

Rahul Vs. M/s. Allied Reality Private Ltd. and Others

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Court : Delhi

Decided On : Aug-18-2015

Judge : Pradeep Nandrajog & the Honourable Ms. Justice Mukta Gupta

Appeal No. : RFA(OS) No. 114 of 2014

Appellant : Rahul

Respondent : M/s. Allied Reality Private Ltd. and Others

Judgement :

Pradeep Nandrajog, J.

1. Rahul, the appellant filed a suit, impleading M/s.Allied Reality Pvt. Ltd., Satish Kumar, J.P.Jain and Dheeraj Kumar as defendants No.1 to 4 respectively. He pleaded that he was born on March 12, 1990. He pleaded that 4 bigha and 8 biswa land comprised in Khasra No.444 in the revenue estate of village Kadipur Kaushak was inherited by him and his brother Dheeraj Kumar (defendant No.4) on the death of their father on January 17, 1998 and their names were mutated as the owners of the land in the revenue record. He pleaded that in the first week of April 2008 he received a notice from the Tehsildar to appear before him on April 07, 2008 concerning some mutation proceedings pertaining to the land in question and when he went to the office of the Tehsildar he learnt that on the strength of a sale-deed dated September 20, 2006 executed by J.P.Jain in favour of M/s.Allied Reality Pvt. Ltd. the said company had applied for mutation of the suit land in its

name. He pleaded that he learnt that on the strength of an unregistered power of attorney allegedly executed by him on May 18, 2004 in favour of his brother Dheeraj, in turn Dheeraj had executed a registered power of attorney in favour of Satish Kumar (defendant No.2) on May 19, 2004 and that on the strength of said power of attorney Satish Kumar had executed an unregistered power of attorney on June 18, 2004 in favour of Sh.J.P.Jain (defendant No.3), and on the strength of said chain of power of attorneys the sale-deed dated September 20, 2006 was executed by Sh.J.P.Jain in favour of the defendant No.1 company. He pleaded that he had never executed any power of attorney on May 18, 2004 and further pleaded his legal incapacity to do so by pleading that born on March 12, 1990 he was a minor on May 18, 2004 and could thus not empower his brother to sell his half share in the suit land. On these pleadings Rahul pleaded that the sale-deed dated September 20, 2006 be cancelled. The alleged power of attorney executed by him on May 18, 2004 be declared null and void and that the power of attorneys dated May 19, 2004 and June 18, 2004 be also declared null and void.

2. On being served with summons in the suit, defendants No.1, 3 and 4 chose not to appear and defend the suit. Only defendant No.2 defended the suit, and in the written statement he raised the plea of res-judicata in the following words:-

2) The suit is further barred by the principle of res-judicata as the case on the similar set of the facts and circumstances, legal proposition between the same parties was filed by the plaintiff before the learned Civil Judge, Delhi (Sh.Pulastya Parmachala). The suit has been dismissed with cost vide order dated 23.4.05. ?

He denied that Rahul was a minor when he executed the power of attorney dated May 18, 2004 in favour of his brother Dheeraj. He pleaded in para 1 of the written statement that Rahul and his brother agreed to sell land comprised in Khasra No.444 and for which they received Rs.5,00,000/- (Rupees Five Lacs only).

3. On the pleadings of the parties vide order dated September 27, 2010 the following 5 issues were settled:-

(i) Whether the suit is barred on the ground of res judicata? OPD-2

(ii) Whether the sale-deed dated 20.09.2006, Power of Attorneys dated 18.05.2004, 19.05.2004, 18.06.2004 are Power of Attorneys are liable to be declared as null and void? OPP

(iii) Whether the suit is liable to be-dismissed on account of alleged misrepresentation as articulated in Paragraph (1) of the preliminary objections to the written statement? OPD

(iv) Whether the plaintiff is entitled to injunction as against the defendants as prayed for in prayer clause (e) of the plaint? OPP

(v) Relief. ?

4. Appearing as his witness Rahul deposed as per the facts pleaded by him in the plaint and proved the following documents:-

(i) Ex.PW-1/1. A certificate dated April 08, 2008 issued by the Principal of Nigam Prathmik Sahshiksha Vidyalaya certifying that as per school record Rahul had studied in the school from Class I to Class V and as per the school record Rahul's date of birth was March 12, 1990.

(ii) Ex.PW-1/2. A notice dated nil issued by the Tehsildar requiring Rahul to appear before him on April 07, 2008.

(iii) Ex.PW-1/3. Certified copy of the sale-deed dated September 20, 2006.

5. On being cross-examined Rahul said that he could neither understand nor write in English and that he did not remember the name of the school where he studied. He said that the date March 12, 1990 was recorded in his Janampatri but said that he had not brought the same.

6. Satish Kumar examined himself as his witness and proved the certified copy of a decree dated April 23, 2005 as Ex.D-2/1 passed by Sh.Pulastya Paramachala which shows that suit No.114/2005 was instituted by Dheeraj and Rahul through his mother Munni Devi against one Indraj Saini and the defendant No.2 : Satish. The decree was passed without a contest recording that on April 20, 2005 the parties had appeared before the Court and had made statements. It records that

Dheeraj Kumar admitted having sold his share in 4 bigha and 8 biswa land comprised in Khasra No.444, Village Kadipur Kaushak and had given possession of half land to Indraj Saini. It records that Munni Devi, the mother of Rahul made a statement that she had knowledge about sale of half of the suit land to defendant No.1 in that suit. The decree passed is as under:-

5. From the statement of plaintiff No.1, this suit becomes non-maintainable on his behalf. From the statement of Smt.Munni Devi i.e. guardian of plaintiff No.2, it becomes clear that story given in the plaint is not correct regarding taking of signature of plaintiff No.1 and Smt.Munni Devi on blank papers. Furthermore, when defendant No.1 was already given possession around two and half months back, then there is no question of any need for defendant No.1 to come to the plaintiff and to threaten them for forcible dispossession. Thus from the statement of aforesaid persons, it becomes totally unambiguous situation that defendant No.1 was sold half of the suit property by plaintiff No.1 within the knowledge of natural guardian of plaintiff No.2. In fact after examination of these persons, it has become clear now that present suit has been filed giving a false story and in that situation, this suit has to fail being a frivolous one. ?

7. For record we need to note that though in his testimony, Satish has proved the judgment and decree dated April 23, 2005 as Ex.D-2/1, but no exhibit mark has been formally put on the document.

8. One Taj Singh was examined by Satish as D-2-W2, who deposed that in his presence Rahul and his brother Dheeraj had taken money from Satish to sell their share in the suit land. Relevant would it be to note that during cross-examination Taj Singh stated:-

I knew that Rahul was also the co-owner of the land. In my presence, no document was ever signed. In my presence, defendant No.2 had given an amount of Rs.1,50,000/- to Dheeraj and defendant No.2 got a period of three months to make the remaining payment. ?

9. Vide impugned judgment and decree dated April 30, 2013, imposing cost in sum of Rs.5,00,000/- (Rupees Five Lacs only) upon Rahul, and holding that the suit

filed by him was an attempt to arm twist the defendants, the learned Single Judge has clubbed issues No.2 and 4 for adjudication and has clubbed issues No.1, 3 and 5 for adjudication.

10. Holding that Rahul did not examine any officer or a representative of the school where he purportedly studied, Ex.PW-1/1 has not been accepted by the learned Single Judge as evidence of date of birth of Rahul, and the learned Single Judge has highlighted that Rahul's testimony did not inspire confidence because on the one hand he claimed to have studied up to Class VI and on the other hand he stated that he cannot read and write either English or Hindi. This is the reason to hold against Rahul on issues No.2 and 4.

11. On issues No.1, 3 and 5, the learned Single Judge has verbatim reproduced the judgment and decree dated April 23, 2005 in suit No.114/2005 to hold that the instant suit filed by Rahul was barred by resjudicata. The learned Judge has also held that it was Rahul's duty to have disclosed said fact in the plaint i.e. that acting on his behalf, his mother had filed suit No.114/2005.

12. The learned Judge has noted two decisions on fraud to hold that Rahul had played a fraud by suppressing the fact that acting on his behalf his mother had filed a suit which was dismissed.

13. The rule of res-judicata does not strike at the root of the jurisdiction of the court trying the subsequent suit. It is a rule of estoppel by judgment based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same cause.

14. The plea of res-judicata is founded on proof of certain facts and then by applying the law to the facts so found. It is, therefore, necessary that the foundation for the plea must be laid in the pleadings and then an issue must be settled and tried.

15. Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and judgment in the previous case. May be in a given case only copy of judgment in previous suit is filed in proof of plea of res-

judicata and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in the decision reported as (1976) 3 SCR 721 Syed Mohd. Salie Labbai (Dead) By Lrs. and Ors. Vs. Mohd. Hanifa (Dead) by Lrs. and Ors., the basic method to decide the question of res-judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as resjudicata. It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the judgment. The Constitution Bench in the judgment reported as (1964) 7 SCR 831 Gurbux Singh Vs. Bhoralal, placing on a par the plea of resjudicata and the plea of estoppel under Order II Rule 2 of the Code of Civil Procedure, held that proof of the plaint in the previous suit which is set to create the bar, ought to be brought on record. The plea is basically founded on the identity of the cause of action in the two suits and, therefore, it is necessary for the defence which raises the bar to establish the cause of action in the previous suit. Such pleas cannot be left to be determined by mere speculation or inferring by a process of deduction what were the facts stated in the previous pleadings. In the decision reported as (1887) 15 IA 186 Kali Krishna Tagore Vs. Secretary of State For India in Council and Anr., the Privy Council pointed out that the plea of res-judicata cannot be determined without ascertaining what were the matters in issues in the previous suit and what was heard and decided. Needless to say these can be found out only by looking into the pleadings, the issues and the judgment in the previous suit.

16. The impugned judgment has totally ignored the aforesaid legal principles concerning res-judicata. The exact plea in the suit and the prayer made thereunder has not surfaced. That apart, a perusal of the judgment and decree Ex.D-2/1 proved by Satish would show that whereas Dheeraj made a statement that he had handed over his half share in the 4 bigha and 8 biswa land comprised in Khasra No.444, Munni Devi, the mother of Rahul simply said that she had knowledge that her son Dheeraj had sold his half share in the land to Indraj Saini, the brother of Satish. It appears that the suit related to Dheeraj's half share in land comprised in Khasra No.444. Even ignoring the fact that Satish failed to properly setup the plea of res-judicata and failed to prove the same, a bare perusal of Ex.D-

2/1 would show that the decree passed concerned only what was sold by Dheeraj Kumar to Indraj i.e. Dheeraj's half share in the land comprised in Khasra No.444. Besides, the learned Single Judge has overlooked the fact that in the plaint of said suit was instituted in the year 2005 and Rahul had been sued through his mother Munni Devi, acting as his next friend. Though Munni Devi has not made any statement against the interest of Rahul, but assuming she had made one, the decree could not have been binding on Rahul for the reason in the instant suit claim of Rahul was that he was a minor when the purported power of attorney was executed by him on May 18, 2004. Interestingly when the earlier litigation was fought, Satish did not contest that as of the year 2005 Rahul was a minor.

17. On the issue whether Rahul has proved being a minor on May 18, 2004, we find that Ex.D-2/1 proved by Satish himself establishes that Satish accepted that in the year 2005 Rahul was a minor. He never raised an objection when Munni Devi, the mother of Rahul, filed suit No.114/2005 along with her son Dheeraj, claiming to be the next friend of Rahul on the plea that as on said date Rahul was a minor. Further, when Rahul proved Ex.PW-1/1 no objection was taken to the manner of proof thereof and thus the reasoning of the learned Single Judge that Rahul's testimony regarding Ex.PW-1/1 is not worthy of credence is a wrong view. The learned Single Judge has put a word in Rahul's mouth by recording in paragraph 8 of the impugned decision that Rahul admitted that he cannot read and write in English and Hindi. When Rahul was cross-examined he said that even till Class VIth I could not read or write in Hindi or in any other language. It is altogether one thing for a witness to say that he cannot read or write in Hindi or in any other language and it is altogether another thing to say that when the witness was in Class VI he could not read or write in Hindi or in any other language. It may be true that Rahul should have led primary evidence regarding his date of birth, but for the reason when Ex.PW-1/1 was proved and exhibited no objection was raised and secondly for the reason Satish, the defendant No.2 in suit No.114/2005 did not raise any objection to Rahul's interest being safeguarded by his mother on the plea that as of the year 2005 Rahul was a minor, it has to be held that Rahul has successfully proved that on the date when the alleged power of attorney was executed by him he was a minor.

18. For the reasons stated hereinabove the impugned judgment and decree dated July 25, 2010 is set aside. On issue No.1 it is held that the suit filed by Rahul was not barred by res-judicata. On issue No.3 it is held that there was no misrepresentation made by Rahul. On issue No.2 it is held that the power of attorneys referred to in the sale-deed dated September 20, 2006 are null and void regarding Rahul and the sale-deed dated September 20, 2006 is null and void in so far Rahul's half share in 4 bigha and 8 biswa land comprised in Khasra No.444 in the revenue estate of village Kadipur Kaushak Delhi has been conveyed to defendant No.1. Suit filed by Rahul is decreed to the extent the sale-deed Ex.PW-1/3 is declared void to the extent it transfers Rahul's 2 bigha and 4 biswa share in the land comprised in Khasra No.444 in the revenue estate of village Kadipur Kaushak. The defendants are restrained from interfering in Rahul's possession qua the said land.

19. Rahul is held entitled to costs all throughout against the contesting defendant No.2.

CM No.12341/2014

Dismissed as infructuous.

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