
(2010) 09 JH CK 0045

In the Jharkhand High Court

Case No : Second Appeal No. 371 of 2005

Kaveri Mewana and Others

APPELLANT

Vs

Subrata Ray and Others

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31

Citation : (2011) 1 JCR 470 : (2011) 1 JLJR 480

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : P.K. Prasad, for the Appellant;

Judgement

Narendra Nath Tiwari, J.—This is the Plaintiffs' second appeal. He had filed suit for praying relief for specific performance on the basis of the alleged unregistered deed of agreement dated 6.1.1980.

2. The Plaintiffs' case in brief is that the suit land being TISCO Holding No. A of Imperial Bank Area, P.S-Bistupur, Jamshedpur belonged to Dr. Surendra Mohan Dutt. He had acquired the said suit holding by virtue of the registered deed of lease dated 2.4.1937. Thereafter, he had constructed a double storeyed building over the suit land. Dr. S.M. Dutt died leaving behind his widow-Smt. Bive Dutt and two daughters, namely, Amita Roy and Amita Guha (Defendant Nos. 1 & 2 respectively). The said two daughters had written to the TISCO Ltd. to enter the name of their mother Smt. Bive Dutt on the record of TISCO in place of Dr. S.M. Dutt as far back as on 4.1.1962. The Plaintiff S.N. Budhdeo (since deceased) and others came in occupation of a portion of the suit property as monthly tenant under Smt. Bive Dutt on pay lent of rent The Defendant Nos. 1 & 2 were residing at Calcutta with their respective family members. Smt. Bive Dutt was alone residing at Jamshedpur. Looking to her old age, she Intended to sell the suit property to the Plaintiffs. The Plaintiffs agreed to purchase the suit property on consideration amount of Rs. 80,000/-, out of which Rs. 20,000/- was paid as earnest amount to Smt. Bive Dutt on 6.1.1980 and an unregistered deed of

agreement for sale was executed on the same date. Rs. 60,000/- was the balance amount to be paid at the time of execution and registration of the sale deed. The Plaintiffs explained that due to old age of Smt. Bive Dutt, her hands were trembling and in her left thumb, there was an abscess due to some injury. Smt. Bive Dutt had thus put her right thumb impression on the alleged deed of agreement. The Plaintiffs were thus holding the said agreement for sale in respect of the suit land. But in the meanwhile, they came to know that the Defendant Nos. 1 & 2 sold the suit property to Defendant No. 3 Durga Prasad Sarawagi by virtue of the registered sale deed dated 26.5.1982 for a consideration of Rs. 2,50,000/-. It was alleged that the said sale deed executed by the Defendant Nos. 1 & 2 in favour of the Defendant No. 3 is wholly illegal, fraudulent and without any consideration and the same is not binding on the Plaintiffs. The Plaintiffs were always ready and willing to pay Rs. 60,000/- and perform the agreement of their part. The Defendant Nos. 1 & 2, who are the daughters and legal heirs of Smt. Bive Dutt, were bound by the said agreement.

3. The Defendants contested the suit and specifically denied execution of the said agreement in favour of the Plaintiffs. The Defendants claimed that the suit property belonged to their father and they have inherited the suit property. They never relinquished their interest in this suit property in favour of their mother. They off and on used to come to Jamshedpur and reside in the suit premises with their mother. Smt. Bive Dutt was a literate lady and she used to sign both in English and Bangala. She had withdrawn money from the Bank with her signature during the relevant period and the story of abscess in her left thumb or trembling of her hands is frivolous and baseless. They denied the Plaintiffs' claim that Rs. 20,000/- was paid as an earnest money to Smt. Bive Dutt. The Defendant Nos. 1 & 2 supported the sale deed executed and registered by them in favour of the Defendant No. 3 for consideration of Rs. 2,50,000/- to the notice and knowledge of the Plaintiffs. The Defendant Nos. 1 & 2 just before execution of the sale deed, had given power of attorney to the Defendant No. 3 and the Plaintiffs were informed about the same. The Plaintiffs also used to remit the rent regularly till January 1982.

4. On the basis of the said pleadings, several Issues were framed.

5. Learned Trial Court thoroughly appraised the facts and evidences on record and came to the finding that the Plaintiffs could not prove the alleged agreement as genuine and valid document. He further held that the Defendant No. 3 is a bonafide purchaser for value without any notice of the alleged prior agreement by Smt. Bive Dutt. Learned Trial Court held the suit not maintainable and dismissed the same.

6. The Plaintiffs aggrieved by the said judgment and decree of learned Trial Court preferred Title Appeal No. 24/2003 before the Court of learned District & Sessions Judge, East Singhbhum at Jamshedpur.

7. The said appeal was finally heard and decided by learned 1st Additional

District Judge, East Singhbhum at Jamshedpur.

8. Learned lower Appellate Court thoroughly discussed all the relevant aspects in the light of the evidences of the parties on record. He dealt with the specific issues in great detail and while answering Issue Nos. 6, 8 & 9, recorded his conclusion that the alleged deed of agreement for sale (Ext. 4) is a manufactured document and that the Defendant No. 3 is a bonafide purchaser without having notice to any prior agreement. Learned lower Appellate Court has also considered the other aspects and held that the Plaintiffs failed to prove that the Defendants had any knowledge about the alleged agreement (Ext. 4). Learned lower Appellate Court thus concurred with the findings of facts arrived at by learned Trial Court and dismissed the appeal.

9. Mr. P.K. Prasad, learned Sr. counsel appearing on behalf of the Appellants, made his best effort to assail the impugned judgment and decree of learned lower Appellate Court mainly on the ground that while deciding the appeal, learned lower Appellate Court failed to frame appropriate points for determination, as required under Order 41 Rule 31 Code of Civil Procedure. and on that ground alone, the judgment and decree of, learned lower Appellate Court is liable to be set aside. Learned Counsel referred to the decision of the Supreme Court in Gannmani Anasuya and Others Vs. Parvatini Amarendra Chowdhary and Others, . Learned Counsel further submitted that the Courts below have not properly considered the Plaintiffs' evidence and the findings recorded by them are lop-sided.

10. Having heard learned Counsel, I closely perused the judgments of the Courts below, I found that learned Trial Court as well as learned lower Appellate Court has thoroughly discussed all the relevant facts and evidences on record and has come to the specific finding that the Plaintiffs failed to prove the alleged agreement (Ext. 4) as legal and genuine document and also that the Defendants had any prior notice and knowledge about such agreement allegedly executed In favour of the Plaintiffs before the execution and registration of the sale deed dated 26.5.1982 in favour of the Defendant No. 3. The said findings of learned lower Courts are based on meticulous discussions of facts and evidences on record and well founded reasons. The findings of facts arrived at by learned Courts below are concurrent and are binding on this Court. So far as the ground of non-observance of Order 41 Rule 31 Code of CPC is concerned, I find that learned lower Appellate Court has recorded his finding issue-wise and the points of determination were very clear in his mind. He has discussed all the relevant points in the light of the materials and evidences on record. The points discussed and decided by learned lower / Appellate Court are based on appreciation of facts and evidences on record and supported by well founded reasons. I find no irregularity or illegality in the impugned judgment of learned lower Appellate Court giving rise to any substantial question of law to be framed and decided in this second appeal.

11. The decision of the Apex Court in Gannmani Anasuya (Supra) referred to and

relied upon by learned Counsel for the Appellants has got no application to the facts of the instant case.

12. I find no substantial question of law arising out of the impugned judgment to be framed and decided in this second appeal.

13. This appeal is, accordingly, dismissed.