

Kora Devi and ors. Vs. Harbansh Kaur and ors.

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SooperKanoon Citation : sooperkanoon.com/771437

Court : Rajasthan

Decided On : Sep-07-2009

Reported in : RLW2010(1)Raj698

Judge : Gopal Krishan Vyas, J.

Appellant : Kora Devi and ors.

Respondent : Harbansh Kaur and ors.

Disposition : Appeal dismissed

Judgement :

Gopal Krishan Vyas, J.

1. In this second appeal filed under Section 100, C.P.C., the appellants are challenging the judgment and decree dated 26.9.2008 passed by the Addl. District Judge, Raisinghnagar in Civil Appeal No. 9/08, whereby, the learned first appellate Court while dismissing the appeal affirmed the judgment and decree dated 30.5.2008 passed by the Civil Judge (Jr. Dn.), Raisinghnagar in Civil Original Suit No. 271/93.

2. Brief facts of the case are that the respondent-plaintiffs filed civil suit for specific performance, in which, it is stated that an agreement for sale was executed by Ishwardas, father of appellants on 20.1.1977 for sale of six and a half bigha land

situated in Sq. No. 24, at Chak 37 NP upon which khatedari rights were also obtained by him after allotment. The said agreement was executed by late Ishwar Das for a consideration of Rs. 25,000/- and possession of the land was transferred to the respondents and part payment of Rs. 17,000/- was made on the date of the agreement and rest of the amount was agreed to be paid at the time of execution of the sale-deed.

3. In the plaint, it is stated that after taking possession near about, Rs. 45,000/- were spent for improvement of the land by the plaintiff-respondents but the defendant-appellants refused to execute the sale-deed in favour of the respondent-plaintiff though they were ready and willing to pay the remaining amount. The plaintiff-respondents preferred suit for specific performance of agreement arrived at in between the parties and the same was decreed in favour of the respondent-plaintiffs finally vide judgment dated 30.5.2008, against which, appeal was preferred before the learned Addl. District Judge, Raisinghnagar and, that, too, was dismissed vide the judgment dated 26.9.2008.

4. In this second appeal, learned Counsel for the appellants vehemently argued that both the Courts below have committed gross error of law while deciding the matter in favour of the respondent-plaintiffs and the finding arrived at by the trial Court for all the issues is perverse and illegal. In fact, Ishwar Das was receiving loan amount from time to time from the respondent-plaintiffs and the respondent-plaintiffs were cultivating his land in exchange of interest of loan, therefore, for the said purpose, to use the land of Ishwar Das, respondent-plaintiffs got his thumb impression and fabricated the alleged agreement to sale. Due to mutual understanding, the thumb impressions were given by Ishwar Das for the purpose of cultivating his land, therefore, the said agreement cannot be termed as agreement to sale. Hence, the decision of the learned trial Court with regard to issues No. 3, 4 and 7 is vitiated because bare perusal of the agreement to sale, placed on record as Annex. 1, it is clear that the suit for specific performance was filed after ten years of its execution but this aspect of the matter was not considered by the trial Court properly.

5. Learned Counsel for the appellant vehemently argued that the trial Court has wrongly arrived at the finding with regard to all the issues, therefore, the finding is contrary to law. More so, the ground of limitation is also not taken into consideration properly, therefore, the finding arrived at by the trial Court is based upon very weak type of evidence.

6. I have perused both the judgments impugned. In my opinion, after framing proper issues, the learned trial Court decided the controversy while discussing the entire evidence in right perspective. Before the learned trial Court, admittedly, thumb impression of Ishwar Das upon the agreement is not disputed but only assertion was made that the thumb impression was given for the purpose of cultivating his land in exchange of interest of loan. This plea was, however, discredited by the trial Court while giving cogent reasons. Likewise, while deciding issue No. 5 with regard to limitation the trial Court observed that the denial for executing the sale-deed was made on 15.6.1987 and before that there was no denial to execute the sale because in the agreement there was a condition that sanad was to be obtained before executing the sale-deed. In this view of the matter, the finding arrived at by the trial Court as well as appellate Court in respect of each issue is based upon sound appreciation of evidence, therefore, upon concurrent finding, there does not arise any question of interference. Moreover, no substantial question of law emerges for consideration in this second appeal.

7. Hence, this second appeal is dismissed.