
(2013) 10 MP CK 0345
In the Madhya Pradesh High Court
Case No : Second Appeal No. 653 of 2003

Smt. Raj Kumar i

APPELLANT

Vs

Smt. Shyamabai and Vijayshankar

RESPONDENT

Date of Decision : 23-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0345

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : Brajesh Pandya, for the Appellant; Vandana Kasrekar and Ms. Preetha Moitra, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J.—This appeal u/s 100 of the C.P.C. is at the instance of the plaintiff in the suit challenging the concurrent judgment of the two courts below. The trial Court by the judgment dated 15.1.2002 had dismissed the C.S. No. 23-A/99 and the First Appellate Court by the judgment dated 26.9.2003 by dismissing the First Appeal No. 17-A/2002 has affirmed the judgment of the trial Court. The appellant had filed the suit for declaration and possession pleading that the suit Plot No. 82-A, Nageen Nagar, Indore is of joint ownership of the appellant and the respondent no. 1, since it was purchased jointly on 15.7.1986 by them by paying half-half consideration amount. It was further pleaded that the respondent no. 1 without the permission and consent of the appellant, had unauthorizedly sold the half portion of the suit land to the respondent no. 2 and had received the sale consideration. The respondent no. 2 inspite of having the knowledge that the appellant and the respondent no. 1 are the joint owner of the suit land, had purchased it and had started construction. Therefore, the present suit was filed.

2. The respondent no. 1 by filing the written statement had pleaded that the appellant and respondent no. 1 are real sisters and the name of the appellant was simply mentioned in the sale deed, whereas the entire sale consideration

was paid by the respondent no. 1, therefore, the question of taking consent and permission of appellant does not arise while affecting the sale of the suit land. It was further pleaded that another land in which the respondent no. 1 had made investment, was sold by the appellant and, therefore, the appellant had relinquished her rights on the suit land and the respondent no. 1 remained the sole owner of the suit land. It was further pleaded that the respondent no. 2 after purchasing half portion of the suit land, had raised construction thereon.

3. The trial Court by the judgment dated 15.1.2002 had dismissed the suit holding that the sale of the half portion of the suit land by the respondent no. 1 in favour of respondent no. 2 is not illegal, and the appellant is not entitled to receive possession of the half portion of the suit land from the respondent no. 2. The first appellate court has affirmed the judgment of the trial Court.

4. This Court by order dated 10.3.2004 had admitted the appeal on following substantial question of law:-

Whether the lower appellate Court committed an illegality in not addressing itself to the issues and the evidence adduced by the parties at the trial while deciding the first appeal?

5. Learned counsel appearing for the appellant submits that the first appellate court has not examined the entire oral and documentary evidence, therefore, the judgment of the first appellate court can not be sustained. As against this, learned counsel appearing for the respondents has submitted that the first appellate court has affirmed the judgment of the trial Court and has considered all the relevant material, therefore, the judgment of the first appellate court does not suffer from any error.

6. Having heard the learned counsel for the parties and on the perusal of the record, it is found that the trial Court after considering the oral as well as documentary evidence, had found that the appellant and the respondent no. 1 were joint owner of the suit land on the basis of the sale deed dated 15.7.1986. The respondent no. 1 could not prove her plea that she was the sole owner of the suit land. It was also found that the respondent no. 1 had also failed to prove that the appellant had relinquished her right on the suit land. The trial Court had also found that the respondent no. 2 was not a bonafide purchaser of the suit land because at the time of purchasing the suit land; he was aware that the respondent no. 1 was not the sole owner of the suit land, but he had not taken any steps to obtain consent and permission of the appellant. Thus, the appellant had succeeded before the trial Court to the extent that she was held to be the joint owner of the suit land and the above findings were recorded in favour of the appellant. The trial Court, thereafter, had considered the issue of the right of the appellant to obtain possession of the sold half portion from respondent no. 2 and had decided this issue against the appellant by holding that the respondent no. 1 was free to sale her half share. It was further noted that on the half share so purchased by the respondent no. 2; he had constructed his residential house and

was living in it. The trial Court, noting that the half portion of the suit land is still lying vacant and the respondent no. 1 had sold the remaining half portion to the extent of her share in the land, has held that the transfer of her half share by respondent no. 1 in favour of respondent no. 2 was not illegal.

7. Since all the other issues were decided in favour of the appellant except the limited issue of legality of transfer of her half share by the respondent no. 1 to respondent no. 2 in the joint ownership land of appellant and respondent no. 1, therefore, in the first appeal only that limited issue was involved which was essentially a legal issue, specially when the respondents had not preferred any appeal or cross objection against the judgment of the trial Court. The first appellate Court has examined the said issue and has noted that the appellant had not pleaded and adduced any evidence to show that which half portion of the suit land was sold by the respondent no. 1. The first appellate court has also noted that the alleged sale deed executed by the respondent no. 1 in favour of respondent no. 2 has not been exhibited or proved in the suit. The boundaries of the half portion sold by respondent no. 1 to the respondent no. 2 have not been disclosed and the appellant in her entire evidence has not disclosed the current status of the entire land or the alleged half portion which was sold. The first appellate Court has considered the right of one of the co-owner to sale her share and has affirmed the judgment of the trial Court by dismissing the appeal.

8. The view taken by the first appellate court is supported by the judgment of the Supreme Court in the matter of Jai Singh and Others Vs. Gurmej Singh, , wherein the Supreme Court has held that when a co-sharer sells a share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession what he transfers is his right as a co-sharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all co-sharers.

9. In view of the aforesaid, it is found that the limited issue which was raised in the appeal has been examined by the first appellate court in the light of the material which was available on record. Since the other issues raised by the appellant were decided by the trial court in her favour, therefore, no appreciation of the evidence on those issues was required by the first appellate Court.

10 Counsel for the appellant has placed reliance upon the judgment of the Supreme Court in the matter of State Bank of India and Another Vs. Emmsons International Ltd. and Another, , in the matter of Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., and in the matter of Madhukar and Others Vs. Sangram and Others, , wherein it has been held that the first appellate court when reversing the judgment of the trial Court is required to consider all issues of law and fact and that first appeal is a valuable right and it is duty of the court to deal with all issues and evidence, but in the present case the judgment of the first appellate court is not a judgment of reversal of the trial Court's judgment but it is a judgment deciding the limited issue and affirming the judgment of the trial Court on that issue.

11 In view of the above analysis, it is found that the first appellate Court has not committed any illegality of not addressing itself to the issues and the evidence adduced by the parties at trial while deciding the first appeal. The appeal has no merit, which is accordingly dismissed.