

THE HIGH COURT OF TRIPURA
AGARTALA

RSA NO. 10 OF 2006

Smt. Gita Deb,
W/O. Sri Dilip Kumar Deb,
Resident of Jalabasha,
P.S.- Pani Sagar,
District:- North Tripura.

..... Appellant

- V e r s u s -

1. Smti. Smt. Gauri Das,
D/O- Late Madan Gopal Das (Karmakar)
2. Sri Tridib Dey,
S/O- Lt.Tarun Chandra Dey,
All are the resident of Post Office Road,
Dharmanagar Town, P.O. & P.S.- Dharmanagar,
District-North Tripura.

.....Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellants	:	Mr. D.K. Biswas, Advocate.
For the respondents	:	Mr. S.Deb, Sr. Advocate, Mr. S.Bhattacharjee, Advocate.
Date of hearing and	:	01.7.2015
Delivery of judgment and order	:	21.07.2015
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER

Briefly stated the facts of the case are that Madan Gopal Shil Karmakar along with his daughter Gouri Das and one Tridib Dey filed a suit against the defendant (present appellant) Gita Deb, Dilip Kumar Deb, Manik Lal Das and Murari Mohan Das the last two

being the sons of Madan Gopal Shil Karmakar. It is not disputed that Madan Gopal Shil Karmakar was the owner of the schedule land. He filed the suit claiming that he had sold portion of the suit land at Serial plot No. 1 to his daughter Gita Deb and Serial plot No. 2 of the suit land to plaintiff No.2 Tridib Dey along with other lands vide two separate sale deeds dated 21.03.1998. According to him, he put the plaintiffs 1, 2 and 3 in possession of the suit land. The case of the plaintiff further is that the defendant 1 and 2 being husband and wife tried to forcibly take possession of the suit land on the strength of sale deeds purported to have been executed by the defendants 3 and 4 (sons of the plaintiff No.1) in favour of the defendant No.1 Gita Deb on the strength of some Power of Attorneys purported to have been executed at Gauhati on 28.08.1996 by plaintiff No.1 in favour of defendant Nos.3 & 4. It is alleged that on the basis of this Power of Attorney defendant No.4 executed one sale deed in favour of defendant No.1 on 29.11.1996 and defendant No.3 executed another sale deed in favour of defendant No.1 on the same date. The case of the plaintiff is that he was not aware about these sale deeds or the Power of Attorney. His case is that this Power of Attorney is totally forged and he has no knowledge of the same.

2. It is further the case of the plaintiff that some dispute arose between defendant 3 and 4 with regard to the manner in which the money of these sale deeds was to be divided and then the plaintiff came to know about the forged Power of Attorney and he accordingly lodged a criminal case against the defendants at P.S. Dharmanagar and finally GR Case 326 of 1999 was registered. The

case of the plaintiff is that the Power of Attorney was sent for examination on the hand writing expert. The defendants contested the suit and raised a number of objections. They pleaded that the suit was not within limitation. It was also pleaded that the suit as filed for declaration and possession was not maintainable without first getting the sale deeds and Power of Attorney set aside. The learned trial court framed the following issues in the suit :

“1. Is the suit maintainable in its present form ?

2. Whether the plaintiffs have any right, title, interest over the suit land?

3. Whether the Power of Attorney bearing No.3790 dated 28.8.96 is the effect of forgery/forged document and not binding upon the plaintiff ?

4. Whether the sale deeds bearing Nos. 1-3680 dated 29.11.96, 1-3679 dated 29.11.96 are fraudulent and in-effective?

5. Whether the plaintiffs are entitled to the decree as prayed for ?

6. Whether the parties are entitled to any other relief/reliefs ?”

/Additional Issue/

1. Whether the suit is barred by the law of limitation ?”

3. The trial court decided additional issue No.1 against the plaintiff by holding that without seeking relief of cancellation of the sale deeds the plaintiff could not file a suit for possession and since the limitation for cancellation of the sale deeds was governed by Article 59 of the Limitation Act the suit was barred limitation. On

merits the trial court held that the Power of Attorney was a valid one and not a forged document and accordingly dismissed the suit.

4. All the three plaintiffs filed an appeal and the learned Additional District Judge, North Tripura, Dharmanagar by a judgment dated 02.12.2005 in Title Appeal 19 of 2005 allowed the appeal and decreed the suit of the plaintiffs. The learned lower appellate court held that the Power of Attorney was a forged document. It further held that since the Power of Attorney was a forged document the sale deeds executed on the basis of the Power of Attorney were void *ab initio* , the suit filed on the basis of title was within limitation.

5. Aggrieved by this judgment only Gita Deb has filed the present appeal and in this appeal only Madan Gopal Shil Karmakar, Gouri Das and Tridib Dey were arrayed as respondents. Dilip Kumar Deb, Manik Lal Das and Murari Mohan Das who were defendants 2 to 4 in the suit have not been made parties in the appeal.

6. This appeal was only admitted on the following substantial question of law.

“Whether the power of attorney on the basis of which the suit land was transferred is a valid one?”

7. At the stage of hearing Sri DK Biswas submitted that in fact the main question of law was whether a suit for possession and declaration on the basis of title was maintainable without first getting the sale deeds executed by Manik Lal Das and Murari Mohan Das, sons of the plaintiff in favour of Gita Deb set aside.

8. On behalf of the respondents it has been urged that the appeal itself is not properly constituted because Dilip Kumar Deb, Manik Lal Das and Murari Mohan Das have not been impleaded as parties in the appeal and the decree is indivisible and without the other being made parties the appeal itself is not maintainable. Sri Sankar Deb, learned senior counsel for the respondents also urged that the sale deeds executed by Manik Lal Das and Murari Mohan Das on the basis of the forged power of attorney were void deeds and need not be set aside and in this behalf he relied upon the judgment of the Delhi High Court in ***Sanjay Kaushish Vrs. D.C. Kaushish and others : AIR 1992 Delhi 118*** and judgment of the Andhra Pradesh High Court in ***Suraneni Lakshmi Vrs. B. Venkata Durga Rao and another : 2012 STPL (LE-Civil) 49841 AP.***

9. As far as the Delhi High Court judgment is concerned, I am of the opinion that may not be strictly applicable since that was a judgment delivered to decide an issue as to whether the plaint should be rejected under Order VII Rule 10 of the C.P.C. However, the judgment of the Andhra Pradesh High Court is definitely relevant. Para 12 & 13 of the said judgment read as follows:-

“12 In fact, it is the consistent view of the courts with regard to void documents. In this case, the document as such is not void since it was executed by the plaintiff but the challenge is on the ground that it was not out of free will and it was by fraud and coercion. The suit was filed by the plaintiff for a declaration of this title to the property and injunction. It is needless to say that while considering

the relief in any suit the court has to consider the allegations in the plaint and grant relief. If in substance, the allegations in the plaint clearly goes to show that as to how the documents were obtained and not enforceable being vitiated and a declaration is sought for title, the court has to take into consideration such allegations while granting the relief and a declaration if granted by the court is substantially a declaration about the binding nature and validity of the sale transactions.

13. It cannot be lost sight that suit for declaration of title to be decided by a Court takes into its fold, consideration of several factors as to how the plaintiff is entitled for declaration of title. In such cases the plea of the defendants about the validity and binding nature and enforceability of any document defeating the title of the plaintiff have also to be considered. In such cases, the court naturally views the evidence on both sides leaving apart the frame of the suit. Therefore, the lower court found that though specific cancellation is not asked, the declaration of title is as good as a relief of cancellation of the sale deeds and found that the suit is not bad."

10. The law is that if pleadings are there and parties are aware with regard to the dispute then merely because no declaration is sought is not a ground to reject the plaint itself. Issue No.3 as framed clearly sets out the dispute whether the power of attorney is a forged document and issue No. 4 is really whether the sale deeds are ineffective. Therefore, the parties were aware that these are the two main issues in the suit and, therefore, in my opinion,

even if no specific declaration was sought the parties being aware about the dispute decree for possession can be passed if it is held that the sale deed is void, fraudulent and ineffective.

11. The learned lower appellate Court has given a finding of fact that the power of attorney is a forged document. This is a pure finding of fact and cannot be overturned and set aside in second appeal.

12. Moreover, I am of the considered view that the appeal as filed is not properly constituted. As pointed out the suit was filed by the three plaintiffs against four defendants. After dismissal of the suit the three plaintiffs filed an appeal against the four defendants. That appeal by the plaintiffs was allowed and a decree had been passed against all the defendants. Even if some of the defendants may not challenge the decree, in case any one of the defendants challenge the decree then all the parties to the suit should have been made parties in the appeal.

13. Order XLI Rule 14 of the C.P.C. provides that the Appellate Court if it decides not to dismiss the appeal under Order XLI Rule 11 should send notice to the respondents of the date of hearing of the appeal.

14. In Tripura, sub-rule 3 to Order XLI Rule 14 C.P.C. as amended and applicable to Gauhati High Court is applicable and this provides that the Appellate Court may make an order dispensing with the service of such notice on any respondent who did not appear either at the hearing in the court whose decree is complained of or in any proceedings subsequent to the decree provided further that the Court may require a notice of the appeal to be published in any newspaper. This does not mean that all the parties should not be

made respondents. There is a decree against defendants 2 to 4, namely Shri. Dilip Kumar Deb, Shri. Manik Lal Das and Murari Mohan Das. This decree if it has to be set aside must be set aside in favour of all the defendants and this cannot be done without them being made parties.

15. In view of the above discussion, I find that no question of law must lesser substantial question of law arises in this appeal. I am also of the view that the appeal itself is not properly constituted since all the parties in the suit have not been arrayed as respondents in the appeal.

16. The second appeal is accordingly dismissed. No order as to costs.

17. Send down the lower court records forthwith.

CHIEF JUSTICE

sabyasachi