

Court No. - 19

Case :- SECOND APPEAL No. - 93 of 1991

Appellant :- Rama Kant And others.

Respondent :- Krishna Muraari And Others

Counsel for Appellant :- H.S.Sahai,U.S.Sahai

Counsel for Respondent :- P.L.Misra,Girish Chandra Sinha,M.G.Misra,Pawan Kumar Tiwari

Hon'ble Jaspreet Singh,J.

1. Heard Shri U.S.Sahai, learned counsel for the appellants and Shri Girish Chandra Sinha, learned counsel for the respondents.

2. This is the defendants' second appeal under Section 100 Code of Civil Procedure assailing the judgement and decree dated 25.08.1986 passed by III Additional Munsif, Sultanpur in Civil Suit No.233 of 1983, whereby the suit seeking cancellation of two sale-deeds and a Will deed was dismissed. The matter was taken in appeal under 96 Code of Civil Procedure bearing No.148 of 1986 which came to be allowed by the lower appellate court by means of judgement and decree dated 23.11.1990 passed by the III Additional District Judge, Sultanpur as a result the suit for cancellation of sale deeds and will deed which was dismissed by the trial court was decreed by the lower appellate court which has prompted the defendants to come up before this Court.

3. The second appeal was admitted by this Court by means of order dated 25.03.1991 on substantial question of law at Serial No.2 and 3 as mentioned in the memo of second appeal, which for ready reference is being reproduced hereinafter:

(2) Whether the consolidation proceedings having intervened in

the village under the U.P. Consolidation of Holdings Act, and no objection having been filed by the plaintiffs claiming their right and title, the claim which was not preferred during consolidation proceedings could be taken after denotification of the village under Section 52 of the said Act and will not be barred under Section 49 of the said Act?

(3) Whether the land not being zamindari land rights by birth could accrue in tenancy land in the life time of father?

4. Before proceeding further, this Court observes that though some of the parties expired during the pendency of the proceedings, however, for the sake of convenience, this Court shall be referring to the parties as they were originally impleaded in the suit.

5. The record would further indicate that the defendants-appellants have also moved an application bearing C.M.A. No.118087/2018 under Order 41, Rule 27 C.P.C. seeking to take on record a copy of registered sale-deed dated 24.01.1983, said to have been executed by Shri Mahadev and Shiv Bux jointly, for the purposes of comparing the signatures/thumb impression of Shiv Bux Singh. The plaintiff-respondent has filed his objections to the said application which are bearing C.M.A. No.49038 of 2019 and further a Coordinate Bench of this Court by means of order dated 23.01.2020 had observed that the said application shall be considered along with the merits of the appeal.

6. It is in the aforesaid backdrop that this Court deems appropriate first to notice the relevant facts giving rise to the instant appeal for proper adjudication of the controversy as well as to answer the question of law framed by the Court.

7. That Shri Krishna Murari, the original plaintiff filed a suit seeking cancellation of two sale-deeds and a Will deed said to have been executed by Shri Shiv Bux against the defendants, namely, Hari Narain, Ramakant, Ram Bhawan, Rama Chandra, Shiva Kant, Uma Kant and Tribhuwan. The parties to the suit are closely related as the original plaintiff Krishna Murari and the original defendant no.1, Hari Narain are real brothers, whereas the defendants no.2 to 5 are the sons of Hari Narain (sons of defendant no.1 and real nephew of plaintiff) and the defendants no.6 and 7 are the sons of Indra Narain (real brother of the plaintiff and the defendant no.1 and the nephews of plaintiff Krishna Murari).

8. From the pedigree as mentioned in the plaint, it would be seen that Shiv Bux was the father of Ram Narain, Indra Narain, Hari Narain and Krishna Murari. It appears that Shiv Bux is alleged to have executed two sale-deeds dated 24.09.1982 and a Will deed dated 24.01.1983. In terms of the sale-deed, the vendees are the grand-sons of Shiv Bux and the sons of Hari Harain and Indra Narain. On the basis of the said sale-deeds, Krishna Murari, who is the son of Shiv Bux has been excluded while the property has been sold to the grand children, sons of Hari Narain and Indra Narain. Similarly, a Will-deed has been executed in favour of the defendants dated 24.01.1983 and this too has been assailed by Krishna Murari.

9. It was specifically pleaded in Paragraphs 8 to 12 of the plaint in suit, elucidating the grounds upon which the sale-deed as well as the Will deed was sought to be challenged. Primarily, it was stated that Shiv Bux was an aged person and he was not in a sound mind and was not able to understand his own good or bad, hence any sale deed executed or the Will executed was not his own volition. Consequently, it was bad in the eyes of law.

The said deeds are alleged to be false and fabricated and without consideration. It was also urged that even the Will was fraudulent which has been procured with the active connivance of the beneficiaries and the defendants. The suit came to be contested by the defendants, who challenged and denied the averments made by the plaintiff and stated that the property in question was sold by Shiv Bux out of his own free volition. The documents were genuine and the sale deeds were also executed after paying full sale consideration and as such the suit was liable to be dismissed.

10. Upon the exchange of pleadings, the trial court framed six issues. However, the important issues upon which the suit was contested were:-

(i) Whether the alleged sale deeds and a Will deed were an outcome of fraud and conspiracy and was procured by illegal means as stated in para 12 of the plaint.

(ii) Whether the property in question was ancestral as stated in paragraph-6 of the plaint.

(iii) Whether the plaintiff is in possession of the property and if no its effect as stated in Paragraph 29 of the written statement.

(iv) Whether the suit was barred by Section 331 of the U.P.Z.A. and L.R. Act, 1950 as stated in Paragraph 24 of the written statement.

11. After the parties led evidence, the trial court considering the issue held that the sale deeds were executed after taking due consideration and in sound state of mind and there was nothing fraudulent in execution of the said documents. The trial court also recorded a finding that the property in question was not the ancestral property. The suit was found not to be barred by

Section 331 of the U.P.Z.A. and L.R. Act, 1950 and by means of judgement and decree dated 25.08.1986 the suit of the plaintiff was dismissed.

12. Shri Krishna Murari carried the matter in First Appeal bearing No.148 of 1986, whereby the lower appellate court found that there were suspicious circumstances regarding the execution of the Will and also that the sale deed was without consideration apart from the fact that the executant, namely, Shiv Bux was an aged man and was unable to understand the import of his act and thus by means of judgement and decree dated 23.11.1990 the appeal was allowed as a consequence the judgement and decree passed by the trial court dated 25.08.1986 in Suit No.233 of 1983 was set aside and the suit was decreed.

13. Shri U.S.Sahai, learned counsel for the appellants while attacking the judgement of the lower appellate court has submitted that the plaintiff Krishna Murari had failed to establish the case as set up in the plaint and the lower appellate court committed an error in allowing the appeal. It is further urged that in the meantime the consolidation operation had commenced in the village and for the said reason, Krishna Murari did not raise any objection before the Consolidation Authority and once rights had been settled in the consolidation proceedings it was not open for Krishna Murari to have challenged the same after the village was denotified in terms of Section 52 of U.P. Consolidation of Holdings Act, 1953 and as such the suit was barred by Section 49 of the Act of 1953.

14. Shri Sahai, learned counsel taking his submissions forward has submitted that the property in question could not be treated to be ancestral merely by virtue of birth and Krishna Murari could not have a right and that too in the life time of Shiv Bux,

who was the father and as such this aspect has also been ignored by the lower appellate court. It is also urged that manner in which the lower appellate court has reappreciated the evidence is not appropriate and the findings returned by the lower appellate court are contrary to the material available on record. Hence, the judgement and decree passed by the lower appellate court dated 23.11.1990 deserves to be set aside.

15. Shri Sahai has also submitted that the core controversy which was involved was regarding the execution of the two sale deeds and the Will deeds by Shri Shiv Bux. It is urged that during the pendency of the instant second appeal, the defendant acquired knowledge that Shiv Bux along with Mahadev also had a grove land. This grove was sold by Mahadev along with Shiv Bux jointly by means of sale deed dated 03.02.2018 which is duly registered and also contains the signature/thumb impressions of late Shiv Bux. The said sale deed has not been assailed before any competent court and continues to subsist and as such if the said sale deed is taken on record and the signature /thumb impressions of Shiv Bux are compared with the signatures/thumb impressions of Shiv Bux on the impugned sale-deed and the Will deed. It would clarify and settle the controversy. Hence, it is urged by Shri Sahai that the said document which could not be brought on record earlier may be permitted to be taken in exercise of powers under Order 41, Rurle 27 C.P.C. and shall be material piece of evidence which shall go a long way in adjudicating the controversy in between the parties once and for all.

16. Shri Girish Chandra Sinha, learned counsel for the plaintiff-respondents while defending the judgement passed by the lower appellate court submits that for all these years, the said sale-deed could not be brought on record even if at all the said

certified copy which is sought to be taken on record is seen, it would indicate that it nowhere has the thumb impressions/the signatures of Shiv Bux. The said document is a certified copy and this in itself is merely at best a proof to say that Mahadev along with Shiv Bux had executed a document in favour of Shri Ganga Ram. Thus, this document in itself cannot be used to compare the signatures / the thumb impressions of Shiv Bux. Moreover, it is urged that the signatures/ the thumb impressions would be on the original document which would be with Ganga Ram the vendee and there has been no effort made by the defendants to have got the same summoned. The suit has been pending since the year 1983 and more than 40 years have lapsed. The sale deed has been brought on record only in the year 2018 without explaining the delay. Moreover, the said sale deed has no relevance to the controversy as once the defendants have missed the boat, they can not be permitted to patch the lacunae for their case by introducing additional evidence which necessarily entails recording of evidence which shall further retard the disposal of the instant appeal by several months and in the aforesaid circumstances the said document is neither relevant nor sufficient ground has been shown by the appellants within the four corners of Order 41, Rule 27 C.P.C.. Hence the application deserves to be dismissed.

17. Shri Sinha has further submitted that insofar as the issue raised by the defendant is concerned, he did not raise this plea regarding the bar of Section 49 U.P. Consolidation of Holdings Act before the court below. This has been raised only for the first time in the instant appeal and in any case, Section 49 cannot be decided as the pure question of law as it is akin to the principle enshrined in Section 11 C.P.C. relating to *res judicata* and unless ample evidence regarding the identification of the property, the judgement and orders passed by the Consolidation

Authority wherein the issue has been thrashed is placed on record. The said plea cannot be considered in abstract. For the aforesaid reasons, the aforesaid issue sought to be raised by the appellate authority is not a substantial question of law which arises and the for the reasons aforesaid, the appeal merits dismissal.

18. Shri Sinha has further urged that the basic controversy regarding the execution of the two sale deeds and the Will is shrouded with suspicious circumstances as such the lower appellate court after delving into the evidence available on record has reappraised the evidence in exercise of its powers as the first appellate court and has reversed the findings of the trial court while decreeing the suit which is a pure finding of fact and in the aforesaid circumstance the same is not liable to be interfered with by this Court in second appeal. Hence, the appeal deserves to be dismissed.

19. The Court has heard the learned counsel for the parties and also perused the material on record.

20. At the outset, it would be noticed that the controversy which has evolved in the instant appeal is on the basis of the pleadings filed by the parties. The plaintiff-respondent, Krishna Murari had filed a suit seeking cancellation of the sale deeds as well as the Will deed on the ground that Shiv Bux was an old man and being more than 70 years of age but was not in a sound state of mind and taking advantage of it, the alleged documents have got executed fraudulently which deserves to be set aside. In this regard, in order to ascertain whether the sale deed has been executed by Shiv Bux or the Will deed has been executed by Shiv Bux is actually not in dispute. It is not the case that the said documents have been executed by resorting to impersonation or it does not bear the signatures/ thumb

impressions of Shiv Bux. Thus, the controversy is not in respect of the signatures and the thumb impressions of Shiv Bux, rather it is in context with the capacity and reasons for execution of such documents. At best, if the sale deed executed by Mahadev and Shiv Bux is also taken on record. All it would prove is the fact that Shiv Bux had executed the sale deed but as said earlier the signature and thumb impressions of Shiv Bux on the impugned sale deed and the Will is not in dispute, therefore, no gainful purpose will be served in taking the said document on record as it is a futile exercise. Moreover, there is nothing on record which can satisfactorily explain why the said sale deed was not produced on record before the trial court or the appellate court and even though the instant second appeal has been pending before this Court since 1991. The said sale deed has been brought on record only in the year 2018 i.e. after more than 27 years.

21. In light of the principle laid down by the Apex Court in the case of **Union Of India vs Ibrahim Uddin & Anr, (2012) 8 SCC 148**, the appellants is unable to make out the case in terms of order 41, Rule 27(a) and (b) insofar as Clause Order 41, Rule 27(aa) is concerned, this gives power to the Court to ascertain and if it finds that the document is necessary to answer the controversy appropriately, it may take the said document on record. This Court is of the clear opinion that insofar as the said sale deed executed by Mahadev and Shiv Bux is concerned, the same has no relevance nor this Court after taking the said document on record would be in any manner benefited to decide the controversy as the core of the controversy is not in context with the signature/ thumb impressions of Shiv Bux, rather it is limited to the grounds upon which the suit was filed by the plaintiff Krishna Murari wherein he himself does not dispute that the sale deeds as well as the

Will deed were executed by Shiv Bux. Thus, for the aforesaid reason, this Court does not find favour with the application moved by the appellants under Order 41, Rule 27. Accordingly, Application bearing C.M.A. No.118087 of 2018 is **dismissed** and objections bearing C.M.A. No.49038 of 2019 are **disposed of**.

22. Having held as aforesaid, the Court has thereafter perused the pleadings and apparently from the written statement filed, it would reveal that defendants no.1,4 and 5 have filed a separate written statement, whereas the defendant no.2 has filed a separate written statement and the defendant no.3 has also filed a separate written statement though the content and tenor of all the three written statement is almost the same. From the perusal of the said written statement, it is clear that none of the defendants have taken any plea regarding the bar of Section 49 of the U.P. Consolidation of Holdings Act, 1953. There is no reference or mention in the written statement regarding any proceeding which may have been contested by the parties before the Consolidation Authorities. In absence of any pleadings, apparently, no issue was framed and thus, there was no adjudication. It is in light thereof that no ground was even raised before the first appellate court for the reason that a suit had been dismissed and in any case a plaintiff did not raise the plea regarding the proceedings before the Consolidation Authorities. Even though the parties led evidence but none of the parties brought any document on record relating to any rights which may have been adjudicated and crystalized in the consolidation proceedings.

23. In view of the aforesaid, the question which has been framed relating to consolidation operation and the bar of Section 49 of the U.P. Consolidation of Holdings Act clearly

has no role to play in the instant appeal.

24. Insofar as the second question relating to the ancestral property is concerned, it is found that the property in question was of Shiv Bux. The property was agricultural, bhumadari of Shiv Bux and in light of provision contained under the U.P.Z.A. L.R. Act, 1950, there is no concept of ancestral property where a person may get a right by birth and that too in the life time of the father. There is difference between coparcenary property which is based on the notions and law as per the customary Hindu Law prior to 1956. Once the U.P.Z.A. L.R. Act came into being on the 1st of July, 1952 all rights in the land stood extinguished and vested with the State. The persons were granted rights which were only of tenure holder as bhumidhar, Sirdar and Adivasis which later were confined only as bhumidhar and Sirdar. The U.P.Z.A. L.R. Act also provides for a separate mode of succession in Section 171 which is different and now it is well settled to be disputed that the personal law is not applicable in respect of agricultural land which is governed by the U.P.Z.A. L.R. Act, 1950 and thus for the aforesaid reasons the plea raised by the plaintiff that the property was ancestral and Shiv Bux did not have a right to alienate the same by sale deed or a Will is not correct and it is answered accordingly.

25. Having considered the aforesaid questions of law, this Court takes note of the other argument raised by learned counsel for the appellants, who had also urged that findings recorded by the lower appellate court is against the weight of the material on record. Though no such substantial question of law has been framed but since the appeal is pending since 1991 before this Court and the suit is of the year 1983. Accordingly, the Court has considered the said argument to satisfy its conscious so that

no injustice may be done to any of the parties. It is in the aforesaid backdrop, the Court has considered the pleadings and also taken a glance at the evidence led. This Court finds that the finding returned by the lower appellate court that there is jointness of Hindu Family and the burden to rebut such presumption is on the person who dispute it and since the burden was on the defendant, who failed to discharge. Hence, it would be treated that the property was of the Joint Hindu Family. This finding of the lower appellate court may not be quite correct as there is a difference between a joint family and a joint family property. Without delving into the issue any further suffice to state that this aspect has been considered by this Court in the case of **Dropadi Devi and others vs. Shiv Chandra Dixit, 2020 SCC OnLine All 104**. In the said case, the difference between joint family and joint family property has been dealt with and accordingly, this Court finds that the findings recorded by the lower appellate court on this count cannot be sustained. The other issue which has been noticed by the lower appellate is in respect of the sale deed which is said to have been executed by Shiv Bux in favour of his grand children. What is important to note is that the grand children at the time of execution of said sale deeds were just coming of age and few of them were even minor.

26. During the cross-examination, the defendant witness, Ram Bhawan was merely 27 years of age, he was studying and did not have any independent source of income sufficient to pay the sale consideration. Insofar as the other beneficiaries of the sale deed are concerned, some of them were minor. While he was cross-examined regarding the payment of sale consideration to which he could not satisfactorily establish the actual payment of sale consideration to Shiv Bux. What strikes at the face is the fact that it is alleged that Shiv Bux was in debt and in order to

repay the same, Shiv Bux sold the property to his grand children who had paid the sale consideration which in turn was huge to liquidate the debt of Shiv Bux.

27. Apparently, nothing could be established from the record as to from whom Shiv Bux had taken any money, what was the amount of the money, what was the quantum of the amount and once the alleged sale consideration for the sale deed was paid to Shiv Bux, whether he repaid the lone.

28. Admittedly, the beneficiaries of the sale-deed did not have any independent source of income by which they could pay the amount as indicated in the two sale deeds and in the cross-examination, it was stated by the witness that he had arranged for the money from his uncle and another source however, neither the said uncle or his other source was examined as a witness to prove that they had given money to the defendants, who in turn paid the same to Shiv Bux. Another relevant aspect is that once Shiv Bux had executed the two sale deeds, there was nothing left with him in terms of assets which he bequeathed by writing his Will. Shiv Bux was admittedly old and though the plaintiff had taken a plea that he was not well but the same could not be established by any evidence regarding his illness or that he was unable to understand his own right or wrong. No evidence was brought on record to establish that Shiv Bux suffered from any illness nor any documents relating to his treatment were placed on record. Thus, the plaintiff could not establish this fact. The only fact which clinches the issue is regarding the payment of the sale consideration which was not established specially in context with the fact that there was a close relationship where the grand-father is executing the sale deed in favour of his grand children which are sons of two sons while excluding the other son, Krishna Murari, who is the plaintiff. In case, if the sale

consideration could not be proved that in itself may not be a ground to cancel the sale deeds as a person would always have a right to claim the amount but the fact remains in the given circumstance the executant, namely, Shiv Bux who is the eldest in the family soon expired and no satisfactory reason could be given by the defendant as to the need for execution of the sale deed in favour of the grand children. Thus, taking this aspect, the lower appellate court has intervened and this being a finding of fact. This Court is not inclined to interfere in the given fact and circumstance.

29. Accordingly, this Court is satisfied that the appeal is sans merit and is **dismissed** and the judgement and decree passed by the lower appellate court dated 23.11.1990 is upheld. The costs are made easy. The record of the court below shall be returned forthwith.

Order Date :- 15.12.2023
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