
(2003) 02 MP CK 0067

In the Madhya Pradesh High Court

Case No : Second Appeal No. 480 of 2001

Limdi Bai

APPELLANT

Vs

Smt. Tulsi Bai (deceased) through L.Rs. Harishankar and
Others

RESPONDENT

Date of Decision : 26-02-2003

Acts Referred:

Succession Act, 1925 — Section 63, 68

Citation : (2003) 3 MPHT 262

Hon'ble Judges : A.M. Sapre, J

Bench : Single Bench

Advocate : P.K. Saxena and Raunka, for the Appellant;

Final Decision : Dismissed

Judgement

A.M. Sapre, J.—Two Courts have decreed plaintiffs suit for declaration of title in plaintiffs favour, cancellation of sale-deed dated 7-2-1974 executed by defendant No. 1 in favour of defendant No. 2 and sale-deed dated 9-5-1980 executed by defendant No. 2 in favour of defendant No. 3 and lastly for possession of suit house. It is against this concurrent decree the defendant No. 3, i.e. subsequent purchaser has filed this second appeal u/s 100 of CPC. It is against the impugned judgment/decrees, dated 11-9-2001, passed by learned IVth Additional District Judge, Mandsaur, in C. A. No. 10-A of 2001, which in turn arises out of Civil Suit No. 21-A of 1974, decided by Civil Judge, Class II, Sitamau, District Mandsaur, on 26-3-1991. The question that arises for consideration in this second appeal at the instance of defendant No. 3 is, whether appeal involves any substantial question of law within the meaning of Section 100 of CPC?

2. Heard Shri P.K. Saxena, learned Senior Counsel with Shri Raunka, learned Counsel for the appellant on the question of admission.

3. Having heard the learned Counsel for the appellant and having perused the record of the case, I find no substance in the appeal. In other words, the appeal

does not involve any substantial question of law within the meaning of Section 100 *ibid* and hence, the appeal has to be dismissed in limine.

4. The dispute relates to certain agricultural land bearing Khata Number 108 situated in Village Sitamau, District Mandsaur. It was admittedly owned by one Ratanlal. The case of plaintiff was that she being the legally married wife of Ratanlal received the suit land by registered Will dated 8-2-1966 (Exhibit P-1) executed by Late Ratanlal in her favour. It was alleged that plaintiff has become the owner of the land on the strength of the said registered Will and hence, the defendant No. 1, who claims to be the sons of Late Ratanlal had no right to deal with the said property nor had any right to sell the land to defendant No. 3 by the impugned sale deeds. It is on the basis of these averments the plaintiff brought the suit out of which this appeal arises against the defendants which included sons of Ratanlal and purchaser of suit land, claiming as stated *supra*, declaration of her title over the suit land, on the strength of Will, cancellation of sale deed executed by defendants in favour of defendant No. 3 (appellant herein) and for possession. The defence of contesting defendant was that firstly plaintiff was not the legally married wife of late Ratanlal but she according to defendant was his keep. Secondly, the Will dated 8-2-1966 (Ex. P-1) was not a genuine Will and hence, does not create any right and interest in plaintiff and thirdly, defendants had the right to sell the land in question being son of Ratanlal. It is these issues which were probed in the trial. The Trial Court decreed the suit. It was held that plaintiff is the legally married wife of Ratanlal. It was also held that Will (Ex. P-1) is duly proved. It was also held that defence of defendant that Will was later revoked could not be proved by defendant for want of any evidence. It was also held that defendant had no right to sell the land - they being not the owner of the land in suit. Accordingly and as stated *supra*, the suit was decreed in its entirety resulting in passing a decree for possession. It was then upheld in first appeal filed by the defendant No. 3 giving rise to filing of this second appeal.

5. In my opinion, no flaw can be noticed in the impugned finding recorded by two Courts below against the defendant No. 3 and in favour of plaintiff. In other words, suit stood rightly decreed on all Courts. Once, it is proved on facts that plaintiff is the legally married wife of Ratanlal and secondly, the Will (Ex. P-1) was properly and validly executed by Ratanlal in plaintiffs favour, then it follows as a necessary consequence that plaintiff alone was the exclusive owner of the suit land on the strength of Will and hence, defendant No. 1 even though son of Ratanlal had no right to inherit the property. It is for the simple reason that the property in question was self acquired property of Ratanlal and hence, he had every right to deal and/or dispose of the suit property in any manner during his life time including by executing a Will.

6. Submission of learned Counsel for the appellant was that Will (Ex. P-1) is not proved in accordance with requirement of Sections 63 and 68 of Succession Act and hence, no declaration in plaintiffs favour could be granted. I do not agree to this submission. Firstly, when two Courts examine the issue of Will on facts and

evidence and record a categorical finding holding the Will in question to be proved, then such finding being concurrent in nature and purely based on facts, binds this Second Appellate Court. It is liable to be upheld rather than to be upset. Secondly, even assuming this Court has to probe into the issue of evidence even then, no flaw can be found in this issue of Will. Thirdly, the Will is a registered document, it is executed by husband in favour of his wife, it is proved by those witness who are alive. What more is required under the law to discard such Will. No suspicious circumstances were pointed out by the defendants in their written statement about the Will and its execution, nor learned Counsel for the appellant could cite any circumstance for holding the existence of Will to be suspicious one.

7. So far as finding in relation to plaintiff status as wife of Ratanlal is concerned, both the Courts have held in plaintiffs favour. Such finding being finding of fact can not be disturbed in second appeal. That apart, defendant could not bring anything on record to prove their defence on this fact except to deny it in the written statement.

8. So far as finding in relation to the nature of property in the hands of Late Ratanlal is concerned, it was for the defendant to have proved that it was not self acquired property of Ratanlal but was ancestral one in his hands so as to have defendants some interest in it. The defendants failed to prove it. In the absence of any evidence tendered by the defendant, both the Courts below were perfectly justified in holding that the suit property was a self acquired property of Late Ratanlal.

9. Learned Counsel for the appellant then referred to Section 43 of T.P. Act in support of his contention. I am at a loss to appreciate any submission to be build up on the strength of Section 43 of T.P Act in the facts of this case. I do not wish to burden the judgment by writing anything more except to simply make reference to the submission and reject it being totally de hors the subject. So too placing reliance on a case reported in AIR 1977 SC 3720, which has no application to the issue involved in the case.

10. As a consequence of aforesaid discussion, the appeal fails and is dismissed in limine.