
(2009) 07 AHC CK 0119
In the Allahabad High Court
Case No : Second Appeal No. 701 of 2009

Nihal Singh and others

APPELLANT

Vs

Harcharan Singh

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2009) 07 AHC CK 0119

Hon'ble Judges : V.K.Shukla, J

Judgement

V.K.Shukla, J.

Second appeal has been filed against the judgment and decree dated 15.04.2009 passed by Additional District Judge, Court No. 1 Bijnor in Civil Appeal No. 31 of 2008 arising out of judgment and decree dated 31.03.2008 passed by Additional Civil Judge (Junior Division) court no. 3, Bijnor in Original Suit No. 101 of 1997(Harcharan Singh Vs. Nihal Singh and others).

Brief background of the case is that plaintiffrespondent filed suit for cancellation of sale deed alleging therein that he was owner in possession of khasra no. 20 measuring three bighas situated in village Majhula pargana Boorpur Tehsil Chandpur District Bijnor and in the said land in question his crops were standing. Plaintiffrespondent contended that he never executed any Mukhtarnama in favour of defendantrespondent no.3 regarding the property/land detailed and described at the foot of the plaint nor he appended any signature on said Mukhtarnama and based on said Mukhtarnama forged and fictitious sale deed which has been executed in favour of defendant nos. 2 and 3 who are no one else but real sons of defendant no. 1. During the pendency of the suit defendant nos. 1 to 3 sold out the said land to defendant no. 4 on 09.04.1999. Said suit was contested by filing written statement and it was contended that plaintiff used to remain out of village and he intended to sell his land and for this purpose he executed Mukhtarnama on 01.01.1990 and thereafter valid sale deed has been executed after due consideration. Reference has also been given of mutation

proceedings. It has also been contended that compromise took place wherein he was agreed that Rs. 31,200/ would be paid and no objection shall be raised in future and said compromise has been filed on 02.09.1996. It has been stated that after getting amount in question restoration application has been moved and same has been allowed. Against the same Appeal has been filed and same has been allowed. Separate written statement was also filed by defendant no. 4 and his claim was that valid sale deed has been executed after due consideration. Against said written statement replica has been filed reiterating therein that Rs. 50,000/ has never been borrowed by the plaintiff and he never intended to sell his land. In all eight issues were framed. From the side of plaintiff, plaintiff got him self examined as PW1 and PW2 Charan Singh and documentary evidence was also filed. Defendant has also got himself examined as DW1, and DW2 Suresh Chand, DW3 Udal Singh and DW4 Param Singh and documentary evidence has also been filed. Trial court on the basis of evidence available on record decreed the suit. Aggrieved defendant preferred appeal and said appeal has also been dismissed. At this juncture present Second Appeal has been filed.

Sri Dhruva Narayan Advocate appearing with Anadi Krishna Narayan, Advocate contended with vehemence that suit was barred by estoppel and acquiescence and the finding recorded by the courts below to the contrary was arrived at by shutting their eyes and mind to the overwhelming evidence produced by the defendantsappellant, as such discussion on the Mukhtarnama is totally irrelevant and redundant and as substantial question of law being there and there being miscarriage of justice, as such present second appeal deserves to be allowed.

After respective arguments have been advanced factual position which is emerging in the present case is that on the basis of Mukhtarnama dated 01.01.1990 defendant no. 1 who is real brother of the plaintiff executed sale deed in favour of his two sons i.e. defendant nos. 2 and 3 and subsequent to the same suit has been filed for cancellation of the sale deed on the ground that fraud has been committed. During the pendency of the suit defendant nos. 1 to 3 executed sale deed in favour of defendant no. 4 on 09.04.1999, as such prayer was made for cancellation of the said sale deed also. Trial court as well as Appellant Court on the basis of evidence available on record recorded categorical finding of fact that Mukhtarnama in question is forged document and it was admittedly unregistered document and based on the same by no stretch of imagination any sale deed could have been executed. Trial court as well as appellate court has considered factual aspect of the matter at greater length and has recorded categorical finding of fact that said Mukhtarnama is forged and unregistered document, in this background no credibility could be attached to the said Mukhtarnama and the sale deed executed on the basis of the same is thus, void document. Once entire foundation and basis of defendant no. 1 is that there was valid Mukhtarnama in his favour and based on the same he executed sale deed then in this background once finding of fact has been returned that there was no valid Mukhtarnama and to the contrary it was forged document then in this background both the courts below has rightly proceeded to hold that entire

proceedings undertaken by way of execution of sale deed is unwarranted and sale deed in question has been executed without any authority of law and are void.

Much emphasis has been led on the principle of estoppel and acquiescence. Principle of estoppel and acquiescence will not come to the rescue of appellant as principle of estoppel and acquiescence are the principle based on equity and good conscience and law is well settled that fraud and justice could not dwell together. Here once fraud has been established beyond any shadow of doubt and document which has been made foundation and basis for entire transaction found to be ingenuine and fraudulent document, in this background principle of estoppel and acquiescence will not come into play from any quarter whatsoever. Thus, present second appeal is concluded by pure finding of fact and no substantial question of law arises, to be answered by this Court.

Consequently present second appeal is dismissed.