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Court : Guwahati

Decided On : Feb-18-2000

Judge : M.L. Singhal, J.

Acts : Registration Act, 1908 - Sections 30(2), 66, 66(1) and 67; Hindu Succession Act, 1956 - Sections 22

Appeal No. : R.S.A. No. 16 of 1999

Appellant : Krishnapada Roy Alias Saha and anr.

Respondent : Parimal Chandra Saha and anr.

Advocate for Def. : B.B. Deb, Sr. Adv. and A. Dev, Adv.

Advocate for Pet/Ap. : B. Das, Sr. Adv.

Disposition : Appeal dismissed

Judgement :

M.L. Singhal, J.

1. This second appeal has arisen out of the judgment and decree dated 30-3-1999 passed by Shri R. K. Ghosh, learned the then Addl. District Judge, WestTripura, Agartala dismissing the appeal of the defendant-appellants.

2. I have heard Mr. B. Das, learned counsel for the appellant as well as Mr. B. B. Deb, learned counsel for the respondents,

3. The plaintiffs father and Smt. Raj Rani Roy, defendant No. 10 had the share in the disputed land situated at Bishalgarh, West Tripura district. Smt. Raj Rani Roy, defendant No. 10 herself and on behalf of the defendant Nos. 2 to 9 transferred the suit property to defendant Nos. 1 and 2 Sri Krishnapada Roy and Smt. Reba Roy on 3-7-1990, it is alleged that the transferee were the tenants in occupation of the property from before. The sale deed was executed at Calcutta under the provisions of Section 28 of the Registration Act. Subsequently, the said property was again transferred by the defendant Nos. 1 to 10 to plaintiff on 5-9-1990. It is not in dispute that the family property had been partitioned by way of compromise in a title suit. On 25-5-1996. The plaintiff filed a suit before the Civil Judge, Junior Division assailing the sale deed dated 3-7-1990 executed by defendant Nos. 5 to 9 in favour of defendant Nos. 1 and 2. The suit was dismissed by the learned trial Court. In appeal, the decree has been affirmed by the appellate Court. Hence, the appeal before this Court.

3A. The first grievance of the learned counsel for the appellant is that the impugned sale deed was executed and registered at Calcutta while the property is situated in Tripura. Under the provisions of Section 28 of the Registration Act, the deed ought to have been registered at Tripura. However, under Section 30 of the said Act, the deed can be executed and registered in a Presidency town. But after the execution and registration of the document, the compliance of the provisions of Section 67 of the said Act is necessary which has not been done in the instant ease. Section 67 of the Registration Act provides as under :--

'Section 67. Procedure after registration under Section 30, Sub-section (2)-- On any document being registered under Section 30, Sub-section (2), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in Section 66, subsection (1).'

4. A plain reading of the Section 67 of the Registration Act clearly shows that when a certain document is registered under Section 30(2) of the said Act in the Presidency town, a copy of such document and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate and the Registrar receiving such copy shall follow the procedure prescribed for him under Section 66(1) of the Act Section 66(1) provides that on registering any non-testamentary document relating to immovable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate. The learned counsel for the appellant argued that the provisions of Sections 67 and 66(1) of the Registration Act have not been complied with in the present case and as such, the impugned sale deed is invalid and inoperative. About the argument of the learned counsel for the appellant, it may be observed that Sections 66(1) and 67 of the Registration Act provide for performance of certain formalities when a document is registered outside the district where the property situate, obviously for the purpose of maintenance of records about the transfer/assignment of the property in the district where t he property is situated. These two sections or any other section of the Registration Act do not envisage any consequences for non-compliance of the provisions of Section 67 or Section 66(1) of the Act, nor they provide that for the non-performance of these formalities, the registered deed shall be invalid or inoperative. The non-compliance of Sections 67 and 66(1) of the Registration Act has not the effect of rendering or invalidating the sale deed registered in a Presidency town under the provisions of Section 30(2) of the said Act. The first, argument of the learned counsel for the appellant, therefore, has no force and merits rejection.

5. The second argument of the learned counsel for the appellant is that the property transferred was the joint family property to which the other co-sharers have the preferential right to occupy the property. But in the instant case, the plaintiff and the defendant Nos. 5 to 10 are of the same family. The transferred property was an ancestral property and so before execution of sale deed, the defendant Nos. 5 to 10 ought to have given notice to the plaintiff so that the plaintiff would have exercised the right of acquiring the property under the provision of Section 22 of the Hindu Succession Act. Undisputedly, as indicated

above, though the property is ancestral property but the parties arc living separately and as long back as in the year 1926, the property was partitioned.

Section 22 of the Hindu Succession Act, 1956 provides as under :--

'22. Preferential right to acquire property in certain cases.-- (1) Where, after the commencement of this Act, Interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolve upon two or more heirs specified in Class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the Court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in Class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation :-- In this section, 'Court' means the Court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other Court which the State Government may, by notification in the Official Gazette, specify in this behalf.'

6. Section 22 of the said Act clearly shows that when interest in any immovable property of an intestate anyone of the heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred. Apparently, Section 22 of the Hindu Succession Act envisages the right of pre-emption in those cases where the partition of the property is incomplete. Such right cannot be claimed where the

property has already been partitioned. In Bhagirathi Chhatoi v. Adikanda Chhatoi, reported in AIR 1988 Ori 285, the Orissa High Court has also held (at page 288) :--

'The right under Section 22(1) is not available to be exercised after partition between the co-heirs since partition clothes the respective parties with authority to hold their shares independently and absolutely as their separate properties and it could not be the intention of the legislature to put a clog on the power of alienation of independent owners of properties. Where, however, the partition is not a complete one, the right under Section 22(1) is not stamped out. Preferential right is not confined only to two brothers but is also available to other Class I heirs.'

7. Learned counsel for the appellant has relied upon decision of this Court rendered in the case of Dwijabrata Das v. Shri Debabrata Das, reported in AIR 1994 Gau 88. I have gone through this decision. But this decision do not render any assistance to the appellant in the instant case.

8. No other point was argued. The appeal

has no force and merits dismissal. Accordingly, this appeal is dismissed with costs to

the respondents.

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