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Court : Madhya Pradesh

Decided On : Jan-10-2014

Appellant : Mahadev

Respondent : ShiVshankar Prasad Judgement Given By: Hon'ble Shri Justice Sanjay Yadav

Advocate for Pet/Ap. : Shri. Sanjeev Mishra

Judgement :

1 S.A.No.578/2010 10.1.2014 Shri Sanjeev Mishra, learned counsel for the appellant.

Heard on admission.

This is defendants appeal directed against the judgment and decree dated 15.12.2010 passed by fiRs.Additional District Judge, Sidhi in regular Civil Appeal No.67 A/2009, whereby while reversing the judgment and decree dated 28.6.2007 passed in Civil Suit No.12-A/1999 by Additional Judge to the fiRs.Civil Judge Class I, Deosar has decreed the Civil Suit in favour of the respondent/plaintiff.

Suit by the plaintiff was for declaration of title and ownership over 0.13 Acre (0.053 hectare) being part of 0.18 Acre of KhaSr.No.1186 situated at village Sarai, Tehsil Deosar, District Sidhi and that the mutation order dated 14.11.1983 and the

appellate order dated 25.2.1988, be declared null and void and perpetual injunction that the defendants shall not interfere with the possession of plaintiff over suit property.

The declaration was sought on the contentions that the suit property originally belonged to Buchau Bani, his grand father, after whose death it devolved in Nand Kishore (plaintiffs' father)_and Ramavatar, (defendant No.3).In 1967 the property was equally partitioned between Nand Kishore and Ramawatar.

The partition though was not recorded in the revenue record.

That due to differences between the plaintiff and his father (Nand Kishore).plaintiff started living separately.

That between the period from 1977 2 to 1985, Nand Kishore and Ramavtar, sold property from their respective shares.

On 5.9.1985 the plaintiff purchased properties from Nand Kishore and Ramavtar including part of KhaSr.No.1186 admeasuring, 0.18 Acre.

That remaining 0.5 Acre came to be owned by defendant Nos.3 to 9.

It was contended that though other lands purchased from Nand Kishore and Ramavtar were mutated in the name of plaintiff, however, suit land by mistake could not be mutated yet the plaintiff continued to be in possession of suit land.

That on 30.1.1999 respondent/defendant No.1 started exerting his possession over the suit property, when on enquiry plaintiff came to know that the defendant is asserting his right on the basis of mutation in revenue record ordered on 14.11.1983 on the basis of some sale deed executed by defendant No.3 Ramavtar.

Respondent/defendants No.1 and 2 denied the entire plaint allegations.

It was stated that the suit property belonged to Ramavtar and was purchased by them on 12.8.1975 and since then they had constructed the house over the suit land and are in possession thereof.

Trial Court framed the following issues: (i) whether the plaintiff is the owner of suit property situated at village Sarai, Survey No.1186 Area 0.13 Acre out of 0.18 Acre.

(ii) whether the plaintiff is in possession of suit property marked with red in Annexure 'A'.

(iii) whether the plaintiff is entitled for permanent injunction.

3 (iv) relief and costs.

(v) whether the suit is filed within, limitation.

All the issues were answered against the plaintiff.

The suit was dismissed on merit as well was found to be barred by limitation.

To arrive at a conclusion that it is the respondent/defendants No.1 and 2 who were the owner of suit property, trial Court relied on Ex.

D-1 dated 14.11.1983, the order regarding mutation of the name of respondents/defendants in the revenue record allegedly on the basis of some sale deed.

No sale deed, however, was brought on record by the defendants to have substantiated their contention, regarding sale deed being executed in their favour.

The trial Court also returned a finding that over the suit land the defendants had initiated to construct a house in the year 1975.

Furthermore trial Court observed that the mutation order dated 14.11.1983 was well within the knowledge of the plaintiff and, therefore, the suit for it being belatedly filed was dismissed being barred by time.

In an appeal, however, the findings by the trial Court has been reversed by the Appellate Court vide impugned judgment and decree dated 15.4.2010.

The fiRs.Appellate Court on the basis of the registered sale deed dated 5.9.1985 exhibit P/1 and comparing it with the mutation order dated 14.11.1983 and in

absence of any other valid document of title in favour of defendant No.1, found the plaintiff to have a better title over the suit property.

Simultaneously, the fiRs.Appellate Court also 4 found that though the defendants were in possession over the suit property; however, on the basis of a document which did not confer any title in them, and the plaintiff having better title who on discovering the fact that the mutation in revenue record was done on the basis of forged sale deed, decreed the suit.

The judgment and decree dated 15.4.2010 is being assailed on the grounds that the fiRs.Appellate Court failed to consider that the suit property was a joint property of plaintiffs father and the defendant No.3 (Ramavtar) and has erred in holding that the alleged transfer of suit land in favour of defendant No.1 on the basis whereof the revenue Courts affirmed mutation in favour of defendant No.1 was not valid.

It is further contended that the fiRs.Appellate Court grossly erred in ignoring that the suit for declaration filed after a period of limitation was barred.

As to the contention regarding joint property, it is the finding of both the Courts that the suit property was part of the property which was owned by Buchau Bani, father of Nand Kishore and Ramavtar (defendant No.3).That after the death of Buchau Bani, the property was settled amongst his two sons Nand Kishore and Ramavtar who came in possession of their respective shares and also sold out of their shares.

The suit property is said to be acquired by sale and both the plaintiff and defendant No.1 respectively claims their right over it.

Whereas the plaintiff brought the suit on the basis of the sale deed 5.9.1985; exhibit P/1 and that when in the year 5 1999 the defendant No.1 had started exerting his possession over the suit property he made enquiries whereon it was informed to him by defendant No.3 Ramavtar that the mutation by order dated 14.11.1983 was on the basis of forged sale deed which was not within his knowledge and when he came to know on 16.4.1986 he preferred an appeal : 20

vihi/87-88 before Sub-Divisional Officer Devsar, who dismissed the appeal on 25.2.1988.

The plaintiff thus having come to know that the mutation was on the basis of forged sale deed filed the suit in question.

On the contrary the defendant No.1 except the order dated 14.11.1983 had no other document to establish his title over the suit property.

The order dated 14.11.1983 Ex.

D/1 reveals that the mutation was done on the basis of jotting a piece of paper (paragraph 2 of Ex.

D/1 recites: vkosnd vkSj vukosnd esa eq[; fojks/kkHkkl bl ckr dk gS fd og ,d Vhi dks fodz; i= ekurk gS vkSj nwljk vukosnd mls ,d izdkj dk lafonk ekurk gS ijUrq fuEu rF;ksa ds vk/kkj ij Vhi ,d izdkj dk fodz; i= gha gS) The order further reveals the fact that the paper which was treated to be a sale deed was later on impounded and the mutating authority i.e. Tehsildar treated it to be as Registered Sale Deed.

Section 54 of the Transfer of Property Act, 1882 stipulates that:- "Sale is transfer of ownership in exchange for a price paid or promised or part paid and 6 part promised.

It further stipulates that such transfer is in the case of tangible, immovable property of the value of Rs.100/- and upwards, or in the case of a revision or other intangible thing, can be made only by registered instrument." Thus, unless it is established that the transfer of right in immovable property having the value of Rs.100/- and upwards is by registered instrument, no title is conferred on the transferee.

In the case at hand the defendant No.1, however, did not file any document establishing conferment of title over suit property nor is he able to establish that Ramavtar was the owner of the suit property.

The plaintiff on the other hand has been able to establish that it was only after coming to know that despite of their being no title the suit land was got mutated by

defendant No.1 he is well within his right in seeking declaration immediately after acquiring the knowledge of said forgery being committed by defendant No.1, as the title of the plaintiff over the suit property acquired vide Registered sale deed dated 5.9.1985 was not extinguished.

It has been held in Santosh v.

Jagat Ram (2010) 3 SCC251 26.

A fraud puts an end to everything.

It is a settled position in law that such a decree is nothing, but a nullity.

It has come in the evidence that when the respondents herein started disturbing the possession of the appellant and also started bragging about a decree having been obtained by them, the appellant chose to file a suit.

In that view, her 7 suit filed in 1990 would be absolutely within time.

The casual observation made by the High Court that her suit would be barred by limitation, is also wholly incorrect.

Having thus considered, no substantial question of law arises as would warrant admission of the Second Appeal.

Consequently, it is dismissed at admission stage.

No costs.

(SANJAY YADAV) JUDGE VKV/-

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