
(2019) 08 CHH CK 0089
In the Chhattisgarh High Court
Case No : Second Appeal No. 501 Of 2006

Santosh Kumar And Ors

APPELLANT

Vs

Pratibha Bai And Ors

RESPONDENT

Date of Decision : 16-08-2019

Acts Referred:

Code Of Civil Procedure 1908 — Section 100
Registration Act, 1908 — Section 17(1)(b), 49

Citation : (2019) 08 CHH CK 0089

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Sanjay Patel, Aditya Tiwari, Akash Pandey

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J

1. The substantial question of law involved, formulated and to be answered in this second appeal preferred by the plaintiffs is as under:-

"Whether the unregistered written family arrangement made by the plaintiffs in favour of the defendant No.1 on 18.01.1996 confers title to the defendant No.1 over the suit land ?"

[For the sake of convenience, parties would be referred hereinafter as per their status shown and ranking given in the suit before the trial Court].

2. The suit property was originally held by the plaintiffs. They filed a suit stating inter-alia that defendant No.1 has unauthorizedly sold the suit land in favour of defendant No.2, therefore, sale deed dated 2.8.2001 (Ex.P-1) executed by defendant No.1 in favour of defendant No.2 be declared as null and void and also prayed for permanent injunction.

3. Defendant No.1 filed her written statement and denied the averments made in the plaint stating inter-alia that the plaintiffs have relinquished the suit property

in her favour vide Ex.D-2 and in that capacity, she became owner and as such, she sold the suit property in favour of defendant No.2 on 2.8.2001 and prayed for dismissal of the suit.

4. The trial Court after appreciating oral and documentary evidence available on record, by its judgment and decree dated 30.11.2005, dismissed the suit relying upon Ex.D-2 that the plaintiffs have relinquished the suit property in favour of defendant No.1 and defendant No.1 has rightly sold the suit property in favour of defendant No.2. On appeal being preferred by the plaintiffs, the first appellate Court concurred with the judgment and decree of the trial Court, against which, this second appeal under Section 100 of the CPC has been filed by the appellants/ plaintiffs, in which substantial question of law has been formulated by this Court, which has been set-out in the opening paragraph of this judgment.

5. Mr.Sanjay Patel, learned counsel for the appellants/plaintiffs, would submit that both the Courts below have concurrently erred in holding that defendant No.1 has right and title over the suit property by relinquishment deed which the plaintiffs allegedly executed in her favour which was inadmissible in evidence for want of registration under Section 17 (1) (b) read with Section 49 of the Registration Act, 1908 (hereinafter called as "the Act of 1908") and therefore, both the Courts below erred in dismissing the suit of the plaintiffs.

6. Mr.Aditya Tiwari, learned counsel for respondents No.1 and 2/defendants No.1 and 2, would support the impugned judgment and decree.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.

8. The suit property was admittedly held by the plaintiffs. On account of some relationship between plaintiff No.2 and defendant No.1, the plaintiffs have executed relinquishment deed (Ex.D-2) in favour of defendant No.1 and relinquished their share/suit property in her favour and in that capacity, defendant No.1 sold the suit property in favour of defendant No.2 on 2.8.2001. The plaintiffs brought a suit on 01.10.2001 questioning only the sale deed dated 2.8.2001 on the ground that it is forged document and it be declared null and void. They did not disclose the execution of relinquishment deed dated 18.1.1996 (Ex.D-2) in favour of defendant No.1. Even they did not make any averment with regard to said relinquishment deed, neither it was produced nor it was exhibited by them. Even they did not question the said relinquishment deed in the plaint. It was only pleaded by defendant No.1 in her written statement that the suit property was relinquished by the plaintiffs in her favour and sought to be proved in evidence. The plaintiffs did not object marking of Ex.D-2 during the course of evidence and allowed to be marked as Ex.D-2. Defendant No.1 has sold the suit property in favour of defendant No.2 on the strength of relinquishment deed dated 18.1.1996 (Ex.D-2), which the plaintiffs even did not challenge by seeking declaration that it is inadmissible document and that does not confer any right

and title to defendant No.1, which the plaintiffs allowed to be marked and exhibited and that has become final.

9. The plaintiffs cannot collaterally challenge the relinquishment deed dated 18.1.1996 (Ex.D-2), they were required to seek declaration that they have not executed relinquishment deed in favour of defendant No.1 and it is not admissible for want of registration under Section 17(1)(b) read with Section 49 of the Act of 1908. The plaintiffs cannot be allowed to question the relinquishment deed dated 18.1.1996 (Ex.D-2)) on the ground that it is unregistered document, they ought to have seek declaration that it is void document and it could not have been allowed to be marked and exhibited by raising objection before the trial Court, as such, both the Courts below were justified in dismissing the suit of the plaintiffs in absence of challenge to relinquishment deed (Ex.D-2) in favour of defendant No.1, which I hereby affirm. The substantial question of law is answered in favour of the defendants and against the plaintiffs.

10. Accordingly, the second appeal deserves to be and is hereby dismissed leaving the parties to bear their own cost(s).

11. Decree be drawn-up accordingly.