

Jagan Vs. Maharani

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Court : Madhya Pradesh

Decided On : Jan-30-2013

Appellant : Jagan

Respondent : Maharani

Advocate for Def. : Shri. B.J.Chourasia

Advocate for Pet/Ap. : Shri. Vishal Dhagat

Judgement :

Second Appeal No.1856 / 2005 (Jagan & others..Vs.Maharani & otheRs.30-01-2013 Shri Vishal Dhagat, learned counsel for the appellants.

Shri B.J.Chourasia, learned counsel for the respondents.

Heard the learned counsel appearing for the parties on I.A.No.5429/2005 filed by the appellants for condonation of delay in filing the appeal.

It is submitted by the learned counsel for the appellants that when the appellants were prevented from entering the field by the respondents, they contacted their counsel and thereafter came to knot about passing of the judgment and decree against them and in such circumstances 54 days' delay in filing the appeal has occurred which deserves to be condoned.

Notices on the said application were issued to the respondents and though no reply has been filed to the aforesaid application, it is vehemently opposed by the respondents.

Having heard the learned counsel for the parties and for the reasons mentioned therein the application for condonation of delay is allowed and delay in filing the appeal is condoned.

Heard the learned counsel for the appellants on the question of admission.

The appellants have filed this appeal being aggrieved by the judgment and decree dated 27-1-2005 passed by the FiRs.Additional District Judge, Damoh, in C.A.No.1- A/2002, whereby the judgment and decree dated 21-12-2001, passed by the Second Civil Judge Class I, Damoh, in C.S.No.75-A/98 has been set aside.

It is submitted by the learned counsel for the appellants that the respondents had filed a suit for declaration and permanent injunction in respect of two acres of KhaSr.No.13, situated at village Hardua Mudar, Tahsil and District Damoh on the ground that the land, in question, belonged to them but as they had taken a loan from one Nenhelal Jain, they had executed a sale deed dated 25-3-1976 in favour of the appellants as security for the loan and, therefore, a sale deed could not be enforced, more so, in view of the provisions of Section 165 of the M.P.Land Revenue Code, 1959, the respondents being tribal.

It is stated that the suit filed by the respondents was dismissed by the trial Court on the ground that it was barred by limitation, that the sale deed was not a sham transaction, the documents were executed as collateral security for the loan and that the respondents were not in possession.

However, on an appeal being filed the fiRs.appellate Court has reversed the well reasoned judgment and decree of the trial Court, hence this appeal.

It is submitted by the learned counsel for the appellants that the fiRs.appellate Court has wrongly reversed the findings of the trial Court in respect of the aforesaid issues totally misreading the oral and documentary evidence on record.

It is submitted that as the execution of the sale deed on 25-3-1976 is admitted, therefore, a suit for declaration filed by the respondents on 29-10-1996 was apparently barred by limitation and as admittedly possession of the property in question was taken over from the appellants in proceedings under Section 145 of the Cr.P.C., therefore, the findings regarding possession have also been wrongly reversed by the fiRs.appellate Court.

Having heard the learned counsel for the appellants and having perused the impugned judgment and decree it is apparent that a sale deed was executed by the respondents in favour of the appellants, dated 25-3-1976, however, no steps were admittedly taken up by them for either getting the land mutated in their names or to seek any declaration in that regard for a long period of nearly 20 years and it was for the fiRs.time that the appellants filed an application for mutation in the year 1993 which led to a dispute between the parties and filing of the suit.

It is also undisputed and in fact the case of the appellant themselves that proceedings under Sections 145 of the Cr.P.C.in respect of the dispute between the parties was taken up much prior to the filing of the suit and as stated by the appellants themselves, possession of the land was taken away from them in the said proceedings but admittedly no suit for declaration of title and possession etc.was ever filed by the appellants in spite of being dispossessed in proceedings under Section 145 Cr.P.C.It is also apparent that apart from the aforesaid, the Court below has also taken note of the fact that the respondents had stated that the amount was repaid to Nanhelal Jain and thereafter he had promised to get the sale deed executed but before he could do so he died and that the dispute arose between the parties for the fiRs.time when the respondents came to knot that the appellants had filed an application for mutation in the year 1993 and obtained orders in that regard against which the respondents had taken up further proceedings to get the mutation orders set aside and thereafter filed a suit for declaration and permanent injunction.

The fiRs.appellate Court, on the basis of the aforesaid facts, has recorded a finding that the suit filed by the respondents for declaration and permanent

injunction was not barred by limitation.

In view of the aforesaid facts and circumstances, I am of the considered opinion that the findings recorded by the fiRs.appellate Court are based on oral and documentary evidence on record as well as the admitted and undisputed facts of the case and, therefore, no substantial question of law arises for adjudication in the present appeal.

In the circumstances, as no substantial question of law arises for adjudication in the present appeal, being meritless, is accordingly dismissed.

(R.S.Jha) Judge mct

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