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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.61 of 1992
IN
First Appeal No.874 of 80

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1. Harihar Mahto(since deceased) substituted by (a) Mostt. Sripati Devi, w/o Harihar Mahto (b) Jitendra Prasad(c) Upendra Prasad(d) Raj Kumari@ Sarita Kumari, D/o Late Harihar Mahto, all residents of vill-Koiria Tola, P.O. & P.S. Raxaul Dist, East Champaran.
2. Bihari Mahto(since deceased), substituted by(i) Dhelia Devi, W/o Late Bihari Mahto(ii) Prabhu Mahto, S/o Late Bihari Mahto, both residents of Koina Tola, P.O. & P.S. Raxaul Dist. East Champaran (iii) Lalmuni Devi, D/o Late Bihari Mahto & wife of Achhelal Mahto(v)Amrawati Devi, D/o Late Bihari Mahto & W/o Dinanath Prasad, both residents of Koraiya, P.O. Jamunia, P.S. Jharaukha, Dist-East Champaran.
3. Sadholal Mahto(since deceased), substituted by (a) Ishwar Pati Devi, w/o Late Sadholal Mahto(b) Pramod Kumar, s/o Late Sadholal Mahto, both residents of Mohalla Koiriya Tola, P.O. & P.S. Raxaul, Dist-East Champaran(c) Shambha Devi, D/o Sadho Lal Mahto, W/o Ram Pukar Mahto, village Inarwa, P.O. & P.S. Lakhaura(East Champaran)(d) Sudama Devi, D/o Late Sadholal Mahto, W/o Deo Chanra Mahto, village Inarwa, P.O. & P.S. Lakhauna, Dist-East Champaran. (e) Shankuntala Devi, D/o Late Sadholal Mahto, W/o Brinda Mahto, vill-Bakhataura, P.O. & P.S. Adapur, Dist-East Champaran.
4. Most. Mauni Devi(since deceased), her legal representative appellant no.5.
5. Smt. Urmila Devi, wife of Mahendra Prasad, daughter of Late Madho Lal Mahto, resident of village Kanchhedwa, P.S. Harsidhi, Dist-East Champaran., at present Koiria Tola, P.O. and P.S. Raxaul, Dist-East Champaran.

Plaintiffs.... .... Appellant/s

Versus

1.Amla Prasad(since deceased), substituted by(i) Gayati Devi, wife of late Amla Prasad, resident of village Koiria Tola, P.S. Raxaul, East Champaran(ii) Aruna Kumari, d/o late Amla Prasad, wife of Ajit Kumar Gupta, resident of Bari Patandevi, P.S. Guljarbagh, Dist-Patna.
2. Mani Prasad
3. Muna Prasad
4.Ajai Prasad
5. Raju Prasad, all sons of Amla Prasad, residents of Koiria Tola, P.O. & P.S. Raxaul, District-East Champaran.

Defendants……Respondents

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Appearance :
For the Appellant/s : Mr. Shashi Shekhar Dwivedi,Sr.Adv.Mr. Ram Adya Singh , Mr. Ranjan Kumar Dubey & Mr. Vishwajeet Kr. Mishra
For the Respondent/s : Mr. Jitendra Kishore Verma & Mr. Anjani Kr.Jha

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 14-07-2015

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The plaintiffs in Title Suit No. 196/23 of 1976/79 on the file of 1st Additional Subordinate Judge, Motihari are the appellants in this L.P.A. They filed the suit for relief of declaration of title and for injunction, and in the alternative for recovery of possession, if it is found that they are not in possession of the property.

2. Briefly stated, the case of the plaintiffs was that Paran Mahto had two sons, by name Thithar Mahto and Ramtahal Mahto, and out of them the latter died earlier. He had a son, by name Bagar Mahto, and he was married to Dharohari. The couple had two sons, by name Muni Mahto and Raja Mahto. Bagar Mahto died leaving behind his wife and two sons. In a partition, the property held by the family is said to have been divided in equal shares, and the northern part of it admeasuring about six kathas and ten dhurs fell to the share of Munni Mahto and Raja Mahto, and almost the equal extent on the southern side fell to the share of Thithar Mahto. Munni Mahto and Raja Mahto predeceased their mother. Thereafter, the property was under the management and administration of Dharohari.

3. In the year 1924 Dharohari mortgaged a part of Plot no. 1535 and other lands to Chhedhari Mahto , the father of the plaintiffs,

and another mortgage deed she executed by her, in respect of the remaining land, in 1926. Ultimately, Dharohari executed sale deed in 1929 in respect of six kathas and ten dhurs of land in favour of the father of the plaintiffs.

4. Thithar Mahto's son is Ramdhyan Mahto. He succeeded to the property of his father and he is said to have sold the same to the father of the plaintiffs in the year 1925. It is stated that only Plot No. 1638 was mentioned in the sale deed, but the boundaries furnished therein covered the entire Plot held by Thithar Mahto. The mistake in this behalf, is said to have been corrected through the document dated 1-1-1931. The plaintiffs pleaded that ever since the lands were purchased by their father their family is in possession and enjoyment of the property. Their grievance was that the defendants started interfering in their possession and claimed the right on the basis of purchase made in 1971 from Ramageya Mahto, son of Ramdhyan Mahto.

5. Defendant nos. 2 and 3 filed common written statement. They did not dispute the structure of the family pleaded by the plaintiffs, nor the factum of partition. Their plea was that no sale as such was effected by Dharohari in favour of the father of the plaintiffs. Alternatively, they pleaded that after the death of her sons, Dharohari came to live in the house of their vendor Ramdhyan Mahto

and orally surrendered all her rights in respect of the property held by her sons. It was pleaded that Dharohari was only limited owner and she did not have the right to sell the property. The defendants further pleaded that they are in possession of the property.

6. The trial court decreed the suit, through its judgment dated 30th August, 1980. Aggrieved by that, the defendants filed Appeal From Original Decree No. 874 of 1980, before this Court. Through judgment dated 27th March, 1992, the learned single Judge allowed the appeal and reversed the judgment and decree in the suit. Hence, this Letters Patent Appeal. For the sake of convenience, the parties are referred to as arrayed in the suit.

7. Mr. Shashi Shekhar Dwivedi, learned senior counsel for the plaintiffs submits that the learned single Judge committed patent error, in the very framing of the point, and even that, is not in accordance with the pleadings in the suit. He contends that except resisting the suit, the defendants did not raise any specific plea as to the absence of any legal necessity for Dharohari or any other factum that vitiates the sale deeds, and still a point was framed as though Dharohari did not have the right to sell the property at all. He contends that this is contrary to Rule 31 Order 41 of the Code of Civil Procedure apart from being opposed to the pleadings. He contends that the learned single Judge, on the one hand failed to frame the

points on the matters of controversy, and on the other hand framed a question which is totally outside the scope of the suit.

8. Learned senior counsel further submits that once the sale deeds, and that too, which are more than 30 years old, were shown to have been executed, the burden on the plaintiffs stood discharged and the plaintiffs were entitled to the relief of declaration of title, and the relief of recovery of possession or injunction, as the case may be, was almost ancillary in nature, and is to follow, as a matter of course. He contends that at no point of time reversioners of Dharohari had doubted her right to sell the property, and even after the sale had taken place, no objection was raised either during her life time or after her death. He contends that the father of the vendor of the defendants has acknowledged the validity of the sale effected by Dharohari in favour of the plaintiffs, so much so that he himself executed the sale deeds in favour of the plaintiffs as regards his share, and still the defendants have resorted to speculative purchase just to create trouble for the plaintiffs.

9.On the basis of pleadings before it, the trial court framed the issues as under:-

"(i) Is the suit as framed maintainable?

(ii)Whether the plaintiffs have any cause of action for the suit?

(iii)Is the suit barred by the principles of estoppel,

acquiescence, waiver and adverse possession?

(iv)Whether the plaintiffs have title to the suit property?

(v) To what relief or reliefs, if any, plaintiffs are entitled?"

10. On behalf of the plaintiffs P.Ws. 1 to 18 were examined and Exts.1 to 6(C) were filed. On behalf of the defendants D.Ws. 1 to 15 were examined and Exts. 1 to 24 were filed. The trial court answered all the issues in favour of the plaintiffs and decreed the suit, as prayed for.

11. In the appeal, preferred by the defendants the learned single Judge did not frame any point as such. However, he identified the area of controversy in paragraph no.35 as under:-

> " The question which falls for consideration in this appeal is whether plaintiffs got any title by virtue of the aforesaid sale deed(Ext.2B) executed by Mostt, Dharohari in the year 1929 being a limited owner of the estate of her deceased husband."

12. The said question was answered in favour of the defendants, and the appeal was allowed and the degree passed by the court below was set aside. We are of the view that the following questions arise in this appeal:

> (1) Whether the procedure adopted by the lower appellate court in addressing the area of controversy is correct?
>
> (2) Whether the plaintiffs proved title over the property?
>
> (3) Whether the defendants have pleaded

and proved any fact which has the effect of nullifying the sales effected by the plaintiffs?

13. As regards Point No.(1), it hardly needs any mention that the appellate court is under obligation to frame the points for consideration. It is only then, that the appellate court would be in a position to address the areas of controversy. In a given case, the points can be nothing but the repetition of the issues framed by the trial court, and in certain cases the lower appellate court may make mention such of the aspects which are most relevant and frame the points which actually arise before it. There are instances wherein the High Court have set aside the judgments of the appellate courts, if Rule 31 of Order 41 of the Code of Civil Procedure was not complied with. There are also instances wherein it was held that mere failure to frame points in a detailed manner would not be a factor to find fault with the judgment, if the appellate court has addressed the entire area of controversy.

14. Strictly speaking, the judgment rendered by the learned single Judge can straightway be said to be in contravention of Rule 31 of Order 41 of the Code of Civil Procedure, in this case. Normally, in such cases, the matters are remanded. However, having regard to the fact that the litigation started in 1976, we do not intend to remand the matter for fresh disposal, lest few more decades get added to the life of litigation. In that view of the matter, though we are convinced that the procedure adopted by the learned single Judge is not correct, we do not intend to interfere with the judgment on that ground alone and proceed to address the matter on merits, as though we are the first appellate court itself.

15.Undisputed facts are that the plaintiffs had purchased a piece of the land from the widow, by name, Dharohari, and anoher

piece from the other branch, namely, Ramdhyan Mahto. The purchases made by the plaintiffs are governed by the Hindu Law of Succession, as it existed before 1956. The sale deeds were executed by Dharohari in the year 1929 in favour of the father of the plaintiffs. In fact the property was under mortgage with him from 1924 itself. The other sale deed was executed by the father of the vendor of the defendants i.e., Ramdhyan Mahto in the year 1925. These two sale deeds have to be dealt with separately since the law that operates as regards them is different.

16. It is no doubt true that Dharohari did not have the absolute right to sell the property as per the extant law. On the death of her sons, she represented their estate and she was entitled to enjoy the property during her life time. She was also conferred with the power to sell the property, of course, for legal and genuine necessity. The reversioners had a claim over the property subject to certain conditions. When she mortgaged the property in the years 1924 and 1926 and sold the same in the year 1929, there was no objection at all whatever from the reversioner i.e. Ramdhyan Mahto, son of Thithar Mahto. On the other hand, Ramadhyan Mahto himself sold his land to the father of the plaintiffs. Therefore, there was a clear admission, acknowledgement and acquiescence on the part of Ramadhyan Mahto about the sale effected by Dharohari in favour of the father of the plaintiffs.

17. Learned counsel for the defendants submits that in a suit of this nature, it would not be sufficient for the plaintiffs just to prove the execution of sale deeds, and they must further to establish that the vendor, which, in this case is a Hindu widow, had a genuine and legal necessity, and only then they can be said to have established the title. We are afraid, this is not the correct approach at all. In a suit of

declaration based on title, the plaintiffs can be said to have discharged their burden once the execution of sale, as required under law is proved. Added to that, since the document is more than 30 years old, the contents thereof are backed by strong presumption under section 90 of the Evidence Act.

18. The question as to whether a Hindu widow, who had limited right over the property, was entitled to sell the same, would arise if only her reversioners challenge the sales effected by her. Such a challenge can be either in the form of independent suit or by way of cross-objection in a suit filed by the persons claiming through such a widow. The defendants in the instant case did not take the plea in this behalf, much less did not file any cross-objection. As a matter of fact, they pleaded that after the death of her sons, Dharohari came and lived with the reversioner Ramdhyan Mahto and orally surrendered her rights over the land This was a fact required to be specifically pleaded and proved to the satisfaction of the trial court. Hardly any effort was made by the plaintiffs, in this regard. Therefore, the plaintiffs can be said to have proved their title in respect of the land covered by the sale deed executed by Dharohari Devi.

19. As observed earlier, another part of suit properties was purchased through separate source, i.e. from Ramdhyan Mahto.He was the absolute owner having succeeded the same from his father. The defendants were silent as to how the sale executed by Ramdhyan Mahto was vitiated.

20. On behalf of the defendants, reliance is placed upon the decision in the case of Kalawatibai Vs. Soiryabai and others[(1991) 3 Supreme Court Cases 410]. Their Lordships have analyzed the scope of section 14 of the Hindu Succession Act, 1956 with reference to the limited rights that existed before the codification of Hindu Law. It

was mentioned that though the purchaser from the limited owner i.e., Hindu widow can claim rights against the entire world, the right derived by her is subject to the claim that may be made by the reversioner. It was also held that if the reversioner is able to establish that the alienation by the Hindu widow is without legal necessity, the sale can be set aside, and his right can be recognised. The relevant paragraph reads as under:-

> "14. Thus if prior to 1956 any alienation was made by a Hindu widow of widow's estate prohibited by law or being beyond permissible limits, it stripped the widow of her rights and she could not acquire any rights under section 14. And so far as alienees were concerned it could utmost create temporary and transitory ownership precarious in nature and vulnerable in character open to challenge if any attempt was made to cloud reversioner's interest. Her possession may be good against the world, her right in property may not be impeachable by the widow but her interest qua the reversioner was to continue in possession at the maximum till the lifetime of her donor of transferor. It was life interest, loosely, as the duration of interest created under invalid transfer came to an end not on death of donee or transferee but donor or transferor. So far as the male alienees from limited owners, that is female Hindu prior to 1956, are concerned, it was held by this Court in Radhey Krishan Singh & Ors. v. Shiv Shankar Singh & Ors., [1973] 2 SCC 472 that, the alienation could be challenged by the reversioner as there was nothing in the Hindu Succession Act which has taken away such a right. A female alienee did not enjoy better or different status as the Hindu Law applied universally and uniformaly both to male and female alienees. She did not become limited owner or holder of a limited estate as understood in Hindu Law. And the

> alienation without legal necessity could be assailed by the reversioner. No change was brought about in this regard by the Act. If the alienation was valid i.e., it was for legal necessity or permitted by law then the donee became an owner of it and the right and title in the property vested in her. But if it was contrary to law, as in this case the gift being of entire widow's estate, then it did not bind the reversioner who could file a suit after the death of the widow. And the appellant cannot claim to have acquired title to the property under the gift deed. Nor had she become a limited owner under Hindu Law which could mature into full ownership when the Act came into force. In fact such possession was not backed any title as against reversioner which could preclude her from bringing the suit for declaration."

21. In the instant case, the reversioner of Dharohari i.e., Ramdhyan Mahto did not question the sale effected by Dharohari, much less instituted any proceedings vis-à-vis the sales effected by her. The defendants came into picture only in 1971 when they purchased the property from the son of the reversioner of Dharohari Devi. Even they did not raise any plea in this behalf. Therefore, the principle laid down in the said judgment does not apply to the facts of the case.

22. Similarly in Naresh Kumari Vs. Shakshi Lal(AIR 1999 Supreme Court 928) the same principle was reiterated. In fact, extensive reference was made to the judgment in Kalawatibai's case (supra). In fact, the various observations made by the Supreme Court run against the defendants.

23.. In Jaisri Vs. Rajdewan(AIR 1982 Supreme Court 83) the Constitution Bench of the Supreme Court held that the Hindu widow is entitled to full beneficial enjoyment of the estate and is not accountable to any one and she cannot alienate the property unless it

be for necessity or for benefit to the estate. Their Lordships proceeded to observe that the restriction on her power to sell is not the one imposed for the benefit of reversioners, but is an incident of the estate ,as known to Hindu law. Even this helps the case of the plaintiffs, particularly when no doubt whatever was expressed as to the genuine necessity of the lady Dharohari to sell the land. Therefore, we answer Point No.(2) in favour of the plaintiffs.

24. Point no.(3) is almost covered by our discussions on Point no.(1). In addition, we have already observed that the plaintiffs derived title over the property through two separate sources, one of it being on the basis of sale from Dharohari and the other from the father of the vendor of the defendants. The two transactions are different. We have already held that as regards the first one, though the plaintiffs can be said to have discharged their burden with the proof of the sale deeds in their favour, that was subject to the plea which the defendants may raise, as regards the limited nature of the ownership of Dharohari and absence of legal necessity. In case they are able to plead and prove those facts, the sale in favour of the plaintiffs, even if otherwise proved to be lawful, can be set aside or ignored in law. However, the defendants have miserably failed in this behalf. As a matter of fact, they were not certain about their plea. No specific plea as to the absence of legal necessity was raised and they came forward with the plea that Dharohari surrendered her right. In other words, but for the surrender,the father of the vendor of the plaintiffs would not have acquired title over the land. The so called surrender was not proved and the sale in favour of the plaintiffs remained unaffected.

25. The second transaction was from none other than the vendor of the plaintiffs. It was not even pleaded by the defendants

that the father of their vendor did not execute the sale deed. At any rate, they did not initiate any proceeding to set aside the sale, which is anterior in point of time.

26. Reliance is placed upon the judgment of the Supreme Court in Union of India Vs. Vasavi Coop. Housing Society Ltd.[(2014)2 Supreme Court Cases 269). It is in relation to the nature of burden of proof in a suit for declaration of title. Their Lordships observed that the burden always rests on the plaintiff to make out and establish a clear case for granting the relief of a declaration. There cannot be any second opinion about it and there is nothing on the record to show that this principle was not observed by the trial court. We are also convinced that the plaintiffs discharged their burden, as required under law.

27. Therefore, this L.P.A. is allowed and the judgment and decree dated 27th March, 1992, passed in Appeal from Original Decree No. 874 of 1980 are set aside. The result is that the judgment and decree passed by the trial court in the suit shall remain.

28. There shall be no order as to costs. Miscellaneous petitions, if any, shall stand disposed of.

(L. Narasimha Reddy,CJ)

BK.Roy/-AFR

(Anjana Mishra, J)

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