affirmed in appeal. Both the courts below on meticulous appreciation of evidence on record recorded a finding that relinquishment deed is neither valid nor has been executed with the consent of the Plaintiff and, therefore, does not bind the same. The aforesaid findings of fact are pure findings of fact, which are based on appreciation of evidence on record. While recording the aforesaid findings the courts below have neither omitted to consider the admissible evidence nor have considered the evidence, which was inadmissible. The findings of fact recorded by the courts below can neither be said to be perverse nor erroneous. The findings, also cannot be said to be based on no evidence. The Learned Counsel for the Appellants was unable to demonstrate that the findings of fact which have been recorded by the courts below are either perverse or based on no evidence.

9. The jurisdiction of this Court to interfere with findings of fact is well defined by catena of decisions of Supreme Court and this Court in exercise of powers u/s 100 of CPC can interfere with findings of fact only if the same is shown to be perverse or based on no evidence, which is not the case here. {See: Sugani (mst.) v. Rameshwar Das and Anr. (2006) 2 SCC 587, Gurdev Kaur and Others Vs. Kaki and Others, and Narayanan Rajendran and Another Vs. Lekshmy Sarojini and Others, . Thus, for the aforementioned reasons the first substantial question of law framed by this Court has to be answered in the affirmative, whereas the second substantial question of law has to be answered in the negative.

10. On behalf of the Plaintiff her son, namely, Pradeep Gupta has been examined as Plaintiffs Witness No. 1. The power of attorney has been produced as Exhibit-P-1. From perusal of the power of attorney, it is apparent that the Plaintiff had authorized her son to conduct the suit and to do all other acts which are necessary. Thus, it cannot be said that the power of attorney does not authorize the Plaintiffs son to depose on her behalf. Plaintiffs Witness No. 1-Pradeep Kumar Gupta, the son of the Plaintiff, has stated in paragraph 2 of his deposition that he has the information about the case. In cross-examination, the statement of Plaintiffs Witness No. 1 that he has the information about the case has not been rebutted. An attorney can appear as a witness as well. The burden to prove the plea vide Exhibit-D-1 dated 15.1.1985 that Plaintiff had relinquished her right, title or interest in favour of the Defendant No. 1, was on the Defendants which they failed to discharge. u/s 114 of the Evidence Act, presumption which may be raised, is discretionary. The Court may or may not raise such a presumption. A presumption must be drawn against a party who having knowledge of the fact in dispute does not go into the witness box, particularly, when *Siprima facie* case is made out against him. The question of drawing an adverse inference on account of non-examination of a party has to be decided in the facts of the each case. The decision relied upon, on behalf of the Appellants, in *Bandhu Mahto (Dead) by L Rs.* (supra) does not apply as it was a case where witness though present in the court, was not examined. Similarly, decision of Supreme Court in *Vidhyadhar* (supra) is of no assistance, as the Defendant in that case did not appear to prove

the plea taken by him, which is not the case here. In the instant case no adverse inference can be drawn on account of non-production of the Plaintiff. Thus, third substantial question of law has to be answered in the negative.

11. The jurisdiction of the Court to receive additional evidence is circumscribed by the conditions mentioned in Order 41 Rule 27(1) of the Code of Civil Procedure. The lower appellate Court has rejected the application under -Order 41 Rule 27(1) vide order dated 2.5.2001. Alongwith an application under Order 41 Rule 27 of the Code of Civil Procedure, the Appellants had filed certified copy of "khasrapanchsala" of the year 1998-99 to show that one Virendra, Brijesh and Prempuri are shown to be in possession of the suit lands. The lower appellate Court vide order dated 02.5.2001 has rejected the application for impleadment of Virendra and Brijesh Richhariya on the ground that they have failed to produce the documents to show that they have purchased the suit lands in question. The lower appellate Court while dealing with the application under Order 41 Rule 27 of the CPC has held that the documents produced by the Appellants by way of additional evidence are not relevant. Thus, the order dated 02.5.2001 rejecting application has been passed within the parameters fixed by the provisions contained in Order 41 Rule 27(1) of the CPC and cannot be said to suffer from any infirmity. Thus, for the aforementioned reasons, the fourth substantial question of law has also to be answered in the negative.

12. In the result, the appeal fails and is hereby dismissed with costs.