

Md. Rahim @ Abdul Rahim and ors. Vs. Md. Maoln and ors.

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Court : Jharkhand

Decided On : Jun-28-2007

Reported in : [2007(4)JCR284(Jhr)]

Judge : M.Y. Eqbal, J.

Appellant : Md. Rahim @ Abdul Rahim and ors.

Respondent : Md. Maoln and ors.

Disposition : Appeal dismissed

Judgement :

M.Y. Eqbal, J.

1. This appeal directed against the judgment and decree dated 20.9.1990 passed by the 2nd Additional District Judge, Giridih in Title Appeal No. 32 of 1981 whereby he has allowed the appeal filed by the plaintiff in part and right tile and interest of the plaintiff-respondent Nos. 1 and 2 was declared in respect of a portion of the suit property.

2. The plaintiff-appellant filed Title Suit No. 58 of 1979 for a declaration that plaintiff Nos. 1 and 2 have subsisting right, title and interest over a pucca built house measuring 4.25 decimals forming part of holding No. 103, Ward No. 3 of Giridih Municipality fully described in Schedule 'B' of the plaint which is the suit

property. Further relief for declaration that the agreement for sale dated 24.4.1997 alleged to be executed by defendant No. 2 in favour of defendant No. 1 in respect of the suit property as well as Schedule 'A' property is illegal, collusive, void and without consideration and it did not confer any right to defendant No. 1 and consequently, the decree obtained by defendant No. 1 in Title Appeal No. 29 of 1979 on the basis of the aforesaid agreement is not binding on the plaintiffs.

3. The facts of the case lie in a narrow compass:

The plaintiffs case was that one Jan Mohammad (Plaintiff No. 3) purchased a tiled house and land measuring 6.5 decimals bearing old Holding No. 165 Ward No. 3, Giridih Municipality fully described in Schedule 'A' of the plaint by a registered sale-deed dated 24.8.1929. The purchase was benami in the name of his wife Bibi Jafiran. It is alleged that Jan Mohammad, thereafter continued to be real owner of the house and land and he remained in possession over the same and never treated his wife as the owner of the house and the land purchased by him. The plaintiffs' further case is that adjacent to Schedule 'A' house, there was vacant land measuring 4.25 decimals which was acquired by Jan Mohammad by way of permanent settlement from the landlord and came in exclusive possession of the land and constructed a pucca house on it. This land has been described in Schedule 'B' of the plaint which is the suit property. According to plaintiffs, after constructing house over the suit property, Jan Mohammad started living therein with his family members and let out Schedule 'A' house to different tenants and used to collect rent from them as absolute owner. Plaintiffs further case is that both Schedule 'A' and Schedule 'B' properties were subsequently treated as one holding which was numbered as 165. Jan Mohammad used to pay municipality taxes for the aforesaid holding. It was alleged that Bibi Jafiran, wife of Jan Mohammad, died 40 years ago leaving behind her husband and one son Abdul Sattar. Even after death of Bibi Jafiran, Jan Mohammad continued to be the real owner of the properties to the knowledge of the whole world including his son Abdul Sattar and his wife Nisha Khatoon. After the death of Bibi Jafiran, Jan Mohammad married a second wife Bibi Putni from whom he got four sons who are defendant Nos. 3 and 4 and plaintiff Nos. 1 and 2. It was alleged that when the four sons of Jan Mohammad attained majority, he made an oral partition of the suit

property. In that partition Schedule 'A' house was allotted to Abdul Sattar, Abdul Gaffar and Md. Jaf-far, whereas the suit property was allotted to Md. Rahim and Md. Shakil. In order to avoid any further trouble, Jan Mohammad also executed two sale-deeds. By the first sale-deed dated 28.7.1972, he transferred the house in favour of Abdul Sattar, Abdul Gaffar and Abdul Jaffar. By another sale-deed dated 5.8.1972, he transferred Schedule 'B' the suit property, in favour of Md. Rahim and Md. Shakil. It was further pleaded by the plaintiffs that the eldest son of Jan Mohammad, namely, Abdul Sattar had no issue. He, at the request of his wife, defendant No. 2 divorced her. Soon after giving divorce, Abdul Sattar died and after his death, his father Jan Mohammad became the sole heir and succeeded to the entire share of Abdul Sattar in Schedule 'A' house. In the year 1978, Jan Mohammad and his son Abdul Gaffar and Abdul Jaffar sold Schedule 'A' house to Bibi Nazma, Md. Qudus Md. Siddique and Md. Safique by a registered sale-deed dated 25.2.1978. Thereafter, the plaintiff came to know that defendant No. 1 obtained a decree in Title Suit No. 29 of 1977 against defendant No. 2 Nisha Khatoon on the basis of agreement alleged to have been executed by defendant No. 2 in her favour. The plaintiff alleged that the agreement to sale dated 20.4.1977 executed by defendant No. 2 in favour of defendant No. 1 on a consideration and it did not confer any right, title and interest on the basis of decree passed in the said suit.

4. Defendant Nos. 3 and 4, the two sons of Jan Mohammad did not contest the suit. Defendant No. 2 filed a separate written statement supporting the case of the plaintiff stating that she had no right title or interest or possession over any part of the suit property. She further denied to have executed any agreement in favour of defendant No. 1.

5. The contesting defendant No. 1 filed written statement denying and disputing each and every allegation made in the plaint. It was stated that the suit is not maintainable and is bad for non-joinder of necessary party, because all the sons and daughters and wife of Jan Mohammad have not been made party and the purchasers of Schedule 'A' house have also been left out. Defendant's case is that Schedule 'A' property was purchased by Bibi Jafiran out of her own purse and she was the real owner and continued to be so till her death. During her lifetime, she

orally gifted Schedule 'A' property to her only son Abdul Sattar who exercise his right, title and interest over the same. It was Bibi Jafiran who constructed the house after purchasing the land and she used to reside therein with her son Abdul Sattar. His further case was that defendant No. 2 was never divorced by her husband. Jan Mohammad never partitioned the suit properties among his sons because he was never in possession of any portion of the suit properties. The defendant's further case is that defendant No. 2, being absolute owner of the suit property, had every right to execute an agreement and sell the property to defendant No. 1.

6. The trial Court decide all the issues agaisnt the plaintiffs-appellants. The trial Court held that the suit is not maintainable and is bad for non-joinder of necessary party. The trial Court also disbelieved the case of the plaintiffs that Nisha Khatoon, wife of Abdul Sattar, was divorced by her husband. The trial Court further held that the plaintiffs are not having subsisting right, title, interest and possession over the suit property and that the defendant No. 2 had entered into valid agreement to sale with defendant No. 1 to transfer the suit property. The suit was consequently dismissed. The appellate Court after re-appreciation of the entire evidence, came to the conclusion that, Schedule 'A' property was purchased by Jan Mohammad (original plaintiff No. 1) in the name of his wife Bibi Jafiran. The appellate Court further affirmed the finding of the trial Court that defendant No. 2 was not divorced by her husband Abdul Sattar. The appellate Court further held that there was no evidence on the record to hold that Bibi Jafiran had orally gifted the suit properly in favour of her son Abdul Sattar. The appellate Court also held that the agreement for sale executed by defendant No. 2 is valid only to the extent of her share in the suit property and, therefore, the decree passed in Title Suit No. 29 of 1977 is binding on. the plaintiffs to the extent of the share of defendant No. 2.

7. Mr. L.K. Lal, learned Counsel appearing for the appellants, assailed the impugned judgments of the Courts below as being erroneous in law and is beyond the fact on record. Learned Counsel submitted that even if the property was purchased by Jan Mohammad Benami in the name of his wife, the property will go back to Jan Mohammad and Abdul Sattar after her death and after the death of Abdul Sattar, his share will return back to Jan Mohammad as because Abdul

Sattar divorced his wife during his life time.

8. Mr. P.K. Prasad, learned Counsel appearing for the respondents, on the other hand, submitted that the Court of Appeal below rightly decided all the issues, but has not correctly recorded the finding. A cross objection to that effect was filed by the respondents questioning jurisdiction of the appellate Court in adjudicating the share of the parties.

9. The only question that falls for consideration is as to whether on the pleadings of the plaintiffs they are entitled to the reliefs sought for in the plaint.

10. The plaintiffs, filed the suit for a declaration, inter alia, that the agreement of sale executed by defendant No. 2 Nisha Khatoon, wife of Abdul Sattar, in favour of defendant No. 1 was illegal, collusive, void and without consideration and the decree passed on the basis of said agreement is not binding upon the plaintiffs. The plaintiffs case was that Jan Mohammad purchased the suit property in the name of his wife Bibi Jafiran, who was merely a Benamidar and Jan Mohammad was the real owner. The plaintiffs further case was that Abdul Sattar, son of Jan Mohammad divorced his wife and therefore, she has not inherited any share in the suit property after the death of Abdul Sattar. The contesting defendant No. 1, in whose favour agreement for sale was executed by defendant No. 2, contested the suit by denying all the allegations. The appellate Court after considering the entire evidence on record, and also after reappreciating the evidence, has recorded a finding that defendant No. 2 Nisha Khatoon was not divorced by her husband Abdul Sattar. I fully agree to the view taken by the appellate Court and I further hold that any evidence of divorce given by Nisha Khatoon was to the benefit of the plaintiffs only to deprive defendant No. 1 from getting the fruits of the agreement. The appellate Court rightly decided the dispute by holding that the agreement executed by defendant No. 2 shall be valid only to the extent of her share and not in respect of the entire property. So far the finding of fact recorded by the appellate Court after appreciation of evidence, I do not find any reason to interfere with the said finding of fact. So far the question of law is concerned, I hold that the appellate Court has rightly decided the question of law involved in the suit. I do not find any gross error of law committed by the appellate Court in deciding the

appeal.

11. For the reasons aforesaid there is no merit in this appeal which is accordingly dismissed.

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