

Mahendra Kar Vs. Babul Kumar Ghosh

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Court : Guwahati

Decided On : Sep-26-2000

Judge : P.G. Agarwal, J.

Acts : [Registration Act, 1908](#) - Sections 47

Appeal No. : Second Appeal No. 22 of 1993

Appellant : Mahendra Kar

Respondent : Babul Kumar Ghosh

Advocate for Def. : S.N. Banerjee, Adv.

Advocate for Pet/Ap. : B.B. Deb and B. Bhattacharjee, Adv.

Disposition : Appeal allowed

Judgement :

P.G. Agarwal, J.

1. Heard Mr. B.B. Deb. learned senior Advocate for the appellant. Also heard Mr. S.N. Banerjee, learned Advocate for the respondents.

2. The respondent-plaintiff instituted a Title Suit No. 12 of 1984 praying for declaration of right, title and interest and recovery of khas possession of the suit land described in the plaint. The case of the plaintiff is that he purchased the suit

land from defendant No. 1 for consideration by a registered deed of sale dated 7.7.1983 and he was put into possession. But on 11.7.1983, i.e. after four days only he was dispossessed and the defendant No. 2 is possessing the same. The suit proceeded ex parte against the defendant No. 1. The defendant Nos. 2 and 3 filed separate written statements contesting the claim of the plaintiff.

3. The case of the defendant No. 2 is that he purchased the suit land from defendant No. 1 and the sale deed was executed on 14.6.1983 and registered on 11.7.1983 and he is in the possession of the suit land. The defendant No. 3, on the other hand, claimed that the suit land was in possession of one Monoranjan Dhar and thereafter he possessed the same. The learned Trial Court decreed the suit on the ground of title and the appeal preferred by the present appellant being Title Appeal No. 23/89 was also dismissed.

4. In this second appeal, the following substantial questions of law were framed:-

1. Whether the trial court did not frame proper issue in respect of question of adverse possession; and

2. Whether the courts below committed error in interpreting the two sale deeds relating to the disputed land,

5. As regards the first question, it is seen that the Trial Court came to a specific finding that the present appellant/defendant No. 3 was in permissive possession and the suit land stood in the name of the defendant No. 1 till transfers by way of sale deed. At no point of time the present appellant claimed the suit land as his own. Although no issue was framed regarding adverse possession, the Trial Court on

the basis of evidence on record held that this is not a case of adverse possession. In the memo of appeal filed by the present appellant before the first Appellate Court, he did not raise this plea of non-framing of issue regarding the adverse possession. As a matter of fact, the plea of adverse possession or non-framing of issues on that ground was never raised before the first Appellate Court. In view of the admitted position of the case and the matter is available, I find no force so far

the first question of law is concerned.

6. The Trial Court rejected the claim of the plaintiff regarding possession over the suit land and his alleged dispossession. The suit was, however, decreed on the basis of the title of the plaintiff. In this case the admitted position is that the suit land belonged to defendant No. 1 and both the plaintiff and the defendant No. 2 claimed to have purchased the suit land from defendant No. 1. Thus there are two sale deeds. Exhibit-4 is the sale deed executed in favour of the plaintiff on 7.7.1983 and it was registered on that date itself, i.e. on 7.7.1983. Exhibit-6 is the certified copy of the sale deed in favour of the defendant No. 2 and it was executed on 14.6.1983 and was registered on 11.7.1983. The plaintiff claims that there was an agreement for sale of 20.9.1982, but as it was a un-registered document, the same was not considered by the court below and the title was not decided on the basis of the said document. The learned Trial Court relying on Section 54 of the Transfer of Property act held that Transfer for ownership of Immovable property of the value of rupees one hundred and upwards takes effect from the time of registration of the instrument.' Hence, relying on Section 48 of the Transfer of Property Act and in view of the fact that Exhibit-4 was registered on 7.7.1983 and Exhibit-6 though executed on 14.6.1983 was registered on 11.7.1983 only, i.e., after Exhibit-4 and as such Exhibit-4 will prevail over Exhibit-6 and the title of the suit land prevails on the plaintiff and Exhibit-6 is not binding and operative against the plaintiff.

7. In the present case, there is no dispute at the bar that Exhibit-4 was registered on 7.7.1983 and Exhibit-6 was registered on 11.7.1983. There is also no dispute at the bar that Exhibit-6 was executed on 14.6.1983, the date is specifically mentioned in the deed itself and even the stamp papers were purchased on 14.6.1983. It seems that the proposition of law laid down by the Trial Court was not correct. The Trial Court did not consider Section 47 of the Registration Act which provides for effects of registration and nonregistration, Section 47 reads as follows:-

'47. Time from which registered document operates. - A registered document shall operate from the time from which it would have commenced to operate if no

registration thereof had been required or made, and not from the time of its registration.'

8. From the above, it is seen that a registered document operates from the date of its execution and not from the date of registration. The result is that if two registered documents are executed by the same person in respect of the property to two different persons at different times, the one which was executed first has priority over the other, although the former was registered subsequently to the latter. The above ratio of law was laid down by the Apex Court in the case of K.J. Nathan v. S.V. Maruthi Rao and Ors. AIR 965 SC 430.

9. The above decision was reiterated by the Apex Court in the case of Thakur Kishan Singh (dead) v. Arvindn Kumar, AIR 1995 SC 73 which is as under:

'* * * * *

Section 47 of the Registration Act provides that a registered document shall operate from the time it would have commenced to operate if no registration thereof had been required or made and not from the time of its registration. It is well established that a document so long it is not registered is not valid yet once it is registered it takes effect from the date of its execution. (See Ram Saran Lall v. Mst. Domini Kuer. AIR 1961 SC 1 747 (1 749) and Nanda Ballabh Gururani v. Smt. Maqbool Begum, 1980 UJ(SC)597).

Since, admittedly, the lease deed was executed on 5th December, 1949, the plaintiff after registration of it on 3rd April. 1950 became owner by operation of law on the date when the deed was executed.

* * * * *

10. In view of the above, it is held that in view of execution of sale deed, Exhibit-6 on 14.6.1983 in favour of the defendant No. 2, the same shall prevail over Exhibit-4 as the latter was executed afterwards. The plaintiff thus did not acquire any right, title over the suit land on the basis of Exhibit-4.

11. The learned counsel for the respondent-plaintiff has submitted that the suit proceeded exparte against the defendant No. 2 and as such Exhibit-6 will not be binding against the plaintiff. I find no force on the above submission as because the suit never proceeded exparte against the defendant No. 2. The order dated 10.2.1988 clearly shows that the defendant No. 2 filed written statement and the same is available on record. No where in the order-sheet of the Trial Court I find that the suit proceeded exparte against the defendant No. 2. The fact that the defendant No. 2 did not adduce any evidence is immaterial because Exhibit-6 was proved and exhibited by the plaintiff himself. The inference drawn by the Appellate Court in paragraph 7 of the Judgment is misleading and has got no basis. There was no scope for inference that the suit

proceeded exparte against the defendant No. 2. The inference holds good so far the defendant No. 1 is concerned.

12. As the plaintiff failed to establish his title and also his possession over the suit land, he is not entitled to any decree. The interpretation of Exhibit-4 and Exhibit-6 by the Trial Court and as well as the Appellate Court was incorrect.

13. In the result, the appeal is allowed. The judgment and decree passed by the Court below and affirmed by the Appellate Court, is set aside. The suit stands dismissed and the present second appeal stands allowed.

14. On the facts and circumstances of the case, there will be no order as to costs.

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