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Court : Madhya Pradesh

Decided On : Feb-19-2003

Reported in : 2003(2)MPHT265

Judge : A.M. Sapre, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100

Appeal No. : Second Appeal No. 563/2002

Appellant : Devkaran

Respondent : Gangaram and ors.

Advocate for Pet/Ap. : R.K. Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

A.M. Sapre, J.

1. Plaintiff has come up in second appeal under Section 100 of CPC against the dismissal of his suit by the Lower Appellate Court for declaration of his title and cancellation of sale deed executed by defendant No. 1 in favour of defendant No. 3. The impugned judgment and decree is dated 19-7-2002 passed by Second Additional District Judge, Shujalpuf, in C.A. No. 13-A/2002 which in turn arise out

of judgment/decreed dated 30-7-1996 passed by Civil Judge, Class-II, Shajapur, in C.S. No. 130-A/91. The question that arises for consideration in this appeal is whether appeal involves any substantial question of law within the meaning of Section 100 *ibid*.

2. Heard Shri R.K. Sharma, learned Counsel for the appellant.

3. Having heard the learned Counsel for the appellant and having perused the record of the case, I find no substantial question of law involved in the appeal and hence it merits dismissal in *limine*.

4. It is a suit filed by the appellant. He claims exclusive ownership over the suit land on the death of his father and then mother he being the sole legatee surviving. The defendant No. 1 who is cousin of plaintiff, says that the property, i.e., suit land was owned and purchased by grand-father of plaintiff and defendant No. 1. On the death of grand-father, it came equally in the hands of plaintiff's father and defendant No. 1 father, who became equal co-owners. It is then said that on the death of plaintiff's father and that of defendant No. 1 both inherited half/half. It is that half which came to the share of defendant No. 1 he sold by him to defendant No. 3 by executing registered deed of sale for Rs. 21,500/-. It is on this basis, the defendant No. 1 has denied plaintiff's title and defended sale made by him in defendant No. 3's favour. The Trial Court decreed the suit but First Appellate Court reversed it and dismissed the suit, giving rise to filing of the second appeal by the plaintiff.

5. In the opinion of First Appellate Court and in my view rightly when the suit property was found to be recorded in the name of grand-father of plaintiff and defendant No. 1, then it will devolve equally on respective fathers being two brothers and sons of grand-father and on their death equally on plaintiff and defendant No. 1 what was, therefore, necessary was to see as to who was the original owner of the suit land. It is a clear case where the defendant No. 1 was able to establish the real source of ownership with reference to original sale deed itself. It was on this basis the First Appellate Court came to a right conclusion that the suit land did not exclusively belong to plaintiff's father as alleged by the plaintiff in the plaint but it belonged to both, i.e., plaintiff's father and defendant No. 1.

father. Accordingly, sale made by defendant No. 1 of his share in favour of defendant No. 3 has rightly been upheld by dismissing plaintiff's suit.

6. I thus do not find any error of law in the impugned judgment so as to constitute any substantial question of law within the meaning of Section 100 *ibid* for admitting this second appeal. The appeal fails and is dismissed *in limine*.

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