

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.636 of 2011

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Hridaya Sharma S/O Late Dhura Sharma @ Rajendra Sharma R/O Village -
Chhapiya, Pargana - Sipah, P.O., P.S. And District - Gopalganj

.... Appellant.

Versus

1. i. Shambhu Sharma, @ Birendra Sharma.
ii. Vinod Sharma.
Sons of Late Dinanath Lohar, Resident of Village-Nawada, P.O.-
Manikpur, P.S. and District-Gopalganj.
- iii. Malti Devi, daughter of late Dina Nath Lohar and wife of Kedar
Sharma, Resident of Village-Semara, P.O.-Thawe, P.S.-Uchaka Gaon,
District-Gopalganj.
- iv. Asha Kumari, daughter of late Dina Nath Lohar and wife of Rajindra
Sharma, Resident of Village-Kurmawata, P.O.-Nautan, P.S.-Nautan,
District –Siwan.
2. Mosmat Shalari @ Jhapuri Widow Of Late Bhairo Lohar R/O Village -
Nawada, Pargana, Sipah, P.O. Manikpur, P.S. And District – Gopalganj
3. Baidya Nath Sharma S/O Late Bhairo Lohar R/O Village - Nawada,
Pargana, Sipah, P.O. Manikpur, P.S. And District – Gopalganj
4. Shesh Nath Sharma S/O Late Bhairo Lohar R/O Village - Nawada,
Pargana, Sipah, P.O. Manikpur, P.S. And District – Gopalganj
5. Bhriugu Nath Sharma S/O Late Bhairo Lohar R/O Village - Nawada,
Pargana, Sipah, P.O. Manikpur, P.S. And District – Gopalganj
6. Prabhu Sharma @ Prabhu Nath Sharma S/O Late Bhairo Lohar R/O
Village - Nawada, Pargana, Sipah, P.O. Manikpur, P.S. And District -
Gopalganj

.... Respondents.

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Appearance :

For the Appellant/s : Mr. Shri Krishna Sinha
For the Respondent/s : Mr. Null

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

17 10-11-2015

Heard Mr.Nagendra Rai, the learned counsel

appearing on behalf of the appellant in support of this appeal.

The plaintiff is the appellant in this appeal
against the judgment and decree of affirmance dismissing the suit.

The plaintiff filed the suit for declaration that

the sale deed executed by Ram Prasad Sharma in favour of Ram Lal Sharma (Lohar) was forged, fabricated and without consideration with further relief to confirm the possession of the plaintiff over the suit land after the grant of the said relief. The prayer has also been made to declare the order passed by the Circle Officer and the Deputy Collector, Land Reforms as illegal and against the facts.

The plaintiff's case, in short, is that the suit property originally belonged to three brothers namely Raju Sharma, Ram Prasad Sharma and Ramgati Sharma all sons of Deep Sharma and there had been no partition between them. It is further case of the plaintiffs that the descendants of Ramgati Sharma sold their 1/3rd share in favour of the plaintiff's father Ghura Sharma @ Rajendra Sharma by registered sale deed dated 18.03.1943 and put the purchaser in possession. The plaintiff's further case is that the remaining brother Ram Prasad Sharma also transferred his share in the property by oral sale deed dated 01.07.1920 for Rs. 95/- in favour of Ghura Sharma @ Rajendra Sharma and put him in possession. The plaintiff's further case is that the defendants have been wrongly claiming over the suit land on the basis of the sale deed dated 12.06.1929 said to have been executed by Ram Prasad Sharma in their favour and have also

wrongly got the Jamabandi created in their name by the Circle Officer, and the Deputy Collector, Land Reforms has wrongly dismissed the appeal of the plaintiff against the order creating Jamabandi in favour of the defendants for the suit land.

The defendants in their written statement have denied the fact of oral sale dated 01.07.1920 by Ram Prasad Sharma in favour of the plaintiff's father and have asserted that Ram Prasad Sharma and Ramgati Sharma had mortgaged their shares in the property by mortgage deed dated 09.04.2014 in favour of Budhi Ram and later on Ram Prasad Sharma by mortgage deed dated 04.10.1920 further mortgaged his share in favour of Ram Lal Lohar who was the predecessor of the defendants and still further, Ram Prasad Sharma sold his share in the property in favour of Ram Lal Lohar by registered sale deed dated 11.06.1929 wherein the previous mortgage money was adjusted in the consideration amount. It is the specific case of the defendants that since after the purchase, Ram Lal Lohar, and thereafter, his sons (the defendants) are coming in possession over the suit land as owner. It is also case of the defendants that the plaintiff is their Bataidar and has been in possession over the suit land as Bataidar.

After scrutiny of the pleadings and evidence,



the trial court came to the finding that though there had been no partition by metes and bounds between the three brothers namely Raju Sharma, Ram Prasad Sharma and Ramgati Sharma but their shares stood defined and therefore they were entitled to alienate their shares. It was also found that the plaintiffs failed to establish the case of oral sale by leading cogent evidence, and on the basis of the transactions by mortgage deed (Ext.C/1) by Ram Prasad Sharma and Ramgati Sharma of their shares in favour of Budhi Ram and thereafter the transaction of mortgage by Ram Prasad Sharma of his share in favour of Ram Lal Lohar (the predecessor of the defendant) and the sale deed dated 11.06.1929 (Ext.D) executed by Ram Prasad Sharma in favour of Ram Lal Sharma (Lohar) and the fact of acceptance of the execution of the said sale deed (Ext.D) by the plaintiff, the trial court came to the finding that the defendants had the title over the suit land. Further after appreciating the evidence on record the trial court also came to the finding that the plaintiff's possession over the suit land was not adverse to the defendants. The suit on these findings was dismissed.

The plaintiff filed the appeal against the judgment and decree of dismissal of his suit. Before the appellate court, the only limited submission was made on behalf of the



plaintiff- appellant that as the suit property remained joint and the defendant did not take step to get the share separated following the execution of the sale deed dated 11.06.1929 within 12 years, his claim of title over the suit land was barred by limitation. The appellate court after reappraisal of the materials on record did not align with the said submission on behalf of the plaintiff-appellant and has dismissed the appeal by the impugned judgment and decree.

Mr. Rai, the learned counsel appearing for the appellant has firstly submitted that the judgment passed by the appellate court below is vitiated for non-compliance of the provision of Order 41 Rule 31 C.P.C.as no point was formulated for determination. It has also been urged that the claim of the defendant over the suit land on the basis of the sale deed dated 11.06.1929 stood barred in view of the Article 110 of the Limitation Act. The learned counsel has propounded that the possession of the plaintiff over the suit land has been admitted by the defendants though as their Bataidar and therefore also the claim of the defendant was barred by limitation.

After perusal of judgments of both the courts below and considering the submissions, it is manifest that the plaintiff filed the suit mainly for declaration that the sale deed

executed by Ram Prasad Sharma in favour of Ram Lal Sharma (Lohar) was forged , fabricated and without consideration. The existence of the said sale deed dated 11.06.1929 executed by Ram Prasad Sharma in favour of Ram Lal Sharma (Lohar) has been admitted by the plaintiff in the plaint itself. The trial court on appreciation of evidence has come to the finding that the plaintiff failed to establish his own claim over the suit land on the basis of oral sale of the suit land by Ram Prasad Sharma on 01.07.1920. The trial court has also come to the finding that the plaintiff did not lead any evidence to establish that the sale deed dated 11.06.1929 (Ext.D) was not executed by Ram Prasad Sharma. The submission on behalf of the appellant that as the defendants did not claim for partition within 12 years from the date of execution of the sale deed dated 11.06.1929 by Ram Prasad Sharma of his share in the joint family property, the title acquired by the defendant on the basis of that sale deed stood extinguished after expiry of 12 years, is entirely misconceived. It is well settled by now that it is the plaintiff who has to establish his case as pleaded in order to get the relief and the weakness in the case of the defendant will not enure to the benefit of the plaintiff. It is manifest that the suit was filed by the plaintiff for declaration against the sale deed of the defendant as forged, fabricated and

without consideration but no cogent evidence has been led on behalf of the plaintiff to establish the said fact. The apex court in the case of *Bajranglal Shivchandrai Ruia Vs. Shashikant N.Ruia, 2004 (5)SCC 272* and in the case of *Shrimant Shamrao Suryavanshi Vs. Pralhad Bhairoba Suryavanshi , 2002(3) SCC 676* has laid down the principle that the law of limitation does not operate against the defendant. This Court, therefore, does not find substance in the submission that the claim of the defendant over the suit land on the basis of the sale deed dated 11.06.1929 (Ext.D) is barred by limitation as envisaged under Article 110 of Limitation act.

Moreover it is also apparent from the evidence on record that the three brothers namely Raju Sharma, Ram Prasad sharma and Ramgati Sharma and their descendants have entered into independent transactions of sale and mortgage of their shares in the family property and even according to the plaintiff, there has been inter se transactions also. These facts are not inconsonance with the case of the plaintiff that the unity of title and possession was surviving between the three brothers. To the contrary, these facts are more in consonance with the disruption of the joint status by definition of shares even though there might have been no partition by metes and bounds. In view



of the provision of Section 44 of Transfer of Property Act, the purchaser of the share of a co-sharer is entitled to remain in joint possession with other co-sharers and law does not mandate that such purchaser must file a suit for partition within 12 years of the purchase. In the case of Jai Singh Vs. Gurmej Singh, 2009 (4) PLJR SC 197 their lordships have observed that “...when a co-sharer sells his share in the joint holding or any portion thereof and puts the vendee into possession of the land in his possession what he transfers is his right as a cosharer in the said land and the right to remain in its exclusive possession till the joint holding is partitioned amongst all cosharers...”

However, in the present case the courts below on the scrutiny of evidence have found that there has been disruption of joint status between those three brothers. In this view of the matter, also there is no substance in the submission on behalf of the appellant.

So far as the submission on the basis of the provision of Order 41 Rule 31 C.P.C. is concerned it is apparent from the judgment of the appellate court below that a limited submission relating to the bar of the claim of the defendant by limitation on the basis of sale deed dated 11.06.1929 has been raised. The appellate court below in paragraph-29 of the judgment

has specifically mentioned the fact that no other submission has been made on behalf of the appellant. In the present second appeal also the appellant has not disputed the said observation and has not objected the impugned judgment by the appellate court below on the ground that the other submissions were also made but have not been considered by the court. In such a fact situation the appellate court was not bound to formulate the points for determination and embark upon reappreciation of the findings of the trial court. It would be fruitful here to take into notice the decision of the apex court by a three Judge bench in ***Thakur Sukhpal Singh Vs. Thakur Kalyan Singh, AIR 1973 SC 146*** where repelling the contention that even if the appellant does not address the court, the court must go through the record and the judgment under appeal and come to its own conclusion about the correctness of the decision of the appeal, it has been ruled as follows:

“5.....

Not unoften certain grounds of objection raised in the memorandum of appeal are not argued or pressed at the hearing and in that case such grounds cannot be taken to be the points for determination and are rightly not discussed in the judgment at all.



It is for the appellant to raise the points against the judgment appealed from. He has to submit reasons against its correctness. He cannot just raise objections in his memorandum of appeal and leave it to the appellate court to give its decision on those points after going through the record and determining the correctness thereof. It is not for the appellate court itself to find out what the points for determination can be and then proceed to give a decision on those points”

“7..... The provisions of Rule 31 should therefor be reasonably construed and should be held to require the various particulars to be mentioned in the judgment only when the appellant has actually raised certain points for determination by the appellate court and not when no such points have been raised as had been the case in the present instance when the appellant did not

address the court at all....”

For the aforesaid reasons and discussions, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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