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Jagjit Singh Vs. Vinod Kumar and ors.

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Court : Jammu and Kashmir

Decided On : Nov-17-2005

Reported in : AIR2006J& K70

Judge : J.P. Singh, J.

Acts : Code of Civil Procedure (CPC) Svt. 1977 - Section 100; ;Limitation Act - Schedule - Article 62

Appeal No. : CSA No.11/2002

Appellant : Jagjit Singh

Respondent : Vinod Kumar and ors.

Advocate for Def. : K.L. Pandita, Adv.

Advocate for Pet/Ap. : Surinder Kour, Adv.

Disposition : Appeal dismissed

Judgement :

J.P. Singh, J.

1. This civil second appeal is against decree dated 12.01.2002 of learned 2nd Additional District Judge, Jammu, whereby he has upheld decree dated 25.07.1995 of learned Sub Registrar Munsiff, Jammu.

2. Mrs. Surinder Kour, learned Counsel appearing for appellant, submits that preliminary issues have been decided by the Trial Court without affording opportunity of leading evidence to the appellant, which has prejudiced the case of the appellant. She submits that issue of limitation, being an issue of fact and law, could neither be treated nor decided as preliminary issue.

3. Finding of the learned Trial Court holding the appellant out of possession too has been questioned by the appellant. Learned Counsel for the appellant submits that the appeal raises a substantial question of law. She has termed the pleas urged by her as substantial questions of law.

4. Sh. K. L. Pandita, learned Counsel appearing for respondents, submits that the findings of the learned Trial Court as also that of First Appellate Court, are legally and factually correct. He submits that no substantial question of law as contemplated by Section 100 of the Code of Civil Procedure has been made out by the appellant.

5. Heard learned Counsel and perused the records.

6. Issues were framed by the learned Trial Court on 31.03.1995. Issues Nos. 4, 8 and 10 were treated as preliminary issues. After the framing of issues, the plaintiff filed an application seeking permission to lead evidence. This application was rejected vide order dated 04.04.1995. Learned Trial Court held that in view of various admissions made by the plaintiff in the plaint, no evidence was required to be led by the plaintiff. Findings of learned Trial Court on issue No. 4 are as under:

Issue No. 4. Plaintiff has assailed the memorandum of Partition dated 20.5.74 registered on 21.5.74 executed between him and defendants Nos. 1, 2, 3 and 4 being illegal, void, inoperative and having no force of law on the basis of fraud. He has asserted that the land underneath the suit property which was exclusive property of his as owner, as the same was given to him by its erstwhile owner Prem Singh son of Anant Singh vide a gift deed dated 3.12.62 registered on the same day. However, defendants 1 to 4 by perpetuating and playing fraud on him, styled the said property to be the Hindu Joint property and on the basis of said premise got a memorandum of partition executed on 20.5.74 registered on 21.5.74

whereby the land in question was partitioned to the convenience of defendants 1 to 4. The plaintiff thus has challenged memorandum of partition dated 20.5.74 after a lapse of nearly 20 years, whereas the period of limitation prescribed as per provisions of the Limitation Act for challenging a document is three years. Article 62 of Limitation Act reads as under:

Description of suit Period of limitation Time from which period begins to run.62. To cancel, or set aside an Three years When the facts entitling theinstrument not otherwise plaintiff to have theprovided for. instrument cancelled or setaside become know to himThe period of limitation as per Article 62 thus is three years whereas the instant suit seeks to challenge the memorandum of Partition executed between the plaintiff and defendants I to 4 after the lapse of 20 years, which patently is barred by time. Hence the suit itself is not maintainable under the provision of Limitation Act.

However, limitation period as per the residuary Article though is six years even if the limitation as per Residuary Clause is applied in the instant case even then the case of the plaintiff is never covered under that. The suit nevertheless is barred by period of limitation, as the suit has been filed after a lapse of 20 years. The issue thus is decided in favour of the defendants as against the plaintiff.

7. Learned First Appellate Court, has affirmed the finding of learned Trial Court on issues Nos. 4 & 8, and in doing so, it has held as follows:

Issues No. 4 & 8:

From the perusal of the file it is evident that plaintiff-appellant has preferred the instant appeal against the judgment and decree passed by the learned Sub Registrar, Munsiff Jammu dated 25.7.95 and for consequential relief for permanent prohibitory injunction, restraining the defendants/respondents 1 to 4 herein from alienating the same, raising any construction over the same on the basis of aforesaid deed or from changing the present portion existing on spot with regard to the same and also restraining the defendants/respondents 5 and 6 from entering the same, raising any construction or alienating the same on the basis of the self-styled owners which they depict with regard to the part of the land in question,

came to be filed by the appellant-plaintiff before the Court of learned District Judge Jammu on 18.8.94. Therefore, it is evident from the plaint that appellant-plaintiff has challenged the memorandum of partition dated 20.5.74 registered on 21.5.74 in the year 1997, i.e. near by over lapse of twenty years. But it is provided under Article 62 of the Limitation Act as under:.. to cancel, or set aside an instrument not otherwise provided, three years when the facts entitling the plaintiff-appellant to have the instrument cancelled or set aside become known to him.In the plaint the appellant-plaintiff has averred that on 17.8.94 for the first time his new counsel intimated him that due to the aforesaid illegal document the defendants/respondents 1 to 4 have tried to divest him from the portion of the property in question despite the fact that he being the absolute owner thereby giving fresh cause of action to him to file the suit in question. So as per the plaint the plaintiff-appellant came to know about the partition deed on 17.8.94, when the defendants/respondents have contended that the plaintiff-appellant has admitted in another suit that Yogeshwar Singh defendant/respondent No. 2 herein is in possession of the suit property. Moreover the plaintiff-appellant in another suit filed by said Yogeshwar Singh, i.e. defendant-respondent No. 2 herein, against plaintiff-appellant admitted in his written statement that:..as a matter of fact the land over which the plaintiff has raised construction of his house was the absolute property of defendant and the land was comprising of khasra No. 119,120 and 121. This land was given to the plaintiff for the construction of his house being the younger brother of defendant...Therefore plaintiff-appellant has admitted that defendant/respondent No. 2 Yogeshwar Singh being in possession of the suit property though the admission was made in another suit, but the same is related to the present one and is important to the facts and circumstances of the case at hand. In other words, therefore, the appellant-plaintiff has admitted that the defendant/respondent No. 2 is in possession of the suit land, as observed above, which in other words means that he is out of possession of the suit property. Therefore as discussed above the plaintiff-appellant has challenged the document in question after twenty years of its execution and registration, i.e. beyond the time of limitation.

The relevant provisions of law have also been discussed by the court below and after considering the pleadings of the parties and other documents and records, it

has rightly come to the conclusion that suit of the plaintiff-appellant nevertheless is barred by period of limitation as the same has been filed after a lapse of twenty years and that the plaintiff-appellant admittedly out of possession of the suit property and the suit of the plaintiff-appellant in the present form would not lie. The order passed by the court below is a Judicial order and after application of mind the order under appeal has been passed.

What has been discussed above and in the light of actual and factual position of the case issue No. 4 & 8 are decided against the appellant-plaintiff and in favour of defendant/respondents.

8. Findings of the Courts below, in view of the averments made in appellant's plaint, are unexceptionable. Partition deed executed by the plaintiff on 20.05.74 and registered on 21.05.74, cannot under any Article of Limitation Act be permitted to be questioned after lapse of twenty long years. Declaration claimed in the suit, too, is dependent on the permissibility of challenge to the partition deed.

9. Permitting the appellant to maintain appeal under these circumstances would result in abuse of the process of the Court and failure of justice,

10. Submissions of learned Counsel for the appellant that substantial questions of law arise in the case, are misconceived.

11. Simple question of law decided by the Courts below and that too in accordance with law, cannot, in my opinion, be termed as substantial question of law.

12. There is no merit in this appeal, which is dismissed with costs assessed at Rupees One Thousand.

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