

Mostt. Ghamia Vs. Mostt. Tipri Devi and ors.

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SooperKanoon Citation : sooperkanoon.com/515277

Court : Jharkhand

Decided On : Feb-04-2005

Reported in : [2005(2)JCR86a(Jhr)]

Judge : Hari Shankar Prasad, J.

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

Appeal No. : AFAD No. 129 of 1990 (R)

Appellant : Mostt. Ghamia

Respondent : Mostt. Tipri Devi and ors.

Advocate for Def. : A.K. Sahani, Adv.

Advocate for Pet/Ap. : Ramawatar Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

Hari Shankar Prasad, J.

1. This appeal at the instance of the appellant is directed against the judgment dated 15.6.1990 and decree dated 25.6.1990, passed in Title Appeal No. 95 of 1988/6 of 1989 whereby and whereunder learned Additional District. Judge IVth, Giridih dismissed the appeal and affirmed the judgment dated 28.6.1988 and

decree 8.7.1988, passed by learned Additional Munsif IVth, Giridih in Title Suit No. 75 of 1987.

2. The plaintiff had filed the suit being Title Suit No. 75 of 1987 for declaration of title and confirmation of possession and in the alternative for recovery of possession in case plaintiff is found to have been dispossessed from the suit land and the learned Court of Additional Munsif IVth, Giridih framed the issues on the pleadings of the parties and after recording evidences both oral and documentary decided the issue and dismissed the suit. As against dismissed of the suit by judgment dated 28.6.1988 and decree 8.7.1988 the plaintiff preferred Title Appeal being Title Appeal No. 95 of 1988/6 of 1989 and in the title appeal also the appellate Court after hearing the parties and discussing the evidences affirmed the judgment of the learned Additional Munsif IVth, Giridih and being aggrieved by the finding of the Title Appeal affirming the judgment and decree of the learned Additional Munsif IVth, the appellant/plaintiff has preferred the second appeal herein two substantial questions of law were framed :--

(i) Whether due to non-consideration of oral evidence by the lower appellate Court the judgment is vitiated in law?

(ii) Whether in view of the fact that the document was executed by an illiterate lady, the Courts below adopted a wrong approach in considering the evidence on the record?

3. It was pointed out by learned counsel for the appellant that without being the oral evidence on records learned lower appellate Court has come to finding and due to non-consideration of evidence the judgment stands vitiated in law. On the other hand, learned counsel for the respondents pointed out that there is full discussion of the witnesses by the learned lower appellate Court and I have gone through the judgment and find that there is full discussion of the oral evidence by the lower appellate Court and therefore, there is no merit on this point which has been raised by way of substantial question of law.

4. It was further submitted that in case where any document is to be executed by any illiterate lady, then law provides some protection to the execution of deed by

such illiterate lady in view of the fact that she may not be the victim of fraud or anything else and, therefore, some precaution should be observed in such a case. It was further submitted that from evidence brought on record, the trial Court as well as the lower appellate Court did not consider the evidence in that light and, therefore, the Courts below have committed an error of law and dismissed the suit, as both the Courts should have taken into consideration the evidence so given by the plaintiff appearing as PW 5 that she did not receive consideration amount and further that she did not sign the Chirkut, etc. and nothing was done without bringing to her notice and since she is illiterate lady, she could not know about the contents of the documents.

5. On the other hand, learned counsel appearing for the defendant-respondent submitted that this suit, for cancellation of the deed and declaration of the title and confirmation of possession and in the alternative for recovery of possession, has been brought at the instance of Devar of the plaintiff-appellant because her Devar namely Basudeo is also interested in the suit land and, therefore, at his instance this suit has been brought and this will be clear from Para-25 of the evidence of plaintiff appearing as PW 5 wherein she says that my Devar also wants to purchase this land and the expense of the case which she has filed, is being borne by Basudeo. In Para-17 of her evidence, she has admitted that scribe read over the contents of documents. PW 3 is the son of the plaintiff-appellant who in Para-8 has stated that his mother had been explained about the contents of the documents and that has been understood by his mother.

6. Learned counsel for the appellant placed reliance upon a number of decisions. He placed reliance on AIR 1952 Pat 262 wherein it has been held that title to the property passes on the terms in the document where the party was that his title to the property was passed immediately after its execution even though full consideration money has not been paid and it is only depend upon the intention of the parties. Reliance was also placed in AIR (37) 1950 Pat 288 wherein it has been held that registered sale-deed where there is recital of payment of full consideration and delivery of possession and there is non-payment of price possession and deed remaining with vendor's title does not pass. Reliance was also placed in BLJR 1985 (33) 785 wherein it has been held that parties to the

sale-deed had agreed that Title to the land in question should pass to the vendee after payment of full consideration money and the lower appellate Court on consideration of the evidence on the record, held that plea of non-payment of consideration money by the plaintiff is not correct and consideration money was paid. The learned appellate Court held that the sale-deed convey title to the defendant-appellant.

7. From perusal of the documents and deposition of the witnesses, it will appear that all precaution required in case of execution of document by a illiterate lady has been observed and to this effect plaintiff appearing as PW 5 has also stated, and further that her son appearing as PW 3 has also admitted that after full discussion between his mother and vendee, this document was executed. Although, the petitioner of this case have claimed that consideration money was not paid. But from perusal of the evidence of PW 3 who is son of the plaintiff-appellant, discussion went on for sixty days. It also appears that at the instance of Devar of plaintiff-appellant, this suit for cancellation of the deed has been filed and all expenses of fighting this case are being borne by Devar of the plaintiff-appellant. Further both the Courts below have given concurrent findings on facts and, therefore, I do not find any infirmity in the judgment of the learned lower appellate Court and also in the judgment of the learned trial Court.

8. In that view of the matter, there is no merit in this appeal which is accordingly dismissed, but without any order as to costs.