
(2019) 09 RAJ CK 0220
In the Rajasthan High Court
Case No : Civil First Appeal No. 88 Of 1990

Legal representatives Of Kundanmal And Ors	APPELLANT
Vs	
Surendra Kumar And Ors	RESPONDENT

Date of Decision : 25-09-2019

Acts Referred:

Hindu Minority And Guardianship Act, 1956 — Section 8(2), 8(2)(a)
Hindu Succession Act, 1956 — Section 14, 15

Citation : (2019) 09 RAJ CK 0220

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Narpat Singh, Vikas Balia, Darshan Jain

Final Decision : Dismissed

Judgement

1. The instant first appeal was preferred by the appellant Kundanmal and is now being pursued by his LRs for assailing the judgment-cum-decree dated 17.03.1990 passed by the learned District Judge, Churu in Civil Original Suit No.6/82, whereby the suit preferred by the respondent-plaintiffs for cancellation of the registered sale deed dated 14.09.1977 executed by defendant Bachchhraj in favour of the appellant Kundanmal was decreed and the sale deed pertaining to a Nohara located at Sardarshahar town, District Churu on a plot measuring 1285 Sq. Yards was cancelled to the extent of the share of the plaintiffs (i.e. 4/5).

2. Brief facts relevant and essential for disposal of the appeal are noted hereinbelow. The Nohara in question was purchased by Magni Devi, grandmother of the plaintiff-respondents and mother of Bachchhraj, defendant No.2, for a consideration of Rs.8,000/-. During her lifetime, Mrs. Magni Devi bequeathed the Nohara to Smt. Ratni Devi, the mother of the plaintiffs and the wife of defendant Bachchhraj. Ratni Devi expired on 04.01.1969. The plaintiffs claimed that Bachchhraj contracted a second marriage with another woman after the death of their mother and their grandmother Magani Devi looked after and maintained them thereafter. Bachchhraj executed the registered sale-deed of the entire

Nohara in question in favour of the defendant No.1 Kundanmal by accepting a meagre consideration of Rs.12,000/-, whereas the market value of the Nohara at the time of sale was Rs.75,000/-. The plaintiffs filed the suit for cancellation of the sale-deed on the specific ground that Bachchhraj had no right to sell the Nohara as the plaintiffs also had a share therein, which they acquired by inheritance. It was also stated that Bachchhraj had no legal right to sell the property, which had assume the character of a joint family property after the death of Ratani Devi without a formal partition and as such also, the sale deed was void and illegal.

3. Bachchhraj, being the defendant No.2, did not appear before the trial court and as such, the proceedings were made ex parte against him. The appellant defendant Kundanmal filed a written statement to the suit claiming that the suit premises, i.e. the Nohara, was not owned by the plaintiffs and that Bachchhraj was the sole owner thereof. The plaintiffs used to reside with their father Bachchhraj, who used to take care of their maintenance and other needs. The claim of the plaintiffs that after the death of Smt. Ratani Devi, their grandmother Smt. Magani Devi took care of their maintenance etc. was opposed. The defendant No.1 claimed that Bachchhraj had unencumbered right to sell the Nohara in question.

4. Learned trial court framed the following issues adjudication in the suit :-

"1. आया वादीगण की मिलकियती की जमीन का एक नौहरा 1285 वर्गगज सरदारशहर में स्थित है, वादी सं0 2 से 4 नाबालिग है, उनकी परवरिश वादी सुरेन्द्र कुमार करता है।

2. आया वादीगण को नौहरा उनकी माता स्व० रतनी देवी से उत्तराधिकार में प्राप्त हुआ जो जरिये बैनामा दिनांक 15.9.1953 खरीद किया, तथा उक्त नौहरे को वादपत्र के चरण संख्या 3 के मुताबिक दिया गया, तथा वादीगण उस पर काबिज है।

3. आया वादीगण की माता के 4.1.69 के देहान्त के बाद वादीगण हिन्दू उत्तराधिकार अधिनियम के अन्तर्गत उक्त नाहरे के मालिक हो गये।

4. आया वादपत्र के चरण सं0 6 के मुताबिक विक्रय पत्र दस्तावेज रजिस्टर करवाने का प्रतिवादी सं0 2 को कोई अधिकार नहीं था और इस कारण बैनामा दिनांक 14.9.77 वादीगण के हको के संबंध में अवैध व शून्य हैं।

5. आया वादीगण बैनामा दिनांक 14.9.77 यदि अवैध व शून्य है तो विवादग्रस्त नौहरे पर कब्जा प्राप्त करने के अधिकारी है।

6. आया बैनामा दिनांक 14.9.77 वादपत्र के चरण सं0 10 के मुताबिक रद्द किया जाना चाहिए।

7. आया बैनामा के समय वाद गण के नाबालिग होने के कारण तथा वादग्रस्त सम्पति का विक्रय पत्र करने से पूर्व कोई नोटिस दिया जाना आवश्यक था।

8. आया वाद पत्र चरण सं0 12 वाद के मुताबिक अन्दर मियाद है।

9. आया वाद पत्र वादोतर के चरण संख्या 16 के मुताबिक उचित न्यायशुल्क अदा न किये जाने के परिणामस्वरूप खारिज किये जाने योग्य है।

10. अनुतोष"

5. 7 witnesses were examined by the plaintiffs, whereas 3 witnesses were examined by the defence. The specific legal objection of the plaintiffs for assailing the validity of the sale deed was based on the provisions of the Hindu Succession Act, 1956 and the Hindu Minority and Guardianship Act, 1956. It was pleaded that pursuant to the intestate death of Ratani Devi, her estate would devolve upon her husband and children. Thus, the four plaintiffs, being the children of Ratani Devi, would have a right to 20% each (1/5 each) on the Nohara, whereas the defendant No.2 Bachchhraj would have a right to 1/5 part thereof. Reliance was also placed on the Section 8(2)(a) of the Hindu Minority and Guardianship Act, 1956 in support of the plea that after the death of Smt. Ratani Devi, the Nohara owned by her, jointly devolved upon the first category heirs, i.e. Bachchhraj as well as the 4 plaintiffs. Bachchhraj, being the natural guardian of the plaintiffs, was prohibited from selling any part of the estate of the minors without previous permission of the court. After considering in detail, the evidence of the parties and the legal issues involved in the case, the learned trial court proceeded to decree the suit of the plaintiffs and cancelled the sale deed to the extent of 4/5 share owned by the plaintiffs.

6. I have given my careful consideration to the submissions advanced at bar and perused the impugned judgment-cum-decree and have minutely gone through the evidence available on record.

7. The sole contention of Mr. Narpat Singh, learned counsel representing the appellant, for assailing the impugned judgment was that Smt. Magani Devi, mother of Bachchhraj, had no independent source of income and the entire money spent towards the purchase of the suit premises was invested by Bachchhraj and as such, he was the true owner and had an unencumbered right to sell the same. Thus, as per Mr. Narpat Singh, the sale-deed was perfectly legal.

8. In reply to this contention, Mr. Vikas Balia, learned counsel representing the respondent-plaintiffs urged that as per the evidence available on record, Bachchhraj himself was a minor in the year 1953, when the property was purchased by Magani Devi and since, he had no known source of income, the money used for purchasing the property could not have been invested by Bachchhraj. Mr. Narpat Singh was not in position to dispute this pertinent assertion of Mr. Balia, which is well-established from the evidence available on record.

9. On going through the evidence of defendant Kundanmal (D.W.1), it is clear that no case whatsoever was set up by him in his testimony that the transaction, whereby Magani Devi purchased the suit premises was a benami transaction. Thus, there is no material available on record of the case by which this court can be satisfied that the sale-deed, whereby Smt. Magani Devi purchased the Nohara in question, was benami. Otherwise also, since Bachchhraj was a minor as on the date of execution of the said document, there is no possibility of his having

invested any money towards purchase of the property. Thus, there is no escape from the conclusion that the Nohara was acquired by Magani Devi from her own resources. There is no dispute inter se between the parties that Magani Devi bequeathed the property to Ratani Devi, mother of the plaintiffs, during her own lifetime. Even Kundanmal admitted in his cross-examination that just two years after the death of Ratani Devi, Bachchhraj re-married and started living at Calcutta with his second wife. Manifestly, thus, the plea advanced by the plaintiffs in their suit that their father abandoned them after the death of their mother and that they were looked after by their grandmother is fortified even by the evidence of the defendant-appellant.

10. It cannot be denied that the rights of the parties would be governed by the Hindu Succession Act, 1956 and Hindu Minority and Guardianship Act, 1956. As per Section 14 of the Hindu Succession Act, any property of a Hindu female, irrespective of how it was acquired, becomes her absolute property. Thus, Magani Devi while acquiring the property through a registered sale deed became the absolute owner thereof. She bequeathed the property to Ratani Devi. After the death of Ratani Devi, the succession would be governed by Section 15 of the Hindu Succession Act. As per clause 15(1)(a) of the Act, the property of a female Hindu dying intestate shall devolve firstly upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. The plaintiffs herein are the sons and daughters respectively of Smt. Ratani Devi. The defendant No.2 Bachchhraj was her husband. Thus, the property would be divided equally amongst these 5 persons, who would have right to stake a claim on the 1/5 share each therefrom. Accordingly, defendant Bachchhraj had right of selling only 1/5 share of the Nohara in question, which too would only be possible after a proper partition. As per Section 8(2) of the Hindu Minority and Guardianship Act, the natural guardian of a minor cannot mortgage or charge, or transfer by sale, gift, exchange or otherwise any part of the immovable property of the minor without previous permission of the court. In view of this clear position of law, apparently, Bachchhraj had no right to sell the share of the plaintiffs in the Nohara in question without seeking permission of the court. Thus, to the extent the shares of the plaintiffs were sold by Bachchhraj to Kundanmal, the registered sale-deed was void and illegal.

11. In view of the above discussion, this court is of the firm opinion that the learned trial court was perfectly justified in decreeing the suit of the respondent-plaintiffs by the impugned judgment dated 17.03.1990, which does not suffer from any infirmity, illegality or perversity whatsoever warranting interference therein. Thus, the appeal fails and is hereby dismissed. Decree be prepared accordingly.

12. The record be returned to the trial court.