
(2018) 02 MP CK 0192
In the Madhya Pradesh High Court
Case No : 37 of 2003

Surendra Singh & Ors.

APPELLANT

Vs

Atar Singh & Ors.

RESPONDENT

Date of Decision : 15-02-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 22 Rule 3](#), [Section 151](#), [Order 11 Rule 15](#), [Order 6 Rule 1](#),
[Order 11 Rule](#)

Citation : (2018) 02 MP CK 0192

Hon'ble Judges : Vivek Agarwal

Bench : Single Bench

Advocate : Deepak Shrivastava

Final Decision : Dismissed

Judgement

1. Both the second appeals are being decided by this common judgment as issue involved in both the cases is identical.

2. Second Appeal Nos.37/2003 and 107/2003 have been filed being aggrieved by judgment dated 29.10.2002 passed by the Court of 2nd

Additional District Judge, Bhind, in Civil Appeal Nos.5- A/2002 and 6-A/2002 arising out of judgment and decree dated 30.4.2002 passed by

the Court of 2nd Civil Judge, Class II, Bhind, in Civil Suit Nos. 30-A/99 & 29-A/99 for setting aside the saledeed dated 25.6.1977.

3. Brief facts leading to the present case are that Jagram, father of the appellants, had filed a suit seeking relief of correction of entries and

declaration of sale-deed dated 25.6.1977 as null and void with a further prayer for grant of temporary injunction.

4. Jagram had filed a suit claiming that out of the land measuring 6 hectares and

394 Are he has 50% share and his name is recorded in the records of Patwari. In fact he had taken loan from defendant Atar Singh as he required some money to defend several litigations which were pending before the family members but such agreement was not an agreement to sell but it was a conditional mortgage that plaintiff shall refund the amount and get the property re-conveyed in the name of the plaintiff, but it is alleged that defendant No.1 in a fraudulent manner got the sale-deed executed and this execution of the sale-deed is against the interest of Jagram by keeping him in dark, and therefore, he prayed for the aforesaid relief.

5. The subsequent suit was filed by the legal heirs of Jagram Singh alleging that Jagram Singh was not capable of alienating the suit property as a natural guardian of the plaintiffs.

6. The trial Court after appreciating the evidence and going through the material on record, has categorically held that the suit property belonging to

Jagram was sold under full consciousness and Jagram is not authorized to question the sale-deed which was executed by Jagram in favour of defendant No.1.

7. Learned counsel for the appellants submits that since application under Order 11 Rule 14 CPC was dismissed and Babu Singh was impleaded

as a party pending death of Jagram Singh in August, 1991, therefore, appellants had moved an application for amendment under the provisions of

Order 6 Rule 17 CPC before the first appellate Court but without considering such application for amendment the first appellate Court dismissed

the appeals, and therefore, present appeals have been filed which have been admitted on the following substantial question of law :-

Whether impugned judgment and decree is sustainable in law, despite non consideration of an application for amendment ?.

8. Learned counsel for the appellants has drawn attention of this Court to such application as has been filed by the appellants before the first

appellate Court under the provisions of Order 6 Rule 17 CPC. In the said application, it is mentioned that appellants' suit has been wrongly

dismissed by the trial Court. Before the trial Court plaintiffs were not knowing the terms and conditions of the sale-deed dated 25.6.1977 executed

by Jagram Singh in favour of Atar Singh and later on in discussion with the

counsel it has been revealed that there was a condition of return of land which was introduced later on in the sale-deed pending refund of the loan amount and in fact no loan amount was advanced by Atar Singh in favour of plaintiff Jagram, therefore, amendment be allowed in the suit and that will not change the nature of the pleadings.

9. This application was filed before the first appellant Court on 7.10.2002. The fact of the matter is that first appellate Court delivered its judgment

on 29th October, 2002. After filing of the application under Order 6 Rule 17 CPC on 7.10.2002 its copy was supplied to the opposite party

which had furnished its reply on 23.10.2002 and thereafter case was fixed for arguments and final arguments on 25.10.2002 when the order-sheet

reflects that appellants had filed another application under Order 11 Rule 14, 15 read with Section 151 CPC, copies of which were given to the

counsel for defendant No.1 and thereafter arguments were heard on both the applications and final arguments too were heard and case was fixed

for judgment. The first appellate Court recorded a finding that objection raised by the appellants are not tenable and confirmed the judgment and

decree passed by the trial Court. In fact, though the appellant Court has not dealt with the application under Order 6 Rule 17 CPC exclusively, but

the fact remains that such application was filed on 7.10.2002 saying that appellants had no intimation about the terms and conditions of the contract

between their father Jagram and respondent Atar Singh.

10. A perusal of the cause title of the earlier suit reveals that on 16.9.1999 amendment was carried out after death of Jagram Singh and appellants

Babu Singh, Surendra Singh, Sarman Singh and Ramashankar Singh were impleaded as party/plaintiffs in place of Jagram Singh. The trial Court

decided the suit on 30.4.2002. When such suit was decided the plaintiffs were having knowledge of the contents of the suit and the evidence which

was led by their father Jagram Singh in which terms and conditions of the contract have been discussed in detail.

11. Therefore, the contention of appellants/plaintiffs that pending death of their father they were not knowing the terms and conditions of the

contract between Jagram Singh and defendant No.1 is neither possible nor believable. No date has been given in the application under Order 6

Rule 17 CPC to show as to when plaintiffs discovered about the terms and

conditions of the contract between Jagram Singh and defendant No.1.

In fact by that time the amendment in Order 6 Rule 17 CPC was introduced whereby a proviso below order 6 Rule 17 has been inserted w.e.f.

1.7.2002. This proviso provides that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the

conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

12. In the present case, suit was decreed prior to amendment but appellants were already impleaded as a party in September, 1999 when

application under Order 22 Rule 3 was allowed vide order dated 14.9.1999. Thereafter time was sought by the plaintiffs to lead evidence as is

reflected from the order-sheet dated 13.10.1999 and time was granted for plaintiffs' evidence. Again time was granted for plaintiffs' evidence on

26.11.99. On 6.1.2000 Babusingh was represented by counsel Shri J.S.Tomar and other legal heirs by Shri Malhotra Advocate and again time

was sought to lead evidence and time was granted. Application under order 13 Rule 10 read with Section 151 CPC was filed on behalf of the

plaintiffs on 25.1.2000. Thereafter, request for summoning the sale-deed dated 25.6.1977 from the office of Sub Registrar was rejected. In view

of such order, it is apparent that plaintiffs already had knowledge about terms and conditions of the agreement, therefore, they had sought

production of such document by filing an application under Order 13 Rule 10 CPC. It is also seen that Jagram Singh was examined before the trial

Court on 21.1.1992 as PW-1 and thereafter when the appellants were substituted as legal heirs, they had given evidence of Rajendra Singh who

had deposed on 30.1.2001 about Panchayat and return sale-deed. Similarly, the evidence of Amar Singh was also given to the same effect on

30.1.2001 and that of Patwari on 26.9.2001 reveals that appellants were already having knowledge of the transactions and terms and conditions

of the contract between Jagram Singh and defendant No.1, and therefore, even on merits such application was not maintainable. Therefore, overall

affect will be that Courts below have considered the aspects as have been sought to be raised in the amendment application and this aspect about

dispute pertaining to whether it was a simpliciter sale-deed executed by Jagram Singh in favour of defendant No.1 or was a conditional mortgage

has been dealt by the Courts below, and therefore, by implication the amendment application stood rejected and will have no impact on the impugned judgment and decree and it is sustainable in law inasmuch as it cannot be said that these issues as have been sought to be raised in the amendment application were not before the first appellate Court and have not been considered by the first appellate Court. Thus, this substantial question of law is answered in negative.

13. The plea of capacity of Jagram Singh as has been raised by the plaintiffs in the subsequent suit is not material because there is evidence on record to the effect that Jagram Singh had sold only 1 Beegha 12 Biswa of land out of total belonging of 30 Beegha as is apparent from his cross-examination para 4 in suit No.154-A/87. Thus, Jagram had sold only one portion out of his undivided share and even if his four legal heirs, who were appellants, are admitted alongwith two defendants to be share holders in 30 Beegha of land, then each of the seven persons would have been granted 4 Beegha of land in their share. Out of 4 Beegha of land which was the original share of Jagram Singh, he had alienated only 1 Beegha 12 Biswa of land, therefore, it cannot be said that property which was alienated by Jagram Singh was from the share of the appellants.

14. So far as the order dated 2.3.2017 passed in Second Appeal No.1003/2005 on which reliance has been placed by the learned counsel for the appellants is concerned, the facts of that case were that application under Order 6 Rule 17 CPC in respect of restoration of possession was not decided by the first appellate Court and under such facts and circumstances, the High Court was pleased to answer the substantial question of law in affirmative and held that first appellate Court erred in not deciding the application filed under Order 6 Rule 17 CPC for amendment in respect of restoration of possession, which are distinguishable from the facts of the present case inasmuch as through amendment no substantial relief has been sought but through amendment appellants wanted to bring on record a fact that they were not aware of the terms and conditions of the contract, and therefore, those cannot be pleaded effectively before the trial Court. In the present case, it is apparent from the evidence, which has been led before the trial Court after appellants were impleaded as a party, and also from the fact that application filed on their behalf under Order

13 Rule 10 CPC was rejected that they were already aware of the terms and conditions of the agreement and had pleaded and led evidence

accordingly, and therefore, the amendment was not having any impact on the outcome of the suit or the first appeal inasmuch as both the Courts

below had already considered and decided that the saled deed was absolute and it was not a deed of mortgage as has been sought to be canvassed

by Jagram Singh and his legal heirs.

15. Plaintiffs' witnesses Preetam Singh (PW-2) and Laxman Singh (PW-3) are not reliable witnesses and they are apparently planted witnesses

who have given their evidence contrary to the claim of the plaintiffs. Thus, the substantial question of law having been answered in negative, both

the appeals fail and are dismissed.