

Mangal Singh Vs. Prithvi Singh

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Court : Rajasthan Jodhpur

Decided On : Mar-14-2014

Appellant : Mangal Singh

Respondent : Prithvi Singh

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

JUDGMENT

: S.B.CIVIL SECOND APPEAL NO.194/2009 Mangal Singh versus Prithvi Raj Singh Date of Judgment :: 14.3.2014 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.C.P.Soni, for the appellant/s.

Mr.R.K.Thanvi, Senior Advocate assisted by Mr.Anil Joshi, for the respondent/s.

---- BY THE COURT: This second appeal under Section 100 CPC is directed against the judgment and decree dated 21.4.2009 passed by the Additional District Judge, Parbatsar, whereby the appeal filed by the appellant against the judgment and decree dated 20.4.2005 passed by the Civil Judge (Jr.Div.).Kuchaman City has been dismissed.

The facts in brief may be noticed thus : Respondent Prathvi Raj Singh filed a suit for possession etc.against the appellant, his step brother on 22.10.1986 with the averments that in Ward No.10 of Kuchaman City a house and two shops of the ownership of the plaintiff's father Manohar Singh are situated, which were

constructed by him from his own income; a patta from 2 Municipality, Kuchaman City was issued in his name and the defendant was serving with Air Force and used to live at Jodhpur; in 1982, he came back to Kuchaman City and started residing in a part of the house, which was indicated in the map attached to the plaint; the father sought the defendant to vacate the house and therefore, a suit was filed on 7.8.1984 by the father when the defendant made alterations in the portion of the house in his possession.

During the pendency of the suit, the father died on 2.10.1984, who had executed a Will dated 11.4.1980 in favour of the plaintiff bequeathing the entire house in favour of the plaintiff based on which he filed an application under Order XXII CPC before the trial court, however, the said suit was dismissed for non-prosecution as the counsel pleaded no instructions, possession of the suit property was sought.

A written statement was filed by the appellant-defendant and it was claimed that the defendant has also contributed in acquiring / building the suit property and as the family was joint, the patta was issued in the name of deceased Manohar Singh; his family used to reside at Kuchaman; the suit property was in his possession ever since, the same was constructed.

It was claimed that on 8.6.1982, deceased Manohar Singh executed an agreement in favour of the defendant and the suit property was given to him.

The Will in favour of the plaintiff was disputed; it was claimed that an affidavit was filed before the Municipality, Kuchaman City by deceased Manohar Singh on 16.6.1983, in which it was admitted that he has partitioned the property 3 among his sons and therefore, the plaintiff does not get a right in the suit property.

A replication was filed and the averments contained in the written statement were denied and the averments contained in the plaint were reiterated.

The document dated 8.6.1982 was disputed and it was submitted that the same was not admissible for want of registration.

The trial court framed 09 issues.

On behalf of the plaintiff, 09 witnesses were examined and 03 documents were exhibited and on behalf of the defendant, 05 witnesses were examined and 04 documents were exhibited.

During the pendency of the suit, on 21.5.1998, the trial court held that document Ex.-A/1 i.e. the partition deed dated 8.6.1982 was inadmissible.

After hearing the parties, the trial court came to the conclusion that the suit property was purchased / constructed by deceased Manohar Singh - father of the plaintiff; the defendant was in possession of the suit property without any right; the Will was proved by producing scribe Radhey Shyam (PW-1) and attesting witnesses Abdul Gafar and Ganga Ram (PW-2 & PW-3) and based on the admission regarding execution of the Will by the defendant himself, who appeared as DW-4; other brothers were not necessary parties; obtaining probate before filing the suit was not necessary; the suit was properly valued; and ultimately, decreed the suit filed by the plaintiff.

Feeling aggrieved, the appellant filed fiRs.appeal.

The learned FiRs.Appellate Court, after hearing the parties, came to the conclusion that the rejection of the document Ex.-A/1 by the 4 trial court was justified.

The findings of the trial court on the ownership of the suit property; the same was constructed by deceased Manohar Singh; the defendant was in possession under permission from his father; the Will in favour of the plaintiff was proved were upheld and therefore, came to the conclusion that the impugned judgment did not require any interference.

It was submitted by learned counsel for the appellant that the courts below were not justified in decreeing the suit / dismissing the appeal and the findings recorded by the courts below are vitiated.

It was submitted that the upholding of the Will and rejection of the document Ex.-A/1 was not justified.

Learned counsel for the respondent supported the judgment impugned.

I have considered the rival submissions.

Both the courts below have concurrently found, based on the oral and documentary evidence that the Will dated 11.4.1980 was duly executed by deceased Manohar Singh, the same was properly proved by producing the scribe and two attesting witnesses and no suspicious circumstances existed.

Further, the defendant-appellant himself admitted in the cross-objection regarding the execution of the Will.

The finding recorded by both the courts below on this aspect is essentially finding of fact and counsel for the appellant has failed to indicate any perversity in the said finding.

So far as document Ex.A/1 relied on by the defendant-appellant is concerned, the document is titled " ", mentions 5 " " and further goes on to indicate " ".

As per the title and the language of the document, the same is a 'deed of partition'.

The document was rightly held as inadmissible by the courts below on account of its purport and language and based on the case of the appellant.

However, learned counsel for the appellant submits that though the same was not the case set up in the written statement, the said document is in the nature of a Will and therefore, not only that the same did not require registration, it also supersedes Will dated 11.4.1980 allegedly executed in favour of the plaintiff.

The submission is baseless, while in the written statement, the document Ex.-A/1 has been termed as an agreement, the same was claimed as family arrangement during submissions before the courts below and the plea now sought to be raised is only an attempt to set up a new case, which was never the plea raised and as such the same cannot be permitted besides apparently, no evidence was led to prove the said document as such.

The findings recorded by the courts below regarding expenditure on the house, nature of the appellant's possession are essentially findings of fact and the same does not call for any interference in exercise of second appellate jurisdiction.

Consequently, there is no substance in this appeal and the same is, therefore, dismissed.

(ARUN BHANSALI).J.

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