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Court : Rajasthan

Decided On : Oct-28-1987

Reported in : 1988(1)WLN331

Judge : Milap Chandra, J.

Appeal No. : S.B. Civil Second Appeal No. 154 of 1986

Appellant : Jethu

Respondent : Devi and anr.

Disposition : Appeal rejected

Judgement :

Milap Chandra, J.

1. This second appeal has been filed against the judgment and decree of Sri Fateh Chand Bansal, District Judge, Bhilwara, dated 14-7-1986, dismissing the appeal against the judgment of Shri B. L. Gupta Munsif, Shahpura, dated 9-7-1981, decreeing the suit for possession and recovery of Rs. 250/- as mesne profits. The facts of the case giving rise to this appeal may be summarised thus.

2. The plaintiff-respondents Nos. 1 and 2 filed a suit for the recovery of possession and mesne profits against the defendant-appellant Jethu and defendant respondent No. 3 Ladulal with the allegations, in short, that the suit property was

initially owned and possessed by the defendant-appellant Jethu, on 30-8-1962 he sold it to the defendant-respondent Ladulal, he took it on rent from Ladulal and on 31-10-1973, he (Ladulal) sold it to the plaintiff-respondents Nos. 1 and 2. Despite several demands and notice, the possession of the suit property has not been delivered by the defendant Jethu. The defendant Ladulal admits in his written statement that he purchased the suit property from the defendant Jethu in the year 1962, he sold it on 31-10-1973 to the plaintiffs and possession was duly delivered to them. The defendant Jethu admits in his written statement that he executed the sale-deed on 30-8-1962 in favour of the defendant Ladulal. The remaining allegations of the plaint have been denied. He has also averred that the sale was a sham transaction, the sale-deed was executed to save the suit property from his creditors he has always been in its occupation & possession as its owner, the suit is time barred and it deserves to be dismissed. After framing necessary issues & recording evidence of the parties which was produced by them, the learned Munsif held that the sale-deed was executed by the defendant Jethu after obtaining the entire amount of the consideration, the sale was not a sham transaction, no debt was outstanding against him when the sale-deed was executed, he is bound with it and the suit is within limitation. The learned District Judge affirmed the findings and dismissed the appeal.

3. It has been contended by the learned counsel for the defendant-appellant that the learned lower courts seriously erred in decreeing the suit for ejectment despite holding that the defendant Jethu is not in possession of the suit premises as a tenant. He further contended that the sale effected on 30-8-1962 by the defendant-appellant was a sham transaction, the sale-deed was executed to save the property from the creditors and he is in possession and occupation of the suit premises as its owner and not as a tenant.

4. The learned counsel for the plaintiff-respondents Nos. 1 and 2 duly supported the judgment under appeal.

5. It is clear from perusal of the plaint that the suit was for recovery of possession and for ejectment and the court-fee had been paid on the market value of the property and not on the amount of yearly rent. It is also mentioned in the plaint that

the defendant Jethu took back the suit property on rent after executing the sale-deed. This fact was demed by both the defendants in their written statement. Even assuming that the suit was far ejectment, still decree for possession could be passed in view of the pleadings and evidence of the parties. Reference of L. Sabu Ram1Raghunathji AIR 1976 SC 1934 and Ramu Shanker v. Bidher Khan and Anr. : AIR1976 All155 may be made here.

6. There is no force in the contention of the learned counsel for the appellant that the sale was a sham transaction and the sale deed dated 20-8-1962 was executed by the defendant-appellant Jethu to save the suit property from his creditors. Both the lower courts have categorically held that the sale-deed was executed with consideration & it was a genuine transaction. This is a finding of fact. It is not open to challenge in this appeal. The learned counsel for the appellant could not show that the learned lower courts have misread any evidence or they omitted some material evidence while recording this finding. The defendant-appellant Jethu filed Appeal No. 128/76 in the court of the District Judge, Bhilwara, against the order of the learned Civil Judge, Shahpura, dismissing his objections filed under Section 47 CPC and his appeal was allowed on 10-2-1962, releasing the suit property from the attachment. The disputed sale-deed was admittedly executed by him long after it i.e. on 30-8-1962. The learned lower courts have thoroughly disoused the evidence produced by the defendant Jethu to prove that he owed several debts immediately before the execution of the sale-deed. After thorough discussions, both the learned lower courts have correctly held that the defendant-appellant Jethu did not owe any debt to Amarsingh, Kishanlal and Santoksingh. This is again a finding of fact and it is not open to challenge in this appeal.

7. There is yet another aspect of the matter. The case of the defendant appellant is that the sale was a sham transaction as the sale-deed was executed to defraud his creditors. Court cannot help a person who committed fraud.

8. The suit was well within limitation. The defendant Jethu executed the sale-deed on 30-8-1962 and the suit for possession was filed on 28-7-1974. Obviously, it was within 12 years.

9. Thus there is no force in the appeal. It is summarily rejected.

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