
(2020) 01 JH CK 0001
In the Jharkhand High Court
Case No : Second Appeal No. 125 Of 2009

Meena Devi

APPELLANT

Vs

Putul Devi And Ors

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Transfer Of Property Act, 1882 — Section 54

Citation : (2020) 01 JH CK 0001

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rohit Roy

Final Decision : Dismissed

Judgement

1. Heard Mr. Rohit Roy, learned counsel appearing for the appellant.
2. The appellant has preferred this Second Appeal against the judgment and decree dated 27.02.2009 and 06.03.2009 respectively passed by learned Additional District Judge, Fast Track Court-III, Gumla in Title Appeal No. 16 of 2007, whereby, the first appellate court has dismissed the appeal and affirmed the judgment and decree dated 24.09.2007 and 10.10.2007 respectively passed by the learned Subordinate Judge-I, Gumla in Title Suit No. 33 of 2003. 3. The appellant/plaintiff had instituted the Title Suit for specific performance of contract against the respondents/defendant with a relief to pass a decree directing the defendants to execute and register a sale deed in her favour in respect of the suit property by accepting the balance consideration amount along with the cost of the suit.
4. It was the case of the appellant/plaintiff in the court below that the deceased defendant Shobha Devi was agreed to sell the suit property to the appellant/plaintiff on 10.01.2003 for a consideration amount of Rs.1,11,000/- and advance of Rs.20,000/- was already paid in pursuance of the agreement. It was also agreed that the deceased defendant Shobha Devi will register the sale deed in

favour of the appellant/plaintiff by 30.08.2003. It was further agreed between the parties that the appellant/plaintiff will pay balance consideration amount at the time of registration of the sale deed. It was contended that the appellant/plaintiff was ready and willing to perform the contract and to pay the balance consideration amount to the defendant and for this purpose, the appellant/plaintiff had approached the defendant several times to execute the sale deed, but the defendant did not reply to the request of the appellant/plaintiff and lastly on 25.08.2003, she refused to receive the balance consideration amount and to execute the sale deed in respect of the suit properties in favour of the appellant/plaintiff and that is why it was necessitated to file the Title Suit. It was pleaded that the cause of action for the suit arose on 10.01.2003 when the deed of agreement was executed and on several dates when the defendants did not turn up for registration of the deed and lastly on 25.08.2003 when the defendants had refused to execute the sale deed in terms of the agreement to sale in favour of the appellant/plaintiff.

5. On being summoned, the defendants had appeared and filed written statement in the suit. The common ground was taken that the suit, as framed, is not maintainable and the same is fit to be dismissed with cost and no valid cause of action arose to the appellant/plaintiff for the suit. The defendants had denied the contents mentioned in paragraphs 1 to 7 of the plaint. It was contended that the deceased defendant Shobha Devi had not made any agreement in favour of the appellant/plaintiff and the appellant/plaintiff had not made any advance payment of Rs.20,000/- to the defendant. No contract or agreement was made by their mother (deceased defendant Shobha Devi) in favour of the appellant/plaintiff in respect of the suit property. The appellant/plaintiff is not entitled to get any relief. The appellant/plaintiff never approached the defendant for execution of the sale deed, as alleged in the plaint. The defendants are not bound to execute the sale deed in favour of the appellant/plaintiff and, therefore, it was prayed that the suit may be dismissed. 6. On the basis of the above pleadings of the parties, the trial court entered into the lis and framed six issues to decide the suit. While deciding issue nos. 4 and 5, which are related to the agreement and payment of advance money, the trial court came to the finding that the appellant/plaintiff failed to prove her own case against the defendants and also came to the finding that there is no agreement and rest of the issues were also decided by the trial court after discussing the evidences and exhibits adduced by the parties and, accordingly, dismissed the suit vide judgment dated 24.09.2007.

7. Aggrieved with this judgment, the appellant herein filed the First Appeal, which was numbered as Title Appeal No. 16 of 2007. The first appellate court has also entered into the lis and discussed the evidences adduced by the parties as well as the exhibits. While considering Ext.-1, the first appellate court came to the finding that it is only an affidavit and it creates doubt as the appellant/plaintiff herself stated that Shobha Devi died on 2nd or 4th January, 2003 while the affidavit was sworn on 10th January, 2003. Thus, the first appellate court

came to the finding that the affidavit is not a genuine document and it is not an agreement and accordingly, dismissed the appeal filed by the appellant vide judgment dated 27.02.2009. Aggrieved with this judgment, the appellant has filed this Second Appeal.

8. Mr. Rohit Roy, learned counsel appearing for the appellant submits that both the courts below have failed to consider the ingredients made in Section 54 of the Transfer of Property Act, 1882 and in that view of the matter there is substantial question of law, involved in this Second Appeal which is fit to be admitted.

9. This Court has perused the judgments passed by the trial court as well as the first appellate court. The appellate court has discussed the evidences adduced by the parties as well as the exhibits, on threadbare basis and came to the finding that Ext.-1 is not a genuine document. The two fact finding courts have come to concurrent finding that the appellant/plaintiff has failed to prove her case. This Court is not inclined to further discuss the evidences adduced by the parties before the two fact finding courts. This Court further finds that there is no substantial question of law, involved in this Second Appeal. Accordingly, this Second Appeal stands dismissed.