

(2007) 10 OHC CK 0038
In the Orissa High Court
Case No : First Appeal No. 286 of 1979

Trinath Das and Others

APPELLANT

Vs

Prafulla Pradhani and Others

RESPONDENT

Date of Decision : 12-10-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Limitation Act, 1963 — Article 59

Citation : (2007) 2 OLR 100 Supp

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Advocate : B.H. Mohanty, R.K. Nayak, B. Das, S.C. Mohanty, J.K. Bastia and D.P. Mohanty, for the Appellant; S. Kr. Mohanty and S. Pattnaik for Respondent No. 3, B. Pujari, A.K. Jena and U.K. Lenka for PLRs 4/a to 4/c, 4/e and 4/f and S. Sarangi, for Minor Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Sanju Panda, J.—The Appellants who are Defendant Nos. 1 to 3 have preferred this appeal against the judgment and decree dated 23.8.1979 and 1.9.1979 respectively passed by the learned Subordinate Judge, Bolangir in Title Suit No. 212 of 1972.

2. The brief facts of the case are as follows:

The present Respondent Nos. 1 to 3 as the Plaintiffs filed Title Suit No. 212 of 1972 for declaration of title over the land measuring an area of Ac. 14.43 decimals appertaining to Holding No. 8/1 of village Antarla, Plot Nos. 377, 376, 375, 372 etc. as per the map attached to the plaint and the usufruct of the suit land which was attached under a 145 Code of Criminal Procedure proceeding.

3. The Plaintiffs' case is that they are the owner in possession of the suit land. On 2.10.1972, as Defendant Nos. 1 to 3 forcibly trespassed upon the suit land and interfered with their possession, they initiated a proceeding u/s 145 Code of

Criminal Procedure against Defendant Nos. 1 to 3. In the said proceeding, the suit land alongwith the standing paddy crops was attached and during pendency of the proceeding, it came to the knowledge of the Plaintiffs that Defendant Nos. 4 to 6, who are the brothers of the Plaintiffs, having no right over the suit land have executed a sale deed in favour of Defendant Nos. 1 to 3 who have fraudulently mutated their names in the mutation proceeding. It was further stated by the Plaintiffs that they were separated from Defendant Nos. 4 to 6 at the time of the alleged execution of the sale deed and the said sale deed was not for legal necessity or for the benefit of the family of the Plaintiffs. It was also averred that the sale deed was executed without their consent and also without any consideration, the Plaintiffs were not minors at the time of alleged sale and Defendant No. 4 was not the guardian of the Plaintiffs and hence, the sale is not binding on them.

4. The present Appellants who are contesting Defendants 1 to 3 filed their written-statements traversing the averments made in the plaint. They averred that Defendant Nos. 4 to 6 and the Plaintiffs belonged to a joint family and the suit land was a joint family property. There was no partition between the Plaintiffs and Defendant Nos. 4 to 6. Defendant No. 4 who was the Manager and Karta of the family had incurred some loans from one Padman Pradhani and others. The suit land was sold by him to repay that loan. As the Plaintiffs and Defendant Nos. 5 and 6 were minors at the time of sale, Defendant No. 4 being their guardian received the consideration amount of Rs. 6,000/- and executed the registered sale deed on 10.09.1962. From the date of sale, Defendant Nos. 1 to 3 are in possession of the suit land and they had raised crops in the suit land in the year of attachment. The sale was for the benefit of the family of the Plaintiffs and Defendants 4 to 6. Before execution of the sale deed, Defendant Nos. 4 to 6 applied for permission to sell the suit land and the same was granted by the Revenue Authorities after due proclamation and with the consent of the Plaintiffs, Defendant Nos. 1 to 3 mutated their names in respect of the suit land. In the current settlement, their names were also recorded and they are paying rent regularly for the suit land. As such, Defendant Nos. 1 to 3 got their right, title and interest over the suit land and they prayed for dismissal of the suit with costs.

5. The Defendants 4 to 6 were set ex parte.

6. Plaintiffs in support of their case, examined five witnesses including Plaintiff No. 2 as P.W. 1 and filed documentary evidence which are marked as Exts. 1 to 3. Defendant Nos. 1 to 3 also examined three witnesses including Defendant No. 1 as D.W. 1 and filed documents which are marked as Exts. A to D.

7. The learned trial Court framed as many as ten issues to decide the disputes between the parties. Analysing the evidence on record, the learned trial Court has recorded the following findings that; there was no partition of the suit properties by metes and bounds among the parties and the suit lands are the joint family properties; that the Plaintiffs were major at the time of execution of

the sale deed dated 10.9.1962 vide Ext. A; that the consideration money has been paid and the same has not been utilized for legal necessity or for the benefits of the family and hence, Plaintiffs are not bound by the same sale deed and Plaintiff No. 2 has not given his consent for mutation of the suit land in favour of Defendant Nos. 1 to 3; that Defendants 1 to 3 are the bona fide purchasers after paying consideration to Defendant Nos. 4 to 6 and hence, the said property will be allotted from the share of Defendant Nos. 4 to 6; that the suit is not barred by Article 59 of the Limitation Act because it was instituted within three years from the date of knowledge of the Plaintiff during 145 Code of Criminal Procedure proceeding and that suit being valued at Rs. 6,000/- and the Plaintiffs having paid Court-fees of Rs. 22.50 only, the balance amount of Rs. 127.50 Court-fees has to be paid by the Plaintiffs and in case of non-payment of Court-fees, the Collector shall realize the balance Court-fees from the Plaintiffs under Orissa Public Demand Recovery Act.

8. On the above findings, learned trial Court decreed the suit in part on contest against Defendant Nos. 1 to 3 with costs and ex parte against Defendant Nos. 4 to 6 without costs. Thus, joint title of the Plaintiffs and Defendant Nos. 1 to 3 was declared over the suit land and over the usufruct attached during 145 Code of Criminal Procedure proceeding and the same have also been divided between the parties.

9. Learned Counsel appearing for the Appellant vehemently argued that the findings arrived at by the learned trial Court is illegal and liable to be set aside. He submitted that the learned trial Court should have held that the suit is barred by time as the sale deed was executed in the year 1962 and the suit was filed on 25.11.1972 by which time the Plaintiffs were major. Thus, the suit challenging the said sale deed should have been filed within three years from the date the Plaintiffs became major. The limitation should not be counted from the date of knowledge but from the date of attaining majority by the parties.

10. Learned Counsel appearing for the Respondents-Plaintiffs supported the judgment of the trial Court and submitted that as the learned trial Court has considered all aspects of the case and come to a just and proper conclusion in deciding the right of the parties, no interference is warranted and hence, the appeal is liable to be dismissed.

11. Considering the above submissions of the parties and after examining the materials available on record in respect of oral as well as documentary evidence adduced by the parties, this Court will have to examine as to whether at the time of execution of the sale deed the Plaintiffs were minor or not, whether the limitation will be counted from the date the Plaintiffs became major or from the date of their knowledge, and whether the property was joint or not ?

12. In this case, P.W. 3 is the mother of the Plaintiffs and Defendant Nos. 4 to 6. She has deposed that there was no partition between the Plaintiffs and Defendants 4 to 6. She was managing the house and family affairs. The sale

deed was not within her knowledge and no consideration money was paid to her. Since the property was not partitioned by metes and bounds, the Plaintiffs have got 2/3rd share over the suit land. They are not bound by the sale deed executed by Defendant Nos. 4 to 6. She has proved the birth register of the year 1940 and 1942, Exts. 1 and 2 respectively, to show the date of birth of the sons of Padman Pradhani, father of the Plaintiffs. P.W. 5, the deed writer, in his evidence has stated that the Plaintiffs were major in the year 1962. The Defendants have not been able to elicit any contradictory material while cross-examining those witnesses regarding the age of the Plaintiffs at the time of execution of the alleged sale deed in the year 1962. Ext. B also reveals that Defendant Nos. 4 to 6 representing the Plaintiffs as minors obtained permission from the S.D.O., Bolangir to sell the land.

13. From the discussions made in the above paragraph, it reveals that Exts. 1 and 2, the certified copies of the entries in the birth registers of the years 1940 and 1942 coupled with the oral evidence of P.W. 3, the mother of the Plaintiffs and Defendant No. 4 to 6 prove that the Plaintiffs were major at the time of execution of the sale deed. However, Defendant Nos. 1 to 3 have proved that they have paid the consideration money to Defendant Nos. 4 to 6 for the suit land. Admittedly, Defendant Nos. 4 to 6 have a share in the suit land. Thus, they being the bona fide purchasers are entitled to the extent of the share of Defendant Nos. 4 to 6. The Plaintiffs were major at the time of execution of sale and they are not bound by the sale deed. It also reveals from the evidence on record that there was no partition by metes and bounds between Plaintiffs and Defendant Nos. 4 to 6. Hence, both the Plaintiffs and Defendants 1 to 3 have title over the disputed land. The execution of the sale deed having come to the knowledge of the Plaintiffs during 145 Code of Criminal Procedure proceeding, the limitation will start from the date of the knowledge and not from the date when they have attained majority.

14. So far as the question of limitation is concerned, for better appreciation it is necessary to extract Article 59 of the Limitation Act, 1963 which reads as follows:

Description of suit - Period of limitation - Time from which period begin to run

Article 59 applies to all suits (1) to cancel or set aside all instruments; (2) to cancel or set aside any decree and (3) for rescission of contract. As regards a suit for cancelling or setting aside an instrument or decree, the limitation starts from the date when the facts entitling the Plaintiff to set aside or cancel the instruments or the decree became first known to him. This Article is the general Article. The Supreme Court in *P.C.K. Muthia Chettiar and Others Vs. V.E.S. Shanmugham Chettiar (dead) and Another*, has held that to a suit for setting aside or cancellation of the instrument or decree on the ground of fraud, Article 59 is attracted. In such suit, the starting point of limitation will be from the date of knowledge of the alleged fraud.

15. In the present case, the definite case of the Plaintiffs is that during the

pendency of the proceeding u/s 145 Code of Criminal Procedure, it came to their knowledge for the first time, i.e., in the year 1972, that a sale deed was executed by Defendant Nos. 4 to 6 on 10.9.1962. Thus, immediately thereafter they filed the suit in the year 1972. The Defendants did not adduce any rebuttal evidence to the contract. The Plaintiffs have proved that before 1972 they had no knowledge about the existence of the purported sale deed. Hence, limitation should be counted from the date of their knowledge that there was a sale deed dated 10.9.1962.

16. Defendant Nos. 4 to 6 have a share in the suit land. Thus, they being the bona fide purchasers are entitled to the extent of the share of Defendant Nos. 4 to 6. The Plaintiffs were major at the time of the sale and they are not bound by the sale deed. It also reveals from the evidence on record that there was no partition by metes and bounds between the Plaintiffs and Defendants 4 to 6. Hence, both the Plaintiffs and Defendants 1 to 3 have titled over the disputed land. However, Defendants 1 to 3 have proved that they have paid the consideration money to Defendants 4 to 6 for the suit land.

17. In view of the above finding, this appeal has no merit. Accordingly, the first appeal is dismissed and the judgment and decree dated 23.8.1979 and 1.9.1979 respectively passed by the Subordinate Judge, Bolangir in Title Suit No. 212 of 1972 are hereby confirmed.

There is no order as to costs.