

(2008) 01 MP CK 0004
In the Madhya Pradesh High Court
Case No : F.A. No. 138 of 2001

Rakesh Chandra Agarwal (L.Rs of deceased Ghanshyam) and others APPELLANT

Vs

Roopkishore and others RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2008) 4 MPLJ 505

Hon'ble Judges : Syed Ali Naqvi, J;S.M. Samvatsar, J

Bench : Division Bench

Advocate : Ashok Kaushik with Sanjay Mishra, for the Appellant; R.D. Jain with DPS Bhadoriya for Respondent Nos. 1 to 4 and 8 and R.P. Rathi for Respondent No. 10, for the Respondent

Final Decision : Allowed

Judgement

S. Samvatsar, J.

This appeal is filed by the plaintiff being aggrieved by the judgment and decree dated 5-3-2001 passed by the Fourth Additional District Judge, Bhind in Civil Suit No. 60-A/2000, whereby the plaintiffs suit for declaration and perpetual injunction is dismissed on the ground that said suit is barred by the principle of res judicata.

The brief facts of the case are that the appellant-plaintiff filed the present suit for declaration of title and perpetual injunction alleging that the disputed agricultural land was owned by one Ayodhya Prasad. Ayodhya Prasad was succeeded by a son viz. Kunni Lal. Kunni Lal died in the year 1919. Mathurabai is the widow of Kunni Lal. It is alleged that Kunni Lal and Mathurabai had adopted Munnalal. Kunni Lal had a daughter viz. Chhonabai, who is defendant No. 4, defendants No. 1, 2 and 3 are sons of Chhonabai.

The original plaintiff Ghanshyam is the son of Munnalal, who is adopted son of

Kunni Lal and Mathurabai. He filed the present suit alleging that respondents No. 1 to 4 has executed sale deeds on 2-5-1990, 30-7-1990, 25-11-1991 and 9-12-1991 in favour of defendants No. 5 to 18. The case of the plaintiff is that after death of Kunni Lal and Mathurabai, Munnalal being their adopted son is the sole owner of the property and Chhonabai has no right, title or interest to sell the property, hence said sale deeds be declared void and respondents No. 1 be restrained from interfering in their possession.

The defendants filed their written statement denying the allegations made in the plaint. The Court below on the basis of pleadings framed as many as 21 issues. Out of 21 issues, the Issue No. 11 was framed to the effect that whether the present suit is barred by the principle of res judicata due to judgment passed by the First Additional District Judge, Bhind in Civil Suit No. 8-A/1977 decided on 30-7-1981 and Issue No. 12 was framed to the effect that whether present suit is barred under Order 2, Rule 2, Civil Procedure Code.

Both the issues were tried as preliminary issues. Issue No. 12 which was relating to bar under Order 2, Rule 2, CPC is concerned, is decided by the trial Court in favour of the plaintiff, while issue No. 11 which was framed in respect of bar of res judicata is decided against the plaintiff and the suit is dismissed, as the same is barred due to the judgment passed in Civil Suit No. 8-A/1977 on 30-7-1981, and consequently the suit is dismissed. Hence, this appeal.

Now the only question involved in the appeal is whether the judgment and decree passed in Civil Suit No. 8-A/1977 operates as res judicata in the present case.

Contention of Shri Ashok Kaushik, learned counsel for the appellant is that the Court below has committed grave error in holding that the said judgment and decree operates as res judicata. On the other hand, Shri R. D. Jain, learned senior counsel for the respondents supported the impugned judgment.

Learned counsel for the appellant submitted that Civil Suit No. 8-A/ 1977 was filed by Chhonabi, who was daughter of Kunni Lal and Mathurabai on the allegation that she has one half share in the property left behind by Kunni Lal. In the said suit, she had challenged sale deeds executed by Munnalal in favour of defendants No. 1 to 5 in the said suit. Said sale deeds were executed by Munnalal on 7-9-1974. Thus, the issue involved in the present suit is quite different that of in the last Civil Suit No. 8-A/1977.

In that suit, a judgment and decree was passed in favour of Chhonabai on 30-7-1981. This judgment and decree was challenged by the defendants in that case by filing First Appeal before this Court, which was registered as FA No. 4/1984. Said First Appeal No. 4/1984 was disposed of in pursuant to compromise entered into between the parties. A copy of the compromise application is filed by the appellant in this appeal and marked as Annexure A-1. The copy of the order passed by this Court in pursuant to the compromise application is marked as Annexure A-2.

From perusal of the compromise application, it is clear that Chhonabai which entering into compromise has agreed that she does not want to take half share in the disputed property as decreed by the Court and she has also given up her claim for mesne profit, which was decreed. She has also agreed that sale deed executed by Munnalal on 7-9-1974 in favour of Vinay Kumar, Balkrishna, Ram Niwas, Janak Singh and Vijay Kumar is acceptable to her and thus she agreed that Munnalal has right to execute sale deed. She has accepted a sum of Rs. 20,000/- for foregoing her claim in the civil suit, hence judgment and decree passed in her favour was reversed on the basis of compromise application.

Contention of learned counsel for the appellant is that once the suit filed by Chhonabai is dismissed in pursuant to compromise entered into between the parties, the findings arrived at in the civil suit will not operate as res judicata as effect of compromise is setting aside the finding recorded by the trial Court in Civil Suit No. 8-A/1977, and therefore this finding will not operate as res judicata.

We have heard learned counsel for the parties at length. From perusal of the plaint in Civil Suit No. 8-A/1977, we find that in that case there was challenge by Chhonabai to the sale deed executed by Munnalal on 7-9-1974 on the ground that Munnalal has right to sell the property. While in the present case the challenge is to the sale deeds executed by respondents No. 1 to 4 in favour of respondents No. 5 to 18 executed on 2-5-1990, 30-7-1990, 25-11-1991 and 9-12-1991 on the ground that Chhonabai has no right, title or interest in the property and therefore sale deeds executed by her in favour of respondents No. 3 to 18 are void. Thus, subject-matter of both the suits are quite different. In the earlier suit, there was no finding by the trial Court that Chhonabai had one half share in the property, but the said decree is reversed in pursuant to the compromise application entered into between the parties. In such circumstances, the findings recorded in Civil Suit No. 8-A/1977 no more exists in the eyes of law, and therefore said findings will not operate as res judicata. Hence, this appeal deserves to be allowed.

In the result, the appeal is allowed and impugned judgment and decree is set aside. As the Court below has not recorded its findings on other issues except Issue Nos. 11 and 12, hence this Court has no option, but to remand the matter back to the trial Court for deciding other issues except Issue Nos. 11 and 12 after recording the evidence of the parties. Parties are directed to appear before the trial Court on 1-3-2008 and trial Court shall conclude the trial before 31-12-2008.

Office is directed to remit the record to the trial Court.