
(2007) 06 MP CK 0014
In the Madhya Pradesh High Court

Smt. Ramrati Sharma and Another

APPELLANT

Vs

Smt. Sheela Sharma and Another

RESPONDENT

Date of Decision : 25-06-2007

Acts Referred:

Evidence Act, 1872 — Section 90

Registration Act, 1908 — Section 21, 34, 35, 52, 58

Citation : (2007) 3 JLJ 407 : (2007) 4 MPHT 71 : (2007) 3 MPLJ 589

Hon'ble Judges : Syed Ali Naqvi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.A. Naqvi, J.

Appellants have preferred this appeal aggrieved by the impugned judgment and decree dated 22-4-1998 passed by First ADJ, Morena, in Civil Suit No. 18-A of 2001 whereby, the suit filed by appellants/plaintiffs for declaration and injunction pertaining to 1/3rd share of disputed property has been dismissed.

Admitted facts are that the plaintiffs/appellants and defendant No. 1/respondent No. 1 are real sisters. They are daughters of late Kalika Prasad. Jodharam and Harpal were real brothers. Jagannath Prasad and Kalika Prasad were sons of Harpal. Defendant No. 2 is son of defendant No. 1.

Case of plaintiffs/appellants in brief, is that in ward No. 18, Morena disputed house is situated. This house was purchased by Harpal. Harpal was in possession of disputed house. The disputed house is parental property of the plaintiffs and defendant No. 1 Jagannath was having one half share and Kalika Prasad was having one half share in disputed property. The share of Kalika Prasad is disputed property. Kalika Prasad was serving in military. After retirement, he constructed a temple on some part of the disputed property. In disputed house, Satish Chandra, Khoob Chandra and Kamal were tenants of Kalika Prasad. Kalika Prasad died on 27-6-1991. Plaintiff and defendant No. 1 are successors of Kalika Prasad.

Jagannath Prasad and his daughter have no right over the disputed house. Kalika Prasad had not sold disputed house to anyone. He has not executed any document in favour of any person regarding disputed house. Plaintiffs and defendant No. 1 are owner of the disputed house of equal portion. On 5-8-1991, husband of plaintiff No. 1 Vinod Kumar Sharma went to collect rent from tenant, tenant told that defendant No. 1 is demanding rent from them. She claimed that her son is owner of the disputed house. She told that Kalika Prasad has sold disputed house by registered sale deed to her son Pankaj Dubey. Defendant No. 1 on asking by the plaintiffs did not give specific reply. She denied ownership of the plaintiffs on the disputed house. Plaintiffs served a notice on 9-8-1991 to tenants Khoob Chandra. Govardhan, Santoshkumar, Satish and Kamal to pay rent to them in future. Consequently, the plaintiffs filed suit for declaration of their share (1/3rd each) in disputed house and issuance of permanent injunction.

Defendants denied allegations of plaint. They averred that Kalika Prasad purchased disputed house alongwith his uncle Jodharam by sale deed (Exh. D-1). The disputed house is self acquired property of Kalika Prasad. Kalika Prasad was owner of one half portion of whole disputed house. After death of Jodharam, his share was succeeded by his brother Jagannath Prasad. Kalika Prasad was also having one half share in Jodharam's portion of disputed house but he relinquished his share in favour of his brother Jagannath Prasad. Kalika Prasad on 4-8-1986 transferred disputed house by registered sale deed (Exh. D-2) to defendant No. 2. Defendant No. 2 is owner of the disputed house. He is in possession of the disputed house, plaintiffs have no right and title over disputed house. No cause of action arose in favour of the plaintiffs. Plaintiffs are not entitled to any relief. They prayed to dismiss the suit.

Learned Trial Court framed five issues. Plaintiffs examined three witnesses and defendants examined two witnesses.

After hearing both the parties, perusing evidence and material on record, learned Trial Court dismissed the suit filed by the plaintiffs holding that the suit house is not parental property of the plaintiffs and defendant No. 1, it was purchased by Kalika Prasad and he was sole owner of the disputed house, Kalika Prasad transferred disputed house to defendant No. 2 by sale deed and defendant No. 2 is in possession of the disputed house.

Aggrieved by the impugned judgment and decree, appellants/plaintiffs have preferred this appeal on the grounds that the impugned judgment is against law, learned Trial Court committed error in deciding issue Nos. 1 and 2 in favour of defendants, learned Trial Court committed error in drawing presumption against appellants, learned Trial Court committed error in disbelieving plaintiffs unrebutted evidence, learned Trial Court committed perversity and illegality in passing impugned judgment and decree. Learned Counsel for the appellants contended to allow the appeal and set aside impugned judgment and decree and decree the suit of the plaintiffs.

Learned Counsel for the respondents supported impugned judgment and he prayed to dismiss the appeal.

I have heard both the parties at length, perused impugned judgment, evidence and material on record.

It is not disputed that Harpal is ancestor of both the parties. Jagannath Prasad and Kalika Prasad are sons of Harpal. Sheela, Ramrati and Uma alias Munni are daughters of Kalika Prasad. Pankaj Dubey is the son of Sheela. Kalika Prasad and Harpal have expired. Ramrati (P.W. 1) deposed that Harpal purchased disputed house out of the sell proceed of his land. She deposed that she is not possessing sale deed regarding disputed house. Harpal Singh kept sale deed somewhere, not known to her. All the sisters are successors of Harpal and Kalika Prasad. The disputed house is in the possession of appellants. Kalika Prasad constructed a temple over the suit property. Kamal, Khoob Chand, Govardhan, Santoshkumar and Satish are tenants in the suit house. She also deposed that Kalika Prasad never sold the disputed house in favour of Pankaj Dubey. Vasudev (P.W. 2) and Suresh Singh (P.W. 3) also corroborated the testimony of Ramrati Bai. Both these witnesses deposed that the disputed house is situated in Sabji Mandi, Morena. Kalika Prasad constructed a temple in the disputed premises. Daughter of Kalika Prasad having possession of the disputed house. Thereafter, they also deposed that the daughters of Kalika Prasad are successors of their father. Contrary to that, Prabhu (P.W. 4) deposed that his father in law Kalika Prasad was serving in military. He purchased the disputed house by sale deed (Exh. D-1) in the year 1986. He transferred the disputed house to Pankaj respondent No. 2 for consideration of Rs. 20,000/- and executed the sale deed (Exh. D-2) in favour of Pankaj Dubey respondent No. 2. He specifically deposed that Kalika Prasad and Jodharam jointly purchased disputed house by sale deed (Exh. D-1). Plaintiffs are not in possession of the disputed house. Durga Prasad (P.W. 2) also deposed that the sale deed (Exh. D-2) was executed in his presence. He is attesting witness to sale deed (Exh. D-2). He also deposed that consideration of Rs. 20,000/- was paid to Kalika Prasad.

Ramrati (P.W. 1) in cross-examination deposed that his grandfather Harpal sold the land situated in his village and out of the sale proceed, he purchased disputed house. She also deposed that a registered sale deed was executed in favour of Harpal by seller. But no sale deed or any other document pertaining to purchase of the disputed house by Harpal from the owner of the disputed house has been produced and proved by the plaintiffs/appellants. It has not been pleaded in the plaint that Harpal sold his village land and out of the sale proceed, he purchased disputed house and she is unable to explain that to whom Harpal sold his land. Plaintiffs never tried to know about the purchasers of alleged land sold by Harpal. There is not documentary evidence to corroborate the testimony of Ramrati, Vasudev and Suresh Singh. It is settled principle of law that if there is a document regarding some transaction or sell, oral evidence is not admissible to prove the contents of document without proving document. Appellants have

not produced alleged sale deed of disputed house/land in the name of Harpal. No sufficient reason has been assigned by the plaintiffs for not producing alleged sale deed. In the absence of sale deed, it shall be presumed that there is no such sale deed in existence and the evidence of witness is not reliable in this respect.

Learned Counsel for the appellants relying upon the case reported as AIR 1963 Mys 335 Sharnappa by her L.Rs. Chander Kant v. Pathru Saheb, vehemently argued that Sections 60 and 61 of Registration Act have not been complied with. Consequently, the document (Exh. D-2) deemed to be incomplete for non-compliance of the provisions of Sections 60 and 61 and this defect is not curable. Sections 60 and 61 of Registration Act read as under:

60. Certificate of Registrar.--(1) After such of the provisions of Sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the Registering Officer shall endorse thereon a certificate containing the word "registered", together with the number and page of the book in which the document has been copied.

(2) Such certificate shall be signed, sealed and dated by the Registering Officer and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsement, referred to in Section 59 have occurred as therein mentioned.

Endorsements and certificate to be copied and document returned.--(1) The endorsements and certificate referred to and mentioned in Sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in Section 21 shall be filed in Book No. 18.

(2) The registration of the document shall thereupon be deemed complete and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in Section 52.

I have minutely perused document (Exh. D-1). On its last page, there is endorsement regarding registration. The Granth number and page number are given in the endorsement and it has been mentioned that the document has been registered. This certificate is due compliance of Sections 60 and 61 of the Registration Act. Consequently, the arguments advanced by learned Counsel for the appellants are devoid of substance. The document (Exh. D-1) is sale deed dated 12-4-57 and it has been registered on 13-4-1957. This document is more than 30 years old. As per Section 90 of the Indian Evidence Act, if any document more than 30 years old is produced in evidence from proper custody, then it will be presumed that signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting and that it was duly executed and attested by the person by whom it purports to be executed and attested, the genuineness and truthfulness of contents of the documents shall be presumed correct unless otherwise proved.

Document (Exh. D-1) is produced from proper custody. Ramrati Bai (P.W. 1) admitted that the disputed house/land previously belong to Pechuram and Moolchand. On perusal of Exh. D-1 it is clear that Pechuram alias Bhagwan Das and Moolchand sold the land of disputed house to Kalika Prasad and Jodharam. There is no evidence to prove that the document (Exh. D-1) is a forged document. Contrary to that, there is strong presumption of genuineness of the document (Exh. D-1). Document (Exh. D-1) corroborates the testimony of Prabhu (D.W. 1) and Durgaprasad (D.W. 2). There is no sufficient evidence from plaintiffs/appellants side to impeach or contradict testimony of these witnesses. I am of the view that the evidence of Prabhu and Durga Prasad is reliable in this respect. It is proved by the evidence that the land of disputed house was purchased by Jodharam and Kalika Prasad who is father of plaintiffs and defendant No. 1. Document (Exh. D-1) proves the fact that Harpal has not purchased disputed land and house from Pechuram alias Bhagwan Das and Moolchand. Consequently, the evidence led by plaintiffs/appellants in this respect is not reliable. I am of the view that the defendant has successfully proved that the disputed land over which disputed house is constructed was purchased by Kalika Prasad and Jodharam and they were having equal right and title over the land. There is sufficient evidence on record to prove that thereafter, Kalika Prasad constructed a house and temple over the disputed land. It is proved that Kalika Prasad was sole owner of the disputed land and house constructed over it. It is not proved that Harpal was the owner of the disputed land and he constructed house over the land. It is not proved that the disputed house is Joint Hindu Family property of Kalika Prasad and Jagannath and thereafter of plaintiffs and defendant No. 1. Learned Trial Court did not commit any illegality in deciding issue No. 1 in favour of defendants.

It has been proved by the defendant that Kalika Prasad by executing registered sale deed (Exh. D-2), sold disputed house to defendant No. 2 Pankaj Dubey. It is also proved that Kalika Prasad received consideration amount Rs. 20,000/- from the father of Pankaj Dubey. Evidence of Prabhu and Durga Prasad has not been impeached by the plaintiffs. Though Ramrati disputed the signature of Kalika Prasad on Exh. D-2 but she admitted that the photo attached to the sale deed (Exh. D-2) is of her father Kalika Prasad. It is proved by defendant's evidence that Kalika Prasad sold his share of disputed house to defendant No. 2 Pankaj Dubey. Learned Trial Court did not commit any illegality or perversity in holding that Kalika Prasad sold disputed house to Pankaj Dubey and Pankaj Dubey is sole owner of the disputed house. Learned Trial Court did not commit any illegality in deciding issue Nos. 1 and 2 in favour of defendant No. 2. Consequently, the finding arrived at by learned Trial Court on issue Nos. 1 and 2 is hereby affirmed.

Though Ramrati (P.W. 1), Vasudev (P.W. 2) and Suresh Singh (P.W. 3) deposed that the plaintiffs are in possession of the disputed land/house but their evidence is contradicted by sale deed (Exh. D-2) and evidence of Prabhu and Durga Prasad. Both these defendant's witnesses are consistent on this point. Their evidence is reliable. Plaintiffs failed to prove possession over the disputed house.

As per above discussion, I am of the view that the learned Trial Court has not committed any illegality or perversity in passing impugned judgment and decree and dismissing the suit of the plaintiffs. Appeal has no merit and is hereby dismissed with costs. Judgment and decree passed by the learned Trial Court is hereby affirmed. Appellants shall bear their own costs and of defendants. Advocate fee as per schedule, if certified. Decree be drawn accordingly.