

Susheela Devi and ors. Vs. Most. Sulehara Kunwar and ors.

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Court : Patna

Decided On : Apr-27-2004

Judge : Sudhir Kumar Katriar, J.

Appeal No. : Appeal from Appellate Decree No. 276 of 1988

Appellant : Susheela Devi and ors.

Respondent : Most. Sulehara Kunwar and ors.

Advocate for Def. : Sukumar Sinha, Sr. Adv. and Udit Narayan Singh, Adv.

Advocate for Pet/Ap. : Ashutosh Ranjan Pandey and Shashi Shekhar Thakur, Adv.

Disposition : Appeal dismissed

Judgement :

Sudhir Kumar Katriar, J.

1. The plaintiffs are the appellants against a judgment of reversal. This appeal is directed against the judgment and decree, dated 8.2.1988, passed by the learned 6th Additional District Judge, Siwan, in Title Appeal No. 132 of 1972 (Most. Sita Kuar and Ors. v. Indrawati Devi and Ors.), whereby he has set-aside the judgment and decree, dated 15.6.1972, passed by the learned 1st Munsif, Siwan, in Title Suit No. 81 of 1965 (Most. Fula Kuar and Ors. v. Bishwanath Pandey and Ors.).

The Trial Court had decreed the suit which has been set aside by the impugned judgment. We shall go by the description of the parties occurring in the plaint.

2. Most. Fula Kuar (since deceased), and Janardan Ojha respondent No. 2, filed Title Suit No. 81 of 1965, against Bishwanath Pandey (since deceased) and Most. Salehara Kuar (respondent No. 1) for adjudication that Most. Salehara Kuar had no right to execute the two sale-deeds, dated 10.03.1965 (Exts. A and A/1) in favour of Bishwanath Pandey and the latter has acquired no right, title and interest over the disputed properties, and also for confirmation of their possession and, in the alternative, for recovery of possession. The disputed properties are situate in two villages, namely, Sanjaniya and village Punakbuzurg.

2.1. According to the plaint, one Thaggan Pandey had two sons, namely, Bhagwat Pandey, husband of Fula Kuar (the original plaintiff) and Jainarain Pandey, (husband of Most. Salehara Kuar, defendant No. 2). Father and sons were joint and father was Karta till his life time. After the death of Thaggan Pandey, both the brothers jointly inherited and came in possession over the entire property of the family including the disputed property. Jainarain Pandey died about 30-31 years before filing of the suit, i.e., in the year 1934-35 in a state of jointness with his brother Bhagwat Pandey leaving behind his widow, Most. Salehara Kuar. Further case of the plaintiffs is that after death of Jainarain Pandey, Bhagwat Pandey inherited the entire family properties by the law of survivorship, and defendant No. 2 (Most. Salehara Kuar) became maintenance-holder. She did not acquire any right or title over the family property nor she ever came in possession. Most. Salehara Kuar came under influence of defendant No. 1 (Bishwanath Pandey) who are related on her father's side, and brought her to her Naihar. Defendant No. 1 got two registered sale-deeds, dated 10.03.1965 executed in his favour by defendant No. 2 in respect of half share in the family property. According to them, the sale-deed in question is fraudulent, without consideration, and Farzi. Defendant No. 2 had no right to execute any sale-deed in respect of family properties.

3. Defendant No. 1 (who was the original before the learned Court of appeal below) appeared and filed written statement. He admitted that Thaggan Pandey

had two sons, but denied that Bhagwat Pandey died issueless, and Jai Narain Pandey died about 30-31 years ago (1934-35). He also denied that defendant No. 2 (Most. Salehara Kuar) was mere maintenance holder. According to him, just after death of Thaggan Pandey, his both sons became separate in mess and business and also privately partitioned the family properties half and half and they came in possession accordingly. It is the further case of defendant No. 1 Jai Narain Pandey died about 19-20 years ago, i.e., 1945-46, and, after his death, defendant No. 2 (Most Salehara Kuar), inherited and came in possession over the properties left behind by her husband. After passing of Hindu Succession Act, 1956, defendant No. 2 became absolute owner and she executed the two sale-deeds in question with consideration to meet her urgent needs, and she had handed over possession of the suit properties to defendant No. 1.

4. The learned Trial Court framed the following issues for adjudication :

(i) Is the suit as framed maintainable?

(ii) Have the plaintiffs got any cause of action for the suit?

(iii) Is the suit barred by law of limitation?

(iv) Are the suit properties valued correctly and the Court fees paid sufficient?

(v) Is the suit bad for defect of parties?

(vi) Has Fulla Kuer subsisting title to the lands in dispute?

(vii) Whether the sale-deeds executed by Most. Salehara Kuar are valid and for consideration?

(viii) Whether Bishwanath Pandey has had acquired right, title and interest to the disputed lands?

(ix) To what relief, if any, are the plaintiffs entitled?

5. Both sides examined witnesses and filed documents in support of their respective cases. On a consideration of the oral as well as documentary evidence,

the learned Trial Court decreed the suit. He has held that Jainarain Pandey died after 1939, and his widow (Salehara Kuar) acquired interest in the property of Thaggan Pandey as her, husband had. He has further held that Jainarain Pandey died in a state of jointness with his brother (Bhagwat Pandey), there was no partition of the family property, and after the death of Jainarain Pandey (Bhagwat Pandey) Fula Kuar came in exclusive possession of the family property. He has also held that in view of Section 14 of the Hindu Succession Act, without partition, Salehara Kuar could not be deemed to be in possession of the properties without which she could not acquire absolute title over the share of her husband.

It has lastly been held that Bishwanath Pandey (defendant No. 1) did not get valid title through the deeds executed by Most: Salehara Kuar.

6. Defendant No. 1 appealed. The learned Court of appeal below formulated the following questions for his decision :

(I) Was Jainarain Pandey died in the year 1930-31 or after 1939?

(II) Had Salehara Kuar acquired absolute right and title over the share of her husband after passing of Hindu Succession Act, 1956?

(III) Are the sale-deeds in question invalid and without consideration.

(IV) Are the judgment and decree under appeal liable to be set-aside?

7. The learned Court of appeal below allowed the appeal, set-aside the judgment of the trial Court, and dismissed the suit. He has in substance held that defendant No. 2 (Most. Salehara Kuar), became absolute owner of the property inherited by Jai Narain Pandey in view of the provisions of Hindu Succession Act, 1956, and had the right, title and interest to alienate the suit properties. The two sale-deeds are valid document of title.

8. Learned counsel for the plaintiffs (appellants) has formulated the following substantial question of law :

'Whether or not the two sale-deeds, dated 10.3.1965 (Exts. A and A/1) are void for having been executed without any consideration?

9. While assailing the validity of the impugned judgment, learned counsel for the plaintiffs (appellants) submits that since the properties were joint, defendant No. 2 could not have executed two sale-deeds with respect to specific properties. It appears to me on a perusal of the materials on record that the Courts below have concurrently found that Jai Narayan Pandey was alive upto 1939. The net result, therefore, is that defendant No. 2, being the widow, became limited owner in terms of the Hindu Women's Rights to Property Act, 1937. She thereafter became an absolute owner in terms of Section 14(1) of the Hindu Succession Act, 1956. She, therefore, had the right, title and interest to alienate the suit properties. The two sale-deeds were executed on 10.3.1965. It follows that once defendant No. 2 became absolute owner of the suit properties, the plaintiff could not have challenged the adequacy of the consideration money. Being an absolute owner, defendant No. 2 was free to alienate the property for any consideration that she chose, particularly in a situation where defendant No. 1 was a close relative who may have been a support in her period of widow-hood and is issueless. The support provided by defendant No. 1 may itself be an adequate or partial consideration. It is further relevant to state that both the Courts have concurrently found that defendant No. 2 had alienated the suit property for a consideration money of Rs. 3,000/-. This concludes matters.

10. Mr. Sukumar Sinha, learned counsel for the defendants, has rightly relied on the well-known judgment of the Supreme Court reported in AIR 1977 SC 1944 (V. Tulasamma v. V. Sesha Reddi), Paragraph 8 of which is relevant in the present context and is set out hereinbelow for the facility of quick reference :

'8. In the circumstances, we reach the conclusion that since in the present case the properties in question were acquired by the appellant under the compromise in lieu or satisfaction of her right of maintenance, it is Sub-section (1) and not Sub-section (2) of Section 14 which would be applicable and hence the appellant must be deemed to have become full owner of the properties notwithstanding that the compromise prescribed a limited interest for her in the properties. We accordingly allow the appeal, set-aside the judgment and decree of the High Court and restore that of the District Judge, Nellore. The result is that the suit will stand dismissed but with no order as to costs.'

11. Learned counsel for the plaintiff (appellants) has next submitted that the properties were joint. Therefore, defendant No. 2 could not have alienated specific portion of the suit property. This issue is also concluded by finding of fact. It has been found that a deed of Takseemnama was executed in the family on 5.3.1939 (Ext. C) between Bhagwat Pandey and Jai Narayan Pandey on the one hand, and Ram Swaroop Pandey and others, on the other hand. It is thus manifest that the family properties of Jhaggan Pandey had been partitioned by metes and bounds. Way back on 5.3.1939 and defendant No. 2 alienated her own share of the properties allotted to her husband of which she became the absolute owner. The contention is, therefore, rejected.

12. Learned counsel for the plaintiff (respondent) has rightly submitted that the issues are concluded by concurrent findings of facts which bind this Court in second appellate jurisdiction. Reliance may be placed on the judgment of the Supreme Court reported in AIR 1999 SC 3325 (Hari Singh v. Kanhaiya Lal). The following portion of Paragraph 16 of the judgment may be usefully quoted :

'Similarly, the High Court interfered with the concurrent finding of facts that nuisance was created by the respondent by obstructing the passage leading to the appellant house by keeping onion bags leaving out of space of 11 feet to 3 feet only. The fact of this obstruction is also supported by the Commissioner report submitted in the present proceedings. The finding recorded on sub-letting and nuisance by both the Courts below being based on evidence on record its setting-aside by reappraisal of evidence, and in any case without framing any substantial question of law by the High Court cannot be sustained and further we also do not find any substantial question of law arising therein. Learned counsel for the respondent tried to submit with force by attempting to take us to the evidence of the witnesses to show their unworthiness for reliance. It is neither a case of no evidence nor perverse finding. All these submissions are within the realm of appreciation of evidence which should not have been interfered by the High Court far less for us to examine.'

12.1. Reference may also be made to the judgment of the Supreme Court reported in 1999 (3) SCC 722 (Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and

Ors.), Paragraph 5 of which is set out hereinbelow for the facility of quick reference :

'5. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last Court of fact, being the first appellate Court. It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the Trial Court in respect of credibility but even where it has rejected the witnesses accepted by the Trial Court, the same is no ground for interference in second appeal when it is found that the appellate Court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous, being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence.'

13. It is manifest from the foregoing discussion that no substantial question of law arises in this appeal. The issues which may be taken to be a substantial question of law in second appellate jurisdiction fell for the consideration of the Supreme Court in its judgment reported in AIR 2001 SC 965 (Santosh Hazari v. Purushottam Tiwari), the relevant portion of which is set out hereinbelow for the facility of quick reference :

'A point of law which admits of no two opinions may be proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by Court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time

before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any list.'

I had the occasion to apply the same in my judgment reported in 2003 (2) BLJR 1260 (Sheo Chand Choudhary alias Sheochan Choudhary v. Adalat Hussain and Ors.). The judgment of the Supreme Court in 1999 (3) SCC 722 (Kondiba Dagadu Kadam v. Savitribai Sopan Gujar and Ors.) is illuminating and is to the same effect.

14. In the result, the appeal fails and is dismissed with costs.

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