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In the Uttarakhand High Court

Case No : Second Appeal No. 49 of 2016

Shri Munishwar Vedang Vidyalaya Rishikesh — APPELLANT

Vs

Smt. Luxmi Devi & Others — RESPONDENT

Date of Decision : 11-04-2016

Acts Referred:

Citation : (2016) 165 AIC 882 : (2016) AIR(Uttaranchal) 85 : (2016) 117 ALR 305 : (2016) 3 ARC 846 : (2016) 4 CivCC 477 : (2016) 132 RD 567

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Dr. H.N. Tripathi and Mr. M.S. Chauhan, Advocates, for the Appellant; Mr. Piyush Garg, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Servesh Kumar Gupta, J.—Having heard the rival contentions at quite good length, it transpires that the property, in question, is situated in Rishikesh. As urged by learned counsel of Appellant that after purchasing the same by Smt. Dhanshukhi Devi Ladia way back in 1952, it was orally gifted to the defendants (appellant herein) for running the school, which is said to be, established since 1952 itself, in addition to, as an old woman revealed in her bequeath, financial arrangements were made by her for running such school.

2. It is evident that no registered gift deed was ever executed as is mandatory under Section 17(a) of the Registration Act for transferring the immovable property in favour of the appellant. So the submission of learned counsel of Appellant is of no avail.

3. It has been further argued by the defendant-appellant that Smt. Dhanshukhi Devi executed an unregistered Will dated 25.12.1968 (no place of this execution mentioned) in his favour and photocopy of the same was brought on the record before Trial Judge, which has been disbelieved by both the Courts below for reasons, elaborated in the judgment and this Court does not want to reproduce

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such reasons and unnecessary burdening this short judgment.

4. The third case, which was projected by the appellant, is adverse possession over the property, in question. After 03.02.1987, when an F.I.R. was lodged by some so-called power of attorney of Sri Shankar Lal Ladia (the son of old lady) for the offence of Sections 379, 427 and 448 of IPC, neither this power of attorney nor F.I.R. could find any evidentiary value on the anvil of admissibility before the Courts below. Prior to lodging such so-called F.I.R., defendant-appellant has claimed their permissive possession over the property.

5. Per contra, the case of the respondents is that they purchased such property through a registered sale deed executed in 2004 from Smt. Renuka Ladia (daughter-in-law of Smt. Dhanshukhi Devi Ladia). Smt. Renuka Ladia succeeded such property from her husband Sri Shankar Lal Ladia, who got this property from her mother through the Will dated 20th December, 1968, executed by her at Kolkata (West Bengal).

6. After the death of its executor in 1969, the probate was granted by Hon?ble High Court of Kolkata. On the strength of such probate, which was not challenged by anybody, he became absolute owner of the property and after his death, his wife Smt. Renuka Ladia became the owner of such property, who executed the sale deed as indicate above. So, at the strength of sale deed, they instituted an O.S. 295/2005 seeking the possession of the property, in question, from the appellant. Suit was decreed by the learned Civil Judge (Sr. Div.) vide its judgment and order dated 04.04.2015 and where-against, first appeal has also been dismissed by the Court of IInd Additional District Judge, Rishikesh vide its judgment and order dated 09.03.2016. So, feeling disgruntled, Shri Munishwar Vedang Vidyalaya, Rishikesh has come up before this Court in second appeal.

7. After hearing the learned counsels of both the parties, the Court feels that this is a glaring example to advert as to how a land/property, owned by someone residing in the remote place/city, is grabbed by local residents or how a true owner is resisted (by abusing the process of law) in the course from enjoying the fruits or enjoy the property owned by him.

8. Learned counsel of the second appellant has relied upon the Hon?ble Apex Court judgment in the case of "Ram Chander v. Ram Singh @ Bhunde & another (2005) 13 SCC 91." This is a short judgment of Hon?ble Apex Court and what could I gather from reading such judgment is that the defendant was claiming his ownership on the property, in question, on the basis of family settlement (only photocopy of the same) and that photocopy was believed by all the Courts below, so the plaintiff knocked the door of the Hon?ble Apex court, then, Hon?ble Apex Court was of the view that only photocopy of the Family Settlement, when it was not even put to the plaintiff when he appeared in the witness box, whether can be accepted in the evidence? And thus, the appeal preferred by plaintiff was allowed. So this precedent, which is being relied by learned counsel for the appellant runs counter to his own arguments.

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9. It is an established principle of law that the Will may be even oral, if proved sufficiently, as contemplated under the law and not shrouded by any mysterious or suspicious circumstances, then it can be accepted, but here, the appellant is striving to grab the property on the basis of entirely forged Will, which has not least evidentiary value, much less, it has not been proved by any attesting witnesses nor even by scribe.

10. On the other hand, there is Will in favour of Sri Shankar Lal Ladia, which was executed in Kolkata and as per requirement of law prevailing in Kolkata, the probate was granted by the competent Court and that probate was never challenged anywhere. Hon?ble Apex Court in the case of "Chiranjilal Shrilal Goenka v. Jasjit Singh & others (1993) 2 SCC 507," has laid down as under :-

"The grant of a probate by court of competent jurisdiction is in the nature of a proceeding in rem. So long as the order remains in force it is conclusive as to the due execution and validity of the will unless it is duly revoked as per law. It binds not only upon all the parties made before the court but also upon all other persons in all proceedings arising out of the will or claims under or connected therewith. The decision of the probate court, therefore, is the judgment in rem. The probate granted by the competent court is conclusive of the validity of the will until it is revoked and no evidence can be admitted to impeach it except in a proceeding taken for revoking the probate. In Sheoparsan Singh v. Ramnandan Prasad Narayan Singh, the Judicial Committee was to consider whether the will which had been affirmed by a court of competent jurisdiction, would not be impugned in a court exercising original jurisdiction (civil court) in suit to declare the grant of probate illegal etc. The Privy Council held that the civil court has no jurisdiction to impugn the grant of probate by the court of competent jurisdiction. In that case the subordinate court of Muzafarbad was held to have had no jurisdiction to question the validity of the probate granted by the Calcutta High Court. In Narbheram Jivram v. Jevallabh Harjivan, probate was granted by the High Court exercising probate jurisdiction. A civil suit on the Original Side was filed seeking apart from questioning the probate, also other reliefs. The High Court held that when a probate was granted, it operates upon the whole estate and establishes the Will from the death of the testator. Probate is conclusive evidence not only of the factum, but also of the validity of the Will and after the probate has been granted, in is incumbent on a person who wants to have the Will declared null and void, to have the probate revoked before proceeding further. That could be done only before the Probate Court and not on the original side of the High Court. When a request was made to transfer the suit to the Probate Court, the learned Judge declined to grant the relief and stayed the proceeding on the original side. Thus it is conclusive that the court of probate alone had jurisdiction and is competent to grant probate to the will annexed to the petition in the manner prescribed under the Succession Act. That court alone is competent to deal with the probate proceedings and to grant or refuse probate of the annexed will. It should keep the original will in its custody. The probate thus granted is conclusive unless it is revoked. It is a judgment in rem."

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11. As regards the nature of possession over the property, in question, it appears that the appellant is taking inconsistent pleas. Up to 1987, he is claiming the permissive possession over the property and that too, without any proof and after 1987, he is claiming the adverse possession over the property.

12. It is also reigning field in law that the adverse possession cannot be accepted against true owner, if the person is claiming such possession over the land/ property, in question, without knowledge or indirect permission of the true owner, so on this score too, the contentions of learned counsel of the appellant are highly unsustainable and this position has also been discussed by the courts below.

13. Merely regarding of entries in the Municipal records or the payments of house tax, water tax and electricity bill can never make a person the owner. These are things, which can easily be managed by a person, who has influence on account of his being local resident, where they are living for last 50 years, as against the person, who is living in Kolkata.

14. I feel that without burdening this judgment further by reasons, I do not think that any substantial question of law arises here. In view what has been set forth above, this appeal has no force and is hereby dismissed in limine.

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