HIGH COURT OF TRIPURA
AGARTALA

RSA NO.20 OF 2020

1(a) Smt. Namita Majumder Datta
W/o Lt. Jahar Datta.

1.(b) Smt. Ruma Datta
D/o. Lt. Jahar Datta.

2. Smt. Manju Datta,
W/o. Lt. Dipak Datta.

3. Sri Dipankar Data,
S/o Lt. Dipak Datta.

4. Sri Subhankar Datta,
S/o. Lt. Dipak Datta.

(Appellant No.1(b) & 4 being minor represented by their mothers 1(a) & 2 respectively)
All are resident of Sonamura town,
P.S. Sonamura, District Sipahijala.

5. Sir Sankar Datta,
S/o. Lt. Amulya Ch. Datta,
R/o. Surjyamaninagar, West Tripura.

---- Plaintiff-Appellants

Versus

1. Smt. Biva Rani Datta (Bhoumik)
W/o. Sri Buddha Datta.

2. Sri Buddha Datta
S/o. Lt. Amulya Ch. Datta,
Both are resident of Surjyamaninagar,
Sukanta Colony, P.S. Amtali, Dist. West Tripura.

----Defendant Respondent

For the Appellant(s) : Mr. K.N. Bhattacharjee, Sr. Adv.
Mr. S. Roy, Adv.

HIGH COURT OF TRIPURA
सत्यमेव जयते

For the Respondent(s) : None.

Date of hearing & delivery of Judgment & Order : 02.12.2020

Whether fit for reporting : NO.

HON'BLE MR. JUSTICE ARINDAM LODH

J U D G M E N T & O R D E R

Heard Mr. K.N. Bhattacharjee, learned Sr. counsel assisted by Mr. S. Roy, learned counsel appearing for the appellants.

2. This second appeal has been peferred by the plaintiff-appellants challenging the judgement and decree dated 02.03.2020 passed by the learned Addl. District Judge, West Tripura, Agartala in Title Appeal No.48 of 2014 upholding and affirming the judgment and decree dated 25.07.2014 passed by the learned Civil Judge, Jr. Division.

3. In course of admission, Mr. Bhattacharjee, learned Sr. counsel has proposed to draw the following substantial questions of law:-

> *" 1. Whether non compliance of mandatory provison of law in delivering judgment by the First Appellate Court amounts to perversity?*
>
> *2. Whether non reading and misreading and non appreciation of pleadings and evidence on record has vitiated the judgment of both the learned Court below?*

HIGH COURT OF TRIPURA

Any other substantial question of law as may be considered appropriate may kindly be framed at the time of hearing. "

4. The plaintiff-appellants by filling the present suit for declaration has prayed for the following reliefs:-

"(a) Admit the appeal;

(b) Call for the records;

(c) Issue notice upon the respondents;

(d) And after hearing the appeal may pleased to pass decree in the light of the prayers made in the plaint by setting aside the judgments passed by the Ld. Courts below.

(e) Pass interim order directing the respondents not to disturb the present possession of the appellants over the suit land and from changing its nature and character till disposal of the appeal;"

5. The First Appellate Court has projected the case of the plaintiff-appellants as under:-

" 3. Facts leading to the Title Suit is that Hashi Datta, mother of plaintiffs and defendants , purchased land measuring 0.033 acre in plot No.PB/40, 527(old dag No.) corresponding to hal plot No.922/1290 recorded in khatian No.401 i.e. the 'A' schedule land of the plaint of the original suit from one Samarjit Chakraborty by registered sale deed No.1-699 dated 5.5.1997 and accordingly khatian was also published in her name. That Hashi Datta had five sons and one daughter out of which she use dto lvie with five sons and one daughter out of which she used to live with three sons namely, Hahar Datta, Dipak Datta and Buddha Dataa in the house her brother namly, Nepal Datta at a distance of 75 meters from her purchased land and her remaining two sons namely, Sankar Dutta and Pallab Datta used to reside at Silchar and Surjamanagar respectively.

That Hashi Datta had another land at Surjamaninagar wherein her son Buddha Datta used to reside with his wife taking permission from Hashi Datta. In the year 2001. Hashi Datta constructed a dokan hut(shop) of four rooms in a portion of her purchased land measuring 0.20 acres described in Schedule "'B" of the plaint, out of which one room was given to Hahr Datta and three other on rent to the tenants. Her son Dipak Datta constructed a house on the remaining portion of the purchased land with permission of Hasi Datta which is described in schedule 'C" of the plaint. It is stated that both schedule B and C consists of A Schedule which is the suit land in the instant case. In the year 2007, Dipak Datta died leaving behind his wife, i.e. plaintiff No.5 as well as his minor son i.e. plaintiff Nos. 6 and 7 who were represented by plaintiff No. 5 being their mother. The plaintiff Hasi Datta also state to have constructed a house in apportion of B schedule land in the year 2003 and started living there with permission of his mother . In the year 2010 Hashi Datta met with an accident in which she sustained fracture injuries and that she was admitted to GBP Hospital for treatment and after getting discharged therefrom. She started living with the defendant No.2 at Surjamaninagar. It is further mentioned that health of Hashi data deteriorated day by day and on 17.06.2011 she died in her house at Surjamaninagar. On 20.7.2011, the plaintiffs came to know from one Samir Laskar, tenant of Hashi Datta that the defendant No.1 asked the rent from him claiming her to be the owner of the suit land and on enquiry the plaintiffs came to know that the defendant No.2 on 17.6.2011 itself, i.e. on the date of death of Hashi Datta, sold the entire suit land in favour of his wife (defendant No.10 by executing two sale deeds on the strength of power of attorney executed in his favour by his mother Hashi Datta few days back. The plaintiffs made allegation that during month of June, 2011 their mother was completely bad ridden due to her illness after the accident and even could not identify any body. As such, she was completely devoid of any prudence or power of understanding and unable to exercise her will, IT is power of understanding and unable to exercise her will. It is

alleged that the defendants keeping advantage of illness of their mother, fraudulently obtained her thump impression on the power of attorney dated 13.6.2011, under the strength of which, suit land was transferred in the name of defendant No.1 .As suit land was transferred in the name of defendants No.1. As alleged ,the deeds in question do not confirm any right, title or interest upon the defendant No.1 so far as the suit land is concerned and the plaintiffs are still asserting that the defendant No.1 never got possession of the suit land. It is alleged that on 2.9.2011 that defendants threatened the plaintiffs to dispossess from the suit land.

On the above factual backdrop, the Plaintiffs brought the original suit seeking a decree for declaration that both the sale deeds vide Nos.1-00752 and 1-00753 dated 17.6.2011 are void, inoperative and illegal. The plaintiff further sought for perpetual injunction with a direction to restrain the defendant No.1, her agents or persons from entering into the suit land and interfere with the peaceful possession of the plaintiff's thereon.

6. While determining the points involved in the first appeal, the learned First Appellate Court had taken up the issues framed by the Trial Court at Para-5 of the judgment for his consideration which are afresh reproduced hereunder:-

" 5. Upon the above pleadings, both the sides went on trial with the following issues framed by the trial Court.

(i) Whether there is any cause of action for the instant suit?

(ii) Whether Hashi Datta was the owner of the suit land?

(iii) Whether defendant No.2 fraudulently obtained the power of attorney in his favour executed by Hashi Datta on 13.06.2011?

(iv) Whether two numbers of sale deeds bearing No.1-00752 & 1-00753 are void, inoperative and illegal?

(v) Whether the plaintiff is entitled to get the decree as prayed for?

(vi) Whether the plaintiff is entitled to get any other relief or reliefs?

7. I have perused the judgment passed by the learned First Appellate Court and I find that the learned Court had visited and touched all the factual and legal issues of the pleaded case on merit and after hearing the learned counsels dismissed the appeal preferred by the plaintiff-appellants.

8. Being aggrieved, the plaintiff-appellants filed the present second appeal.

9. It is the well settled law that the Court will admit the second appeal if it is satisfied that the appeal involves substantial questions of law and even not a mere question of law. Keeping in mind the said principle, I have proceeded to decide the present second appeal.

10. I have meticulously given my due consideration to the proposed substantial questions of law as mentioned in the memo of appeal and as urged by Mr. K.N. Bhattacharjee, learned Sr. counsel appearing on behalf of the plaintiff-appellants. According to me, none of the proposed substantial questions of law merits consideration to draw substantial

question of law. These are all the question of facts. Mr. Bhattacharjee, learned Sr. counsel has not urged any other substantial question of law.

11. The first substantial question of law that has been proposed by Mr. Bhattacharjee, learned Sr. counsel is that the mandatory provision of Order XXXXI Rule 33 has not been complied with and for that reason, the judgment and decree passed by the First Appellate Court should be declared as perverse. I find no merit in the submission of the learned Sr. counsel.

12. After going through the judgment, it transpires that the learned First Appellate Court had considered the factual and legal aspects of the case in the line of the issues framed by the learned Trial Court. All the issues have been touched and dealt with by the First Appellate Court. The learned First Appellate Court while deciding the appeal had taken note of the case of the plaintiffs and the evidence on record. The plaintiff side had adduced three witnesses including the plaintiffs as P.W.1 & P.W.2. P.W.3 was the tenant. The learned First Appellate Court found that the plaintiffs have admitted the sale deed, certified copies of the registered general power of attorney dated 13.06.2011 and registered sale deed bearing Nos. 1-00752 and 1-00753 dated 17.06.2011 and original registered sale deed

No.1-699 dated 05.05.1997. The plaintiffs had filed an application calling for the documents from the Sub-Registry but before calling such documents they had admitted the said documents and learned Trial Court by resorting to the provision of Order XII Rule 3A of the CPC recorded admission of the documents and allowed the admission by an order. The plaintiff side did not agitate their grievance against the order before the Court of competent jurisdiction. The plaintiff side admitting the document, power of attorney and the registered sale deed as stated above have only stated that the thumb impression of Hashi Datta was obtained by practising fraud. It is established law that when a party alleges fraud, burden lies upon them to substantiate the fact of fraud i.e. when and how the fraud was practiced. But both the Courts below have held that the plaintiffs have failed to discharge their burden to prove that the defendants had practice fraud in obtaining the thumb impression and registering the power of attorney and the subsequent sale deeds.

13. True it is, that, a party who relies upon the documents has to prove it initially. In the instant case, before such proof of the document, the plaintiffs admitted the execution of the power of attorney executed by Hashi Datta.

14. The learned First Appellate Court after going through the evidence of the P.W.-3 had observed that P.W.-3 did not state a single word in his deposition about the alleged thumb impression of Hashi Datta being fraudulently obtained by the defendant No.2 in the power of attorney.

15. The learned First Appellate Court had further observed that:-

> *"Moreover, when the petition for calling the Sub-Registrar and deed writer as witness was filed by the defendants to prove execution of the power of attorney and the sale deeds, the plaintiffs side voluntarily admitted the documents and its genuineness for which the Ld. Trial Court did not call for the witnesses, which the learned Trial Court did not call for the witnesses, which otherwise indicates that the plaintiffs side admitted execution of the power of attorney as well as both the sale deeds. As such, consequent upon the above admission, the plaintiffs are legally estopped from saying that the power of attorney was fraudulently executed*".

16. I don't find any error of facts and law in the said finding of the First Appellate Court. Procedural law has been enacted to render justice and not to defeat the cause of justice. On perusal of the judgment and decree of the both the Courts below, I find that both the Courts below had well considered and appreciated the pleadings and evidence on record and I find no errors of facts and law in the said findings and decision of the learned Trial Court as well as the First Appellate Court.

17. Being held thus, I find no merit to admit the present second appeal and hence, it is dismissed *in limine*. The judgment and decree passed by the Trial Court and confirmed by the First Appellate Court are upheld and affirmed accordingly. Draw the decree accordingly. However, there shall be no order as to cost.

Send down the L.C.Rs.

JUDGE

HIGH COURT OF TRIPURA

suhanjit