

Court No. - 19

Case :- SECOND APPEAL No. - 244 of 2022

Appellant :- Smt. Singari Devi And Another

Respondent :- Abdul Hafeez

Counsel for Appellant :- Jay Narayan Mishra, Dinesh Kumar Pandey, Jai Prakash Yadav, Om Prakash Nag

Hon'ble Jaspreet Singh, J.

Heard Sri Jai Prakash Yadav, learned counsel for the appellants.

This is the defendant's second appeal assailing the concurrent judgment and decree dated 25.07.2013 passed by the Civil Judge, Senior Division, Ambedkar Nagar decreeing the suit of the plaintiff bearing No. 473 of 1989 seeking a decree of possession.

The defendant preferred a Regular Civil Appeal bearing No. 50 of 2013 which was heard by the Additional District Judge/Fast Track Court-II, Ambedkar Nagar and by means of judgment and decree dated 05.09.2022, the defendants' first appeal was dismissed and the decree passed by the Trial Court dated 25.07.2013 has been affirmed.

The learned counsel for the appellant while assailing the concurrent findings has primarily submitted that admittedly the property in question belonged to one Sri Jagannath. He is said to have executed a registered will in favour of the plaintiff-respondents Abdul Hafeez dated 01.02.1988.

It is stated that Sri Jagannath had subsequently executed a will in favour of his nephew Ghanshyam on 20.02.1988. It is later that Ghanshyam claiming title on the basis of the alleged will dated 20th February, 1988 further executed a sale deed on 22.02.1989 in favour of Smt. Singari Devi (appellant no. 1).

The submission is that the plaintiff though had proved his will but the Trial Court as well the Lower Appellate Court fell in error in not noticing and considering the evidence led by the defendants-appellants whereby they had proved the will executed by Jagannath on 20.02.1988 in favour of Ghanshyam.

It is submitted that the two courts completely ignored the material on record and have arrived at the findings which are not supported by the adequate evidence, accordingly, the

findings are perverse and the appeal deserves to be admitted.

Having heard the learned counsel for the defendant-appellant and from the perusal of the material on record, it transpires that undisputedly the property in question belonged to Jagannath. He suffered from leprosy and he was under treatment in a hospital in Faizabad where Abdul Hafeez, the respondent was also undertaking his treatment. Since the relations between the Jagannath and his sister and nephew were not quite cordial, accordingly, after being discharged from the hospital and being happy with the services rendered by Abdul Hafeez who was also staying in the disputed premises alongwith Jagannath, accordingly, the registered will came to be registered in favour of Abdul Hafeez.

It is stated that while Abdul Hafeez claiming title on the basis of will has been away from the house, the defendant forcibly entered into the premises by putting a lock and as such the plaintiff was dispossessed.

It is in the aforesaid circumstances that the suit for possession came to be filed registered as R.S. No. 473 of 1989. The suit was contested by the defendants-appellants raising a plea that the Jagannath had already executed a later will dated 20.02.1988 and it is the last will of the testator which should prevail.

In the aforesaid circumstances where the defendant had also examined the attesting witnesses of the said will, in this view of the matter, ignoring the evidence of the defendants and merely relying upon the evidence led by the plaintiffs, the two courts have have committed an error.

Having considered the aforesaid submissions, this Court further finds that in so far as the will executed by Jagannath in favour of Abdul Hafeez is concerned, the same is a registered will which was duly proved by examining its one of the attesting witness and the other attesting witness of the will by then had already expired.

The Trial Court also considered the other evidences led by the respective parties including the witness Ghanshyam found that the testimony of Ghanshyam, the nephew of Jagannath was not inspiring. He made incredible statements to the effect that his relations with his uncle Jagannath were quite cordial, however, the plaintiffs have filed documents on record bearing Paper No. Ga-37 to Ga-41 wherein earlier litigations between Jagannath and his nephew was brought on record.

There were instances where the nephew of Jagannath had tried to encroach and usurp the property of Jagannath and as such he had reported the matter to the police. It is also noticed by the Trial Court that the finding of the will which was set up by the defendant could not be said to be inspiring, inasmuch as, it was an unregistered will.

It also relied upon the decision of the Apex Court wherein it has been held that an registered will cannot be cancelled by an unregistered will. It is taking note of the aforesaid in recording a finding of fact after scrutinizing the evidence of both the plaintiff and the defendant, a finding was returned that the will as set up by Abdul Hafeez dated 01.02.1988 was duly proved and for the said reasons regarding the animosity between Jagannath and his nephew the will of Ghanshyam was found to be mired with suspicious circumstances and since Ghanshyam had propounded the will, it was his duty to have dispelled the suspicious circumstances and come out with reasons under what circumstances, the will was cancelled and Jagannath had executed a separate will in favour of Ghanshyam.

The record would also indicate that even while Jagannath was in hospital, the nephew was not present to take care or to nurse him at that stage. He also did not know the date of death nor who all were present in the hospital and taking note of these surrounding circumstances, the Trial Court returned a finding that the evidence of the defendant did not inspire confidence nor the reasons for executing the will in favour of Ghanshyam had any connections whereas there were ample documentary evidence which could not be controverted by Ghanshyam regarding the strained relations between Jagannath and him.

It is in the aforesaid backdrop that the Trial Court by means of judgment and decree dated 25.07.2013 decreed the suit. The Lower Appellate Court has also re-appraised the evidence and has found that the findings recorded by the Trial Court are based on proper and sound appreciation of evidence and does not require any interference.

Having taken note of the questions of law as proposed by the learned counsel for the appellants, this Court finds that the two courts have meticulously considered the evidence on record and have recorded findings of fact. Nothing could be shown as to under what circumstances, the registered will executed by Sri Jagannath on 01.02.1988 was discarded by and what compelled Jagannath to execute an unregistered will on 20th February, 1988.

The overall circumstances shows that the evidence of the

defendants does not inspire confidence, accordingly, this Court does not find that there is any substantial question of law involved in the instant appeal. The appeal is concluded by concurrent findings of fact which this Court is loathed to intervene in exercise of jurisdiction under Section 100 C.P.C., accordingly, the judgment and decree passed by the Trial Court dated 25.07.2013 and the judgment and decree dated 05.09.2022 passed by the Lower Appellate Court are affirmed, accordingly, the appeal is ***dismissed*** at the admission stage.

In the facts and circumstances, there shall be no order as to costs.

Order Date :- 7.11.2023

Asheesh