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Court : Patna

Decided On : Jul-29-2002

Judge : Radha Mohan Prasad, J.

Appeal No. : S.A. No. 149 of 1999

Appellant : Most. Ram Dular Devi and ors.

Respondent : Shri Satya Narayan Prasad and ors.

Disposition : Appeal Dismissed

Judgement :

Radha Mohan Prasad, J.

1. This appeal by the defendants is against the judgment of reversal passed in Title Appeal No. 77 of 1992 by 6th Additional District Judge, Rohtas, Sasaram, setting aside the judgment passed by Additional Munsif, Bikramganj in Title Suit No. 503 of 1989.

2 Briefly stated the case of the plaintiff-respondents is that plaintiff is an illiterate and pardanasin lady having no issue and her husband died leaving her as only heir. The husband of defendant-appellant No. 1, Ram Bhajan Prasad, dealing in grains, ornaments and utensils, used to visit the house of the plaintiff and developed intimacy with his family. After the death of her husband, he helped her in various ways and acquired her confidence. One Satya Narain Lai, his wife Sita Devi and Makardhwaj Lai, both distant relative of the plaintiff also come in close contact with her and started looking after the cultivation and her other affairs. In order to protect the properties from the greedy eyes of her agnates, they wanted her to give them registered power of attorney to manage her property and litigation, which she agreed, but, instead of getting power of attorney, they got scribed deed of gift with respect to her property and took her L.T.I., on the said deed and the contents thereof were not read over of explained to her. She claimed that she always retained her possession over the suit land and the said deed of gift was never acted upon. The plaintiff for the first time knew about the fraudulent deed of gift dated 23.3.1984 (Exhibit-2) in the month of September, 1989 in course of mutation proceeding before the Circle Officer, Nasriganj and after service of the notice of the said Mutation case, she; inquired about it, and, thereafter, she cancelled the said deed of gift on 26.9.1989 by registered deed of cancellation, and, thereafter, she filed the suit on 12.11.1989, for declaration that registered deed of gift dated 23.3.1984 alleged to be executed by the plaintiff in the name of Late Ram Bhajan Prasad, husband of defendant No. 1 is illegal and was never acted upon.

3. The defendants in their written statement have asserted that the deed of gift dated 23.3.1984 in the name of Ram Bhajan Prasad is genuine and legal and acted upon. Ram Bhajan Prasad acquired title and got possession and after his death the defendants are coming in possession of the suit property.

4. The trial Court on consideration of the pleadings as well as evidence both oral and documentary adduced on behalf of the parties decided all the issues in favour of the plaintiff, but dismissed the suit as it was found

barred by limitation. The lower appellate Court on appeal reversed the findings of the trial Court by holding that the suit is not barred by limitation, hence, the present appeal by the defendants.

5. It is submitted by the learned Counsel appearing for the defendant-appellants that the lower appellate Court in last and concluding paragraph of its judgment mentioned that the plaintiff-appellant got the cause of action in the year 1982 and the suit was filed in 1989, despite this it has been held that the suit is not barred by limitation. The lower appellate Court has failed to appreciate the findings of the trial Court recorded in paragraph 26 of its judgment that the plaintiff got the cause of action on 24.7.1984 when she executed deed of cancellation to cancel the deed of gift allegedly executed by her in favour of one Vijoy Lall.

6. This Court fails to appreciate the submission made by the learned Counsel for the appellants. The trial Court in paragraph 26 of its judgment while deciding point No. 3 in regard to limitation swayed himself to presume that the plaintiff must be aware about the deed of gift executed in favour of Ram Bhajan Prasad at the time of execution of deed of cancellation to cancel the deed of gift in favour of Vijoy Lall on 24.7.1984. The cause of action cannot be decided merely on presumption Whereas, the specific case of the plaintiff is that she came to know about the fraudulent deed of gift dated 23.3.1984 in the month of September, 1989 after service of notice of the Mutation proceeding and thereafter, she executed the registered deed of cancellation on 26.9.1989 and filed the suit on 12.11.1989. It appears that in the last paragraph of the judgment of lower appellate Court '1982' is typographical mistake, which is apparent from paragraph 4 of the said judgment and paragraph 26 of the trial Court judgment. The lower appellate Court, thus, has rightly found that the learned Munsif has wrongly held that the suit is barred by the law of limitation. Learned Counsel for the defendant-appellants has failed to show any infirmity in the findings recorded by the lower appellate Court. Thus, in my opinion, the judgment of the lower appellate Court is well considered and does not warrant any interference in Second Appeal.

7. As the matter stands concluded by the findings of facts by the lower appellate Court based on evidence this Court does not find any reason to interfere with the impugned judgment, moreso, when no substantial question of law is involved. The appeal is, thus, dismissed summarily.

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