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Rameshchandra and ors. Vs. Rajendra Prasad and ors.

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Court : Madhya Pradesh

Decided On : Feb-06-2006

Reported in : 2006(2)MPHT35

Judge : N.K. Mody, J.

Acts : Limitation Act, 1963 - Schedule - Articles 59, 60 and 113

Appeal No. : Second Appeal No. 776/2004

Appellant : Rameshchandra and ors.

Respondent : Rajendra Prasad and ors.

Advocate for Def. : D. Chhabra, Adv. for the Respondent No. 1

Advocate for Pet/Ap. : A.S. Garg, Sr. Adv. and ;Maqbool Ahmad, Adv.

Disposition : Appeal dismissed

Judgement :

N.K. Mody, J.

1. Being aggrieved by the judgment and decree dated 16-12-2003 passed by XVII Additional District Judge, Indore, in Civil Regular Appeal No. 34/2002, whereby the judgment and decree dated 23-7-2001 passed by 14th Civil Judge Class-I, Indore in Civil Suit No. 458-A/2001 has been confirmed and the suit of the appellants has

been dismissed, the present appeal has been filed.

2. Short facts of the case are that appellants are the real brothers and son of respondent No. 2. Respondent Nos. 3, 4 and 5 are cousin brothers of respondent No. 2. Sale deed was executed by respondent Nos. 2 to 5 in favour of respondent No. 1 on 7-7-1972, for a sum of Rs. 10,000/- for the suit property, which is an agricultural land. Lateron suit property was acquired by Indore Development Authority and award was passed on 25-9-1984. Thereafter a suit for declaration and permanent injunction was filed by the appellants challenging validity of the sale deed dated 7-7-1972 on 12-6-1984, alleging the fact that the fact of execution of sale deed in favour of respondent Nos. 2 to 5 came to their knowledge on 16-4-1984. Suit was contested by the respondent No. 1 on various grounds including on the ground that suit is barred by law of limitation.

3. On the basis of pleadings of the parties, learned Trial Court framed the issues, recorded the evidence and dismissed the suit.

4. The judgment and decree passed by learned Trial Court was maintained in appeal. Learned Counsel for the appellants submit that the learned Court below committed error in not considering the fact that suit property was Undivided Joint Hindu Family property and appellants were co-parceners, therefore, respondent No. 2, who happens to be the father of the appellants had no authority to execute the sale deed on behalf of the appellants unless there was a legal necessity. It is further submitted that sale deed was executed by respondent No. 2 in his personal capacity and not as guardian of the appellants, who were minor, at that time. Learned Counsel for the appellants raised following substantial questions of law :-

(1) Whether Laxminarayan, father of the appellants could alone have sold the HUF property without there being any legal necessity ?

(2) Whether the learned Lower Appellate Court being Final Court of facts, erred in law in not deciding all the issues on record and not considering the entire oral and documentary evidence.

5. Learned Counsel for respondent No. 1 submits that the learned Court below framed issue No. 3 regarding limitation, which reads as under :-

Whether suit filed by appellants is barred by law of limitation.

6. It is submitted that learned Trial Court has given a specific finding to the effect that suit is barred by law of limitation.

7. Learned Counsel further submits that limitation is prescribed under Articles 59 and 60 of Limitation Act, 1963, which reads as under :-

59. To cancel or set aside an 3 years When the factsinstrument or decree or entitling the plaintifffor the rescission of a to have the instrumentcontract. or decree cancelled or setaside or the contractrescinded first becomeknown to him.60. To set aside a transfer ofproperty made by theguardian of a ward--(a) by the ward who has -do- When the ward attainsattained majority majority.(b) by the ward's legalrepresentative--(i) when the ward dies -do- When the ward attainswithin three years from majority.the date of attainingmajority;(ii) when the ward dies -do- When the ward dies.before attainingmajority.

8. Learned Counsel submits that if the suit is not covered under Articles 59 and 60 of the Limitation Act then case is covered under Article 113 of Limitation Act, according to which any suit for which no period of limitation is provided elsewhere in this Schedule then limitation is of three years from the date of right to sue accrues. It is submitted that the right to sue accrued to the appellants on 7-7-1972, when the sale deed was executed and since the appellants were minor at the time of execution of the sale deed, therefore, the limitation of the appellants remained arrested till appellants were minor. It is submitted that period of three years shall be counted from the date of attaining the age of majority.

9. From perusal of the record it is evidence that specific issue was raised by the learned Trial Court regarding the limitation and that issue has been decided against the appellants. In the memo of appeal filed before this Court findings of that issue has not been challenged. No substantial question of law has been proposed in that regard. In view of this no substantial question of law is involved in

this appeal. Hence, appeal stands dismissed.

No order as to costs.

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