(2008) 01 RAJ CK 0080

In the Rajasthan High Court

Smt. Kanta Bai APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80, 96
Transfer of Property Act, 1882 — Section 122

Citation : (2008) 01 RAJ CK 0080

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Kumar Jain, J.—This is plaintiff''s regular first appeal, u/s 96 of the Code of Civil Procedure, against the impugned judgment and decree dated 19.08.1991 passed by the District Judge, Sawaimadhopur, whereby the plaintiff''s suit for declaration and permanent injunction has been dismissed.

2. Briefly stated the facts of the case are that the plaintiff filed a suit for declaration in the lower court pleading therein that she is owner of the disputed house, the description of which has been mentioned in Para 2 of the plaint; Shri Babulal or the Firm Babulal Sitaram have no connection with the said house; on 18th January 1985 the sales-tax Inspector came at the house and attached the same forcibly to recover the so-called amount of sales-tax due against Firm Babulal Sitaram, Sawaimadhopur; it was prayed in the plaint that a decree of declaration be passed to the effect that the plaintiff is the owner of the disputed house and the defendants have no authority to attach or auction the same and, further that the defendants be directed to release the disputed house from the attachment.

3. The defendants filed a written-statement wherein they pleaded that the plaintiff has no concern whatsoever with the attached house and she is not the owner thereof but the owner of the attached/disputed house is Babulal, one of the partners of the Firm Babulal Sitaram, Sawaimadhopur; the said Firm is a

registered partnership firm; a sum of Rs. 41,541.85p. towards sales-tax is due against the said firm which remained unpaid; and, the house has rightly been attached. Therefore, it was prayed that the suit be dismissed.

4. The learned trial court framed two issues; Issue No. 1 was as to whether the plaintiff was the owner of the disputed house and the sales-tax amount due against the Firm Babulal Sitaram can be recovered from this house; the Issue No. 2 was whether in absence of notice u/s 80 of the CPC the suit is not maintainable.

5. The plaintiff examined herself as PW-1 and Salamat Ali as PW-2, and produced documentary evidence Exhibit-1, registered gift-deed dated 20.11.1976 in favour of plaintiff, and Exhibit-2, memo of attachment proceedings. The defendants examined DW-1 Jagdambalal, the ACTO, and DW-2 Prabhatilal. No documentary evidence was produced on behalf of defendants.

6. The learned trial court, after considering the evidence on the record and the submissions of learned Counsel for both the parties, decided Issue No. 1 against the plaintiff and the issue No. 2 in her favour. On the basis of the finding in respect of Issue No. 1, the trial court dismissed the suit, hence this appeal.

7. The learned Counsel for the appellant contended that the finding of the learned trial court in respect of Issue No. 1 is absolutely illegal and without jurisdiction, and the same is liable to be set-aside. He contended that the plaintiff was the owner of the disputed house on the basis of registered gift-deed executed way back on 20.11.1976 in her favour. The said gift-deed was not under challenge and it was filed for decreeing the suit of plaintiff for declaration that she is the actual owner of the disputed house. He further contended that the trial court committed an illegality in giving due weightage to the contradictions in between the statement of Smt. Kanta Bai (PW-1) and the contents of the gift-deed (Exhibit-1), which were of minor nature and were possible as plaintiff''s statement was recorded after 13 years of execution of gift-deed and she was a housewife. The gift-deed was executed in the year 1976 and the statement of Smt. Kanta Bai was recorded in the year 1989. The said contradictions were liable to be ignored particularly when the gift-deed (Exhibit-1) was a registered document. It is also contended that the learned trial court, while deciding the Issue No. 1, wrongly recorded a finding that the gift-deed is illegal and is not in accordance with the Section 122 of the Transfer of Properties Act without any issue and prayer in the plaint in this regard. He contended that a gift- deed can only be challenged by executor thereof or by any other interested or affected party but not by the defendants. He also contended that there was no counterclaim on proper court-fee on behalf of the defendants with a prayer to declare the gift-deed as illegal, therefore, the finding of the learned trial court in respect of Issue No. 1 is liable to be set-aside and the decree, as prayed for in the plaint, be passed in favour of the plaintiff.

8. The learned Counsel for the respondents has supported the impugned

judgment passed by the trial court and contended that an enquiry was made about ownership of the disputed house by sales-tax Department, according to which the owner of the house was Babulal. Therefore, for the dues against the Firm Babulal Sitaram, to which Babulal was one of the partners, the house was rightly attached and the learned trial court has rightly decided the issue No. 1 in favour of the defendants. He contended that the finding of the learned trial court in respect of issue No. 1 is absolutely based on oral and documentary evidence which calls for no interference by this Court and the appeal deserves to be dismissed.

9. I have considered the submissions of learned Counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

10. The plaintiff, in the plaint, made a prayer that a decree of declaration may be passed in her favour to the effect that she is the owner of the disputed house and the defendants have no right to attach or auction it for recovery of sales-tax amount due against Babulal, a partner of Firm Babulal Sitaram, and the defendants be directed to release the disputed house from attachment. The case of defendant in the written-statement is that the plaintiff is not concerned with the disputed house as the same belongs to Babulal, one of the partners of the Firm Babulal Sitaram against whom sales-tax dues were there and the house was rightly attached for realization of dues of sales-tax amount. The trial court considered the contradictions in the statement of PW-1 Kanta Bai and the contents of Exhibit-1 the gift-deed as to whether the disputed house was given to the plaintiff by way of gift by her father or by her husband. The attesting witnesses of Exhibit-1, the gift-deed, were not examined in the case. Therefore, the trial court recorded a finding that the gift-deed is not proved in accordance with Section 122 of the Transfer of Properties Act and the same is void.

11. I find that the reasonings recorded by the learned trial court while deciding the Issue No. 1 against the plaintiff are absolutely illegal and liable to be set-aside for the reason that Exhibit-1, the gift-deed dated 20.11.1976 was a registered document, it was not under challenge in the present case and the same was not required to be proved strictly in accordance with Section 122 of the Transfer of Properties Act. The examination of two attesting witnesses of document was not necessary in the facts and circumstances of the present case. The case of the plaintiff is that she is the owner of the disputed house whereas the case of the defendants is that Babulal is the owner of the disputed house. PW-1 Smt. Kanta Bai, in her statement, specifically stated that she is the owner of the disputed house. She produced on the record the gift-deed (Exhibit-1), which was registered way back on 20.11.1976. Prima-facie the plaintiff discharged her burden in proving that she is the owner of the disputed house on the basis of the gift-deed (Exhibit-1), which is a registered document and not challenged in the present case by any one. The defendants did not produce any documentary evidence whatsoever in support of their contention that Babulal is the owner of the house, in dispute.

12. I have examined the statements of PW-1 Kanta Bai, PW-2 Salamat Ali, DW-1 Jagdambalal and DW-2 Prabhatilal.

13. Exhibit-1, the gift-deed, is on the record and it has been proved by PW-1 Kanta Bai and PW-2 Salamat Ali, the scribe thereof, who has specifically stated that the gift-deed (Exhibit-1) was written by him in his own handwriting and it bears the signature of Babulal at place ''C to D''. The signature of the executor of the gift-deed is proved from the statement of PW-2. DW-1 Jagdambalal, the ACTO, in his statement, admitted that after due enquiry he came to a conclusion that the attached house was belonging to Babulal. The enquiry was got conducted from the Inspector. He admitted that the enquiry report has not been filed in the case nor it has been exhibited. He also admitted that the disputed amount of sales-tax due was relating to the assessment-year 1979. This fact is very much relevant to see the bona- fide or mala-fide with regard to execution of the gift- deed. Had the gift-deed (Exhibit-1) been executed after 1979, it could have been presumed that it was executed with mala-fide and in order to deprive the Department from recovering the amount of sales-tax dues, but the gift-deed (Exhibit-1) was executed in 1976 and it was a registered document, therefore, it cannot be presumed that it was executed with mala-fide intention. DW-1 Jagdambalal also admitted that the original amount of sales-tax was only 18-19 thousand rupees. Initially the interest was not levied at the time of assessment but subsequently a rectification order was passed and the interest was levied thereon but the order levying the interest was set-aside by the appellate authority, as the order was passed after expiry of the period of limitation. He, therefore, admitted that the original amount of rupees 18-19 thousand is due against the Firm Babulal Sitaram.

14. From the entire facts and circumstances of the case, it reveals that it was a case wherein the plaintiff''s suit for declaration to declare her as owner of the disputed house and to restrain the defendants from recovering the sales-tax dues by attaching and auctioning it; the case of the defendant was that the disputed house belongs to Babulal, who was one of the partners of the Firm Babulal Sitaram against which there is dues of sales-tax amount and the defendants are entitled to recover the same by attaching and auctioning the disputed house. The initial burden to prove that plaintiff was owner of the disputed house was on plaintiff. The plaintiff discharged her initial burden by producing Exhibit-1 the registered gift-deed. Thereafter burden shifted on defendants to prove that Babulal is the owner of the disputed house. The defendants did not discharge the said burden by producing any document whatsoever to show that the disputed house was belonging to Babulal and they are entitled to recover the sales-tax amount due by attaching and auctioning the same. Whether the gift-deed (Exhibit-1) dated 20.11.1976 was a valid document or not, was not a question which was required to be examined in the facts and circumstances of the present case. It was note a case of the Department during trial of the case that gift-deed Exhibit-1 is not a valid document or its execution is not proved or it was executed with mala-fide intention to deprive them to

recover the amount due against Babulal. No issue was framed by trial court in this regard also. In my view, the reasons assigned by the learned trial court while deciding the Issue No. 1 against the plaintiff are not tenable in the facts and circumstances of the present case. The finding of the learned trial court is absolutely illegal and without jurisdiction and the same is liable to be set-aside.

15. In view of the above discussion, the appeal is allowed. The impugned judgment passed by the trial court is set aside. The defendants are directed to release the disputed house from attachment immediately and they are further restrained from recovering the amount of sales- tax due against the Firm Babulal Sitaram, Sawaimadhopur, by attaching and auctioning the disputed house. There will no no order as to costs.

