

(2019) 07 CHH CK 0180
In the Chhattisgarh High Court
Case No : Second Appeal No.269 Of 2005

Shanker And Ors

APPELLANT

Vs

Babulal And Ors Vs

RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 100

Citation : (2019) 07 CHH CK 0180

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : H.B. Agrawal, Pankaj Agrawal, Akash Pandey

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J

1. The substantial question of law involved, formulated and to be answered in this defendants No.1 to 3' second appeal is as under: -

"Whether the sale deed executed on 10-3-1969 could be declared by the lower appellate Court to be illegal on the basis of suit filed in the year 1993, in view of the provisions of the Limitation Act ?"

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the plaint before the trial Court.)

2. The plaintiffs filed a suit for declaration of title and permanent injunction stating inter-alia that sale deed dated 10.3.1969 executed by Prahlad in favour of father of defendant No.1 and defendants No.2 & 3 be declared illegal and revenue correction and certification also be declared illegal and the plaintiffs and defendant No.5 be declared title-holder and defendants No.1 to 3 be restrained from interfering with their possession of suit land.

3. The defendants filed their written statement and opposed the averments made in the plaint stating inter-alia that they are in possession of the suit land by

cultivating the same and rather the plaintiffs are interfering with their possession and the suit for declaration of sale deed to be illegal is barred by limitation.

4. The trial Court principally held that the suit is barred by limitation and also recorded finding that sale deed dated 10.3.1969 is illegal. Being aggrieved and dissatisfied with the finding of the trial Court, the plaintiffs and the defendants both have preferred first appeals being Civil Appeal Nos.10A/02 and 21A/01. By common judgment and decree dated 30.4.2005 the first appellate Court declared the sale deed dated 10.3.1969 as illegal and not binding on the plaintiffs and also declared the correction entry dated 24.1.1975 as illegal and consequently, granted permanent injunction in favour of the plaintiffs by dismissing the appeal of the defendants, against the judgment and decree of the first appellate Court, this second appeal under Section 100 of the Code of Civil Procedure, 1908 has been filed by the appellants/defendants No.1 to 3, in which, substantial question of law has been formulated and set-out in the opening paragraph of this judgment.

5. Mr.H.B.Agrawal, learned Senior Counsel assisted by Pankaj Agrawal, learned counsel for the appellants/defendants No.1 to 3, would submit that for declaring sale deed dated 10.3.1969 illegal, suit was filed on 2.7.1993, which was ex-facie barred by limitation in view of the provisions contained in Article 58 of the Limitation Act, 1963 (hereinafter called as "the Act of 1963") and therefore, the first appellate Court is absolutely unjustified in reversing the finding qua limitation as recorded by the trial Court. Therefore, that finding recorded by the first appellate Court be set aside and consequently, the plaintiffs are not entitled for decree.

6. None present for respondents No.1 to 24 though served.

7. I have heard learned counsel for the appellants/defendants No.1 to 3 and considered his submissions made hereinabove and also went through the records with utmost circumspection.

8. The plaintiffs brought a suit only on 2.7.1993 stating inter-alia that at the time of executing the sale deed dated 10.3.1969, Prahlad was unsound mind, he has not in fact transferred the suit land in favour of father of defendant No.1 and defendants No.2 & 3 and on that basis, revenue records were certified and corrected on 21.4.1975. When the plaintiffs on 26.6.93 went into the suit land, they came to know that names of defendants No.1 to 3 are recorded on 24.1.1975 leading to filing of the suit for declaration of title and declaring the sale deed as null and void. The trial Court framed Issue No.5 as to whether the suit is within the period of limitation ? The trial Court recorded finding that the plaintiffs and defendants No.4 & 6 came to know about mutation made on 24.1.75 in the month of June, 1984, then they ought to have filed the suit within three years from June, 1984, which they did not file and would be hit by Article 56 and 59 of the Act of 1963 as the suit was filed on 2.7.1993 for declaring the sale deed dated 10.3.1969 and mutation dated 24.1.75 as illegal. In appeal

preferred by the plaintiffs, the first appellate Court did not accept the finding of the trial Court and held that the plaintiffs are in possession of the suit land and sale deed dated 10.3.1969 was got executed by father of defendant No.1 and defendants No.2 & 3 fraudulently as said Prahlad has no right to execute the sale deed and got it certified after six years from the date of sale i.e. 24.1.1975 without notice to other side and consequently, recorded the finding that the dispute arose between the parties in the year 1993 and for the first time, in the year 1991-92 the suit land came to be recorded in the names of defendants No.1 to 3 vide Exs.D-3 and D-4 and as such, cause of action arose in favour of the plaintiffs in the year 1993 and the suit was rightly filed on 2.7.1993, which is within limitation.

9. Article 58 of the Act of 1963 states as under:-

Description of suit Period of Time from which period limitation begins to run 58. To obtain any other declaration Three years When the right to sue first accrues.

10. The Supreme Court in the matter of Union of India and others v. West Coast Paper Mills Ltd. and another AIR 2004 SC 1596 has held that in terms of Article 58 the period of three years is to be counted from the date when 'the right to sue first accrues'.

11. In the matter of C. Mohammad Yunus v. Syed Unnissa AIR 1961 SC 808 the Supreme Court has held that the cause of action for the purposes of Article 120 of the Limitation Act, 1908 accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action. It was observed as under:-

"7. The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right."

12. The principle of law laid down in C. Mohammad Yunus (supra) has been followed with approval by the Supreme Court in Daya Singh and another v. Gurdev Singh (Dead) by LRS. and others (2010) 2 SCC 194.

13. The High Court of Uttarakhand in the matter of Smt. Neelam Kumari & Anr. v. U.P. Financial Corporation AIR 2009 Uttarakhand 5 appellate Court, has held that in a suit for declaration of sale deed as null and void, limitation does not start per se from date of execution or registration of sale deed, but actually it starts from date when plaintiff obtains knowledge about that fact.

14. Reverting to the facts of the present case, it is quite vivid that sale deed was executed by Prahlad in favour of father of defendant No.1 and defendants No.2 & 3 on 10.3.1969, but it was certified only on 24.1.1975 and the suit land came to be recorded in the names of defendants No.1 to 3 in the year 1991-92, which is apparent from perusal of Ex.D-3 and Ex.D-4 and thereafter it appears, the

dispute arose between the parties and the suit was filed on 2.7.1993. The first appellate Court has taken into consideration the aforesaid fact and came to the specific conclusion that though sale deed was executed on 10.3.1969 and it was certified on 24.1.1975, but cause of action arose pursuant to recording the names of defendants No.1 to 3 in revenue records vide Ex.D-3 and Ex.D-4 in the year 1991-92 and thereafter cause of action arose in the year 1993 and suit was promptly filed on 2.7.1993. Therefore, the suit is within limitation under Article 58 of the Act of 1963. The finding recorded by the first in my considered opinion, is strictly in accordance with law. I do not find any illegality or perversity in the said finding. The substantial question of law is answered in favour of the plaintiffs and against the defendants.

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

16. Decree be drawn-up accordingly.