
(2014) 10 RAJ CK 0099
In the Rajasthan High Court
Case No : Civil Second Appeal No. 884/2011

Narayan

APPELLANT

Vs

Radhaballabh

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 7 Rule 10, 100

Citation : (2014) 10 RAJ CK 0099

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : R.K. Agarwal, Sr. Counsel Assisted by T.S. Choudhary, Advocate for the Appellant; Akhil Simlote, Advocate for the Respondent

Judgement

Bela M. Trivedi, J.—The appellant/plaintiff has filed the present appeal under Section 100 of CPC, challenging the judgment and decree dated 16/7/2011 passed by the Additional District Judge (Fast Track) No. 3, Jaipur Metropolitan, Jaipur (hereinafter referred] to as "the Appellate Court") in Civil Regular Appeal No. 4/2011, whereby the Appellate Court has dismissed the said appeal and confirmed the judgment and decree dated 15/11/2008 passed by the Additional Civil Judge (Junior Division) West, Jaipur City, Jaipur (hereinafter referred to as the Trial Court) in Civil Suit No. 475 of 2005.

2. The short facts, giving rise to the present appeal, are that the appellant/plaintiff had filed the suit before the Trial Court, seeking declaration to the effect that the respondent/defendant was not the son of Late Shri Ghisi Lal, but was the son of Shri Gangabux. The appellant had also sought prayer that the entries made in the revenue record in favour of the respondent/defendant in respect of the suit lands, be declared null and void, the same having been made illegally in collusion with the Revenue Officers. The appellant had also sought the permanent injunction against the defendant in respect of the lands in question. As per the case of the appellant, one Shri Sojiram had two sons Ganeshnarayan and Sonath. Ganeshnarayan had two sons Vijay Lal and Kanhaiyalal, and the

appellant/plaintiff Narayan was the son of Vijay Lal, and Kanhaiyalal that is uncle of the appellant had died unmarried. Sonath had one son named Ghisilal, who died issueless in the year 1952. Hence, according to the appellant/plaintiff, all the lands in question which belonged to his father Vijay Lal and his uncle Kanhaiyalal and Ghisilal, were inherited by him alone, however, the respondent/defendant Radhaballabh, claiming himself to be the adopted son of Ghisilal had got his name entered in the revenue record illegally, in collusion with the officers of the Revenue Department. Hence, the suit was filed. The respondent/defendant had resisted the suit by filing the written-statement contending inter-alia that his name was muted in the revenue record in the year 1963-64, he being the adopted son of Ghisilal and that the appellant was aware about the said fact since then. It was also contended that the suit was not maintainable being time barred and that the Trial Court also had no jurisdiction to entertain the suit.

3. The Trial Court, after appreciating the evidence on record, dismissed the suit vide the judgment and decree dated 15/11/2008, against which the appellant/plaintiff had filed the appeal, which came to be dismissed vide the impugned judgment and decree.

4. It is sought to be submitted by the learned Senior Counsel Mr. R.K. Agarwal for the appellant that the Trial Court while holding that the Court did not have the jurisdiction, should have returned the plaint under Order VII, Rule 10 of CPC, and the Appellate Court also while reversing the finding of the Trial Court with regard to the jurisdiction has committed an error of law in dismissing the appeal. He further submitted that there was no evidences to show that the respondent was legally adopted by late Shri Ghisilal, and therefore the respondent had no right to get his name muted in the revenue record. The learned senior counsel Mr. Agarwal taking the Court to the findings recorded by the Trial Court as well as by the Appellate Court submitted that both the Courts have committed serious error of law by recording perverse findings with regard to the alleged adoption of the respondent by Shri Ghisilal. However, the learned counsel Mr. Akhil Simlote for the respondent has submitted that the suit of the appellant was grossly time barred, and that considering the prayers made in the plaint, the Trial Court had rightly dismissed the suit on the ground of lack of jurisdiction, amongst other grounds.

5. Having regard to the submissions made by the learned counsels for the parties, and to the impugned judgments and decrees passed by the Courts below, it appears that the suit was filed by the appellant/plaintiff in the year 2005, seeking declaration that the respondent/defendant was not the adopted son of Shri Ghisilal, but was the son of Shri Gangabux and that the entries made in the revenue record treating him to be the adopted son of Shri Ghisilal were null and void. Both the Courts after discussing the evidence in detail have held that the suit of the appellant/plaintiff was barred by law of limitation. As transpiring from the judgments of the Courts below, the appellant/plaintiff himself had purchased one piece of land from the respondent/defendant on

21/6/1965 (Ex. A2), in which the respondent had shown himself to be the adopted son of Ghisilal. The said piece of land was further sold by the plaintiff/appellant to one Jana Devi as per the sale deed Ex. A1, in which there was a reference of the respondent being the adopted son of Ghisilal. In other sale deeds also produced at Ex. A4, A5, A7, executed by the defendant during the period 1963-65, he had shown himself to be the adopted son of Ghisilal. From the said documents, it clearly transpires that the appellant/plaintiff was aware since 1965 about the alleged adoption of the respondent by late Shri Ghisilal, however, the appellant had not taken any legal action till the suit was filed in 2005. As rightly held by the Courts below, the period of limitation, as per Article 57 of the Limitation Act being three years from the date when the alleged adoption becomes known to the plaintiff, the suit of the appellant/plaintiff was grossly time barred.

6. So far as the jurisdiction of the Civil Court is concerned, the Trial Court had decided the issue No. 6 in favour of the appellant/plaintiff by holding that the dispute with regard to the adoption could be decided by the Civil Court only, and had decided the issue No. 8 against the plaintiff by holding that the dispute with regard to the entries made in the revenue record in respect of the agriculture lands could be heard and decided by the Revenue Court only and not by the Civil Court. However, the Appellate Court to an extent reversed the said finding by holding that the appellant/plaintiff having also made the prayer, seeking declaration with regard to the alleged adoption of the respondent by late Shri Ghisilal along with the declaration with regard to the entries made in the revenue record, the Civil Court had the jurisdiction. Assuming that for the part of reliefs claimed in the suit, the Civil Court had the jurisdiction, the suit of the appellant/plaintiff being grossly time barred and meritless, the Courts below have rightly dismissed the same. Though, it was sought to be submitted by the learned Senior Counsel Mr. Agarwal for the appellant that the Trial Court ought to have returned the plaint under Order VII, Rule 10 of CPC, the said submission cannot be accepted. It is pertinent to note that as per the Order XIV, Rule 2, notwithstanding that the case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. In the instant case, since the question of jurisdiction was not decided as the preliminary issue, the Trial Court was bound to give findings on all the issues and in that case the question of returning the plaint after the full-fledge trial did not arise.

7. The learned senior counsel Mr. Agarwal having failed to point out any substantial question of law being involved in the present appeal, and there being no illegality and infirmity in the impugned judgments and decrees passed by the Courts below, the Court is not inclined to interfere with the same. The appeal being devoid of merits deserves to be dismissed, and is accordingly dismissed.