
(2013) 07 MP CK 0201

In the Madhya Pradesh High Court

Case No : Second Appeal No. 590 of 2008

Satyanarayan Mali

APPELLANT

Vs

Indar Singh Rajput

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2013) 07 MP CK 0201

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : B.I. Mehta, for the Appellant;

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J.

Heard on the question of admission 1. This appeal u/s 100 of the C.P.C. at the instance of original defendants no. 4 and 5 is directed against the judgment of the lower appellate court dated 30.6.2008, whereby the F.A. No. 5A/2008 filed by the respondents no. 1 to 4 has been allowed and the judgment of the trial Court has been reversed. The respondents no. 1 to 4 (plaintiffs) had filed the suit for declaration, partition, possession and permanent injunction pleading that the respondents no. 1 to 4 and 8 are sons and daughters of respondent no. 5 Dhulji. The suit properties were joint Hindu family ancestral properties entered in the revenue record in the name of Dhulji. Dhulji by the different sale deeds executed on 18.7.2005 had sold the suit properties to the appellants and the respondents no. 6 & 7. The purchasers had taken illegal possession, though Dhulji had no right to sale the joint family property. The plaintiffs further pleaded that they had 1/6th share each in the suit property and the sale deeds were executed by Dhulji without consideration.

2. The suit was opposed by the appellants and respondents no. 6 and 7 (purchasers of the property) denying that the suit property was the ancestral

property and also denying that the plaintiffs had 1/6th share in the suit property. They raised the plea that the suit property was purchased by them by paying the full consideration amount.

3. The trial Court by judgment dated 15.12.2007 dismissed the suit, though the trial Court found that the suit property was the joint family property. The said judgment of the trial Court has been reversed by the First Appellate Court on reaching to the conclusion that the suit property originally belong to Kalu, father of respondent no. 5 Dhulji. The respondents no. 1 to 3 are found to be the sons of Dhulji, respondent no. 4 is found to be the wife of Dhulji and respondent no. 8 is found to be the daughter of Dhulji. It has also been found that no prior partition of the suit property had taken place between the parties. Since the suit property was found to be an ancestral property, therefore, the lower appellate court noting the amendment which has been made in the Hindu Succession Act in 2005, has found that each of the member of the joint family including the wife and daughter of Dhulji had 1/6th share in the suit property. The lower appellate court set aside the sale deeds which were executed in favour of the appellants in excess of the share of Dhulji.

4. Learned counsel appearing for the appellants has submitted that the suit filed by the respondents no. 1 to 4 was liable to be dismissed by the trial Court for want of jurisdiction, since the sale deeds which were executed in favour of the appellants as well as the other purchasers were valuing more than Rs. 10 Lacs. Such a submission can not be accepted at this stage. Trial Court has rightly considered the said aspect of the matter and has taken the view that the sale deeds have been questioned by the plaintiffs as void, therefore, they are not liable to value the suit as per the valuation of the sale deed. It is undisputed that plaintiffs were not the party to those sale deeds. No jurisdictional error has been committed by the trial Court in trying the suit.

5. Learned counsel appearing for the appellant has further submitted that the trial Court has committed an error in holding that Dhulji had only 1/6th share, ignoring the fact that wife of Dhulji had no share in the suit property. Such a submission can not be accepted in view of paragraph-315 of the Principles of Hindu Law 16th Edition and also in view of the judgment of the Supreme Court in the matter of Smt. Raj Rani Vs. Chief Settlement Commissioner, Delhi and Others, and in the matter of Gurupad Khandappa Magdum Vs. Hirabai Khandappa Magdum and Others, , whereby a wife can not herself demand a partition but if a partition does take place between her husband and sons; she is entitled (except in Southern India) to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband. The first appellate Court has rightly noted that the wife of Dhulji will receive share equal to that of the son. In view of the aforesaid, it is found that the appeal does not involve any substantial question of law, which is accordingly dismissed.