

Court No. - 19

Case :- SECOND APPEAL No. - 160 of 2023

Appellant :- Amar Singh @ Bairagi And Another

Respondent :- Savita And Another

Counsel for Appellant :- Alok Kr. Misra

Counsel for Respondent :- Mayankar Singh

Hon'ble Jaspreet Singh,J.

1. Heard Sri Alok Kumar Mishra, learned counsel for the appellants as well as Sri Mayankar Singh, learned counsel who has appeared on behalf of the respondents-caveator.

2. By means of the instant second appeal, the plaintiff-appellants assail the concurrent judgment and decree passed by the Additional Civil Judge, Junior Division, Court No. 12, Gonda in Regular Suit No. 1727 of 2017 dated 29.11.2022 whereby the suit for cancellation of sale deed dated 19.07.2017 has been dismissed so also the first appeal filed by the plaintiff also stands dismissed by the Additional District Judge, Court No. 3, Gonda in Appeal No. 64 of 2022 vide judgment dated 10.08.2023.

3. The submission of learned counsel for the appellants is that the property in question belonged to Smt. Gulbasa @ Rajdei and her three sons. Smt. Gulbasa has executed a sale deed dated 29.07.2017 in respect of her share in favour of her daughter-in-law Savita who is the respondent no. 1 (wife of Jaswant Singh who is the respondent no. 2).

4. It is further submitted that the sale deed was challenged on the ground that it was not executed by Smt. Gulbasa @ Rajdei. It was also urged that the boundaries were also not adequately and clearly defined and nor any partition had taken place and moreover no sale consideration was given. The suit came to be contested by the defendants-respondents wherein they had taken a plea that the sale deed was executed by Smt. Gulbasa @ Rajdei, the mother of the parties and she herself had appeared before the Sub Registrar for execution and attestation/registration of the sale deed dated 19.07.2007 and she executed the sale deed only in respect of her share which she had inherited from her husband and that proper sale consideration was also paid to her.

5. For the aforesaid reasons Smt. Gulbasa @ Rajdei had the

competence to execute the sale deed, which she did and moreover without impleading her as a party to the suit, the suit was liable to fail. It was also pleaded that in presence of Smt. Gulbasa @ Rajdei, the plaintiffs had no locus to file the suit.

6. The Trial Court considering the evidence of the parties framed as many as ten issues, however, the primary issue upon which the suit came to be contested was in respect of the validity of the sale deed and the grounds for challenge which upon leading of evidence before the Trial Court by the respective parties did not find favour and as such the suit bearing No. 1727 of 2017 came to be dismissed by means of judgment and decree dated 29.11.2022.

7. The plaintiffs being aggrieved against the said judgment and decree preferred a regular civil appeal under Section 96 C.P.C. before the District Judge, Gonda which came to be registered as Civil Appeal No. 64 of 2022 whereafter it was transferred to the Court of Additional District Judge, Court No. 9, Gonda for hearing. The Lower Appellate Court echoed the same sentiments which amplified by the Trial Court by means of judgment and decree dated 10.08.2023, it dismissed the appeal which has prompted the plaintiffs-appellants to knock the door of this Court in exercise of powers under Section 100 C.P.C.

8. The learned counsel for the appellants further submits that there was a clear statement given by Smt. Gulbasa @ Rajdei to the effect that she was pleased with the services of her son and daughter-in-law and for the said reason, she executed the sale deed in favour of Smt. Savita. Later, in her deposition, she also stated that she had received a sum of Rs. 7,00,000/- as consideration.

9. The learned counsel for the appellant has raised a two fold submissions:-

(i) It is urged that from the statement of Smt. Gulbasa @ Rajdei, it was clear that either she executed the sale deed on account of being happy with the services of the son and the daughter-in-law and for such a reason either she could have gifted the property to them but there was no occasion for her to have accepted two consideration, inasmuch as, the consideration can be either the good services or money consideration. In case if she accepted the consideration of cash as indicated in her deposition, then in such circumstances, her earlier statement that she was happy with her son and daughter-in-law in whose favour the sale deed was executed does not stand to reason and the sale deed is bad, this gives a rise to a substantial questions of law.

(ii) It is further urged that since the parties are related and in the aforesaid circumstances, it was necessary for the Court to have examined whether there was any probability of executing such a sale deed by the mother in favour of one daughter-in-law and in effect excluding two other sons who otherwise would have an interest and right in the said property, thus, the appeal deserves to be admitted.

10. Sri Mayankar Singh, learned counsel for the respondents-caveator submits that it is not disputed between the parties that the property in question initially belonged to Sri Sohrat, the father of the appellants and the respondent no. 2. Upon his death, the property was inherited by Smt. Gulbasa @ Rajdei being the wife and three sons i.e. the appellant nos. 1, 2 and the respondent no.2.

11. Once the sale deed has been executed in favour of the daughter-in-law i.e. the respondent no. 1 by Smt. Gulbasa @ Rajdei in her lifetime relating to her share only, the appellants would not have any right to assail the same, especially when the sale deed was admitted by Smt. Gulbasa @ Rajdei as having been executed in favour of the respondent no. 1 while she appeared before the Court as a defence-witness.

12. Thus, this aspect has been adequately dealt with by the two courts and have examined the evidence on record and returned findings of fact which is not liable to be disturbed in exercise of powers under Section 100 C.P.C.

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

14. Apparently, the undisputed fact is that Smt. Gulbasa @ Rajdei had executed the sale deed only in respect of her share which she inherited from her husband. It is not disputed by the plaintiff-appellants that she had the right to execute the sale deed. The ground which was raised in the plaint that Smt. Gulbasa @ Rajdei did not execute the sale deed rather an imposter has been placed before the Sub-Registrar, this could not be adequately proved by the plaintiffs and both the Courts did not believe this version especially in light of the evidence of Smt. Gulbasa @ Rajdei herself who appeared as D.W. 2 and admitted that she had gone to the office of the Sub-Registrar and had executed the sale deed in favour of respondent no. 1.

15. In so far as the fact that Smt. Gulbasa @ Rajdei had her share in the property and she had the competence to execute the sale deed in favour of any person. Once, she decided to execute the sale deed, may be in favour of her daughter-in-law, being

pleased with her services and has accepted the sale consideration also noticing that the sale consideration was deposited in her bank account and these findings have been recorded on the basis of evidence on record are pure findings of fact which require no interference from this Court.

16. There is no exposition of law which prohibits a person from executing a sale deed in favour of his/her children being happy with them and by accepting sale consideration from them, nor it creates any cloud over any such transaction especially when the ground for challenging the sale deed could not be proved by cogent evidence.

17. This Court is satisfied that no substantial questions of law arises in the instant appeal and the second appeal is concluded by the concurrent findings of fact, accordingly, the appeal is ***dismissed*** at the admission stage. The judgment and decree dated 29.11.2022 passed by the Additional Civil Judge, Junior Division, Court No. 12, Gonda in Regular Suit No. 1727 of 2017 and 10.08.2023 passed by Additional District Judge, Court No. 3, Gonda in Appeal No. 64 of 2022 are affirmed. In the facts and circumstances, there shall be no orders as to costs.

Order Date :- 6.11.2023

Asheesh