

Item-27. 06-12-2022

sg

Ct. 8

SAT 265 of 2016
Kumari Durgarani Bera
Versus
Nikhil Kumar Bera & Ors.

The appeal is of the year 2016. The Additional Stamp Reporter has reported in its report dated 20th June, 2016 that the appeal is defective. The matter appeared in the warning list on 16th November, 2022 and continued to remain in the said warning list till it was transferred to regular list on 21st November, 2022. In spite of notice, the appellant is not represented nor any accommodation is prayed for on behalf of the appellant.

The appellate decree dated 28th January, 2016 affirming the decree of the Trial Court dated 20th July, 2013 passed in a suit for declaration of title and permanent injunction is the subject matter of challenge in the second appeal. The suit was dismissed on contest. The first appeal was also dismissed.

The plaintiff claimed that the suit property described in schedule Ka to Una, previously belonged to and was possessed by her father Khagendranath Bera and during his life time he filed a partition suit being title suit no. 175/80 against his co-sharers in the court of Civil Judge (Jr. Divn) 1st Court, Tamluk and subsequently the said case was transferred to the court of Civil Judge (Sr. Divn), Tamluk and it was renumbered as title suit no. 87/1987 and defendant no. 1 to 3, the sons of said Khagendranath Bera, looked after the said title suit as Khagendranath Bera was unable to attend the court due to his illness and the said defendants proposed to their father Khagendranath Bera to sell some lands to

meet up the cost of the said suit and took away Khagendranath Bera to the Additional Sub-Registrar, Sutahata on 20-09.89 on the plea of making a power of attorney in their favour for looking after the said suit on his behalf and they got a power of attorney executed in their favour but subsequently they disclosed that the said title suit was going to be compromised and a solemana petition was required to be prepared and for that purpose they again took away Khagendranath Bera to the Tamluk court and that Khagendranath Bera died on 30.05.89 leaving behind him his wife namely, Nilima Sundari Bera (D-9) and three sons namely Nikhil Kumar Bera (D-1), Narayan Chandra Bera (D-2) and Krishna Prasade Bera (D-3) and three daughters namely Parul Rani Ray (D-10), Durga Rani Bera (plaintiff), Radha Rani Bera (D-11) and that the defendant no.1 Nikhil Kumar Bera has four sons namely Buddhadev Bera (D-5), Siddhartha Bera (D-6), Joydev Bera (D-7), Debojyoti Bera (D-8) and D-4 is the wife of Narayan Bera (D-2).

Before the trial court the plaintiff has further stated that he was the unmarried daughter of Khagendranath Bera and she inherited and has been possession 1/7th share of the suit property and that on 12.06.2001 a quarrel took place in between the plaintiff and defendants when the defendants for the first time disclosed about the existence of the impugned deeds of gifts, described in schedule Ka/1, Kha/1, Ga/1, Gha/1, Una/1 and after receiving the certified copies of those impugned deeds of gifts, plaintiff came to know that those impugned deeds of gifts are void, illegal, inoperative, not acted upon and vitiated by fraud, misrepresentation and undue influence, alleging that

Khagendranath Bera did not voluntarily execute the impugned deeds of gifts and the recitals of those impugned deeds of gifts are not the statement of Khagendranath Bera and the recitals of those impugned deeds of gifts are not the statement of Khagendranath Bera and on the pretext of making a power of attorney for the purpose of looking after the case being T.S. no. 82/87 the defendants got those impugned deeds executed by Khagendranath Bera and the impugned deeds were not properly executed and attested and that in good faith believing the statement of the defendants Khagendranath Bera executed the impugned deeds of gifts believing that he was executing a power of attorney and that on and from 12.06.2001 the defendants are denying and disputing the title of the plaintiff and was disturbing the possession of the plaintiff in the suit property.

The further case of the plaintiff before the Ld. Court below is that Khagendranath Bera was retired primary teacher and lived in his house and that the plaintiff and her youngest sister (defendant no.11) were unmarried and that they were students and that the plaintiff having no personal income and being a student she was maintained by her father Khagendranath Bera.

Under such circumstances, the suit for declaration was filed. The plaintiff claimed that the impugned deeds of gift are fraudulent, illegal, collusive and are vitiated by fraud, misrepresentation and undue influence. The plaintiff claimed right, title, interest and possession over 17th share in schedule Ka, Kha, Ga, Gha and Una. The defendant nos. to 8 contested the proceeding. The said defendants have clearly stated that the impugned deeds are valid, legal and acted upon and

Khagendranath Bera voluntarily executed the deeds of gifts in favour of the defendants and since execution and registration of those impugned deeds of gifts, defendants have been possessing the suit properties and that Khagendranath Bera was a primary school teacher and he was well aware about his properties and the consequence of the deeds of gifts and that for proper administration of his properties he executed a Nirupan Patra on 03.12.89 in favour of the plaintiff and defendant nos. 1, 2, 3, 9, 0 and 11 in respect of his properties but the plaintiff remains silent about the said deed of Nirupan Paztra and that out natural love and affection Khagendranath Bera executed the deeds of gifts in favour of the defendants and plaintiff knew about the execution of the alleged impugned deeds of gifts since 1991 and as such the contesting defendants prayed for dismissing of the suit.

Defendant no 10 and 11 did not contest the suit and as such the case was heard ex-parte against them.

On the basis of the pleadings, the trial court framed nine issues. The trial court decided issue nos. 3 and 4 in favour of the plaintiff, namely, that the plaintiff has the cause of action to file a suit and the suit is not barred by limitation.

The trial court noticed that although the plaintiff has alleged in her plaint and in her evidence in chief that after the death of her father Khagendranath Bera she inherited 1/7th share of the suit property and she has been possessing her said share of the suit property but it appears from her evidence in cross examination that she stated therein that she is in possession in 12 decimals of land of suit plot no. 407.

It appears from the certified copy of the decree and order of

title no. 82/87 (marked Ext-7) that by that decree of that suit Khagendranath Bera was allotted $43 \frac{1}{2}$ decimals land of plot no. 407 and as such if it is presumed that plaintiff inherited $\frac{1}{7}$ th share of the said suit plot no. 407 then she would have possessed $\frac{1}{7}$ th of $43 \frac{1}{2}$ decimals land of plot no. 407 i.e. $6 \frac{3}{4}$ decimals land of plot no. 407.

It appears from the schedule of the plaint and also from the L.R. record of right (marked as Ext-G series) that there are many suit plots in this suit and the natures of the suit plot include Jala land, Kala land and doba land and the plaintiff has not stated in her evidence as to how she is possessing the said different natures of the suit plots.

The evidence of the said witnesses has stated nothing about the plaintiff's possession of the suit land. The certified copies of impugned deeds of gifts and certified copy of sale deed no. 5474/89 and certified copy of the judgment and the decree of title suit no. 82/87 which were marked as Ext-1 to 7 respectively.

It appears from the LCR that the plaintiff has examined Bakul Chandra Bera as PW-2 and PW-2 has not stated anything relating to the plaintiff's possession over the suit property neither Amiya Kumar Das, PW-3 has stated anything on the said possession. On the other hand, the contesting defendants have examined defendant no.3 Krishna Prasad Bera, Nandalal Bhowmik and Shankar Latua as DW-1, DW-4 and 4 and got exhibited the LR khatians nos. 909, 910, 911, 912, 817, 267, 77 and 270 and the rent receipts (marked as Ext-G series and H series) to prove their possession. the oral evidence of DW-1, 4 and 5 coupled with the documents marked as Ext-G series and H

series prove the defendant's possession is a suit property.

The possession of the plaintiff accordingly is not proved whereas the defendants have been able to prove their possession over the suit land by oral evidence of DW-1, 4 and 5 and also by the documents namely the finally published LR khatian and rent receipts of the suit property marked as Ext-G series and H series. Insofar as the other issues are concerned, in due influence of the father by the defendant nos. 1 to 3 could not be established. Khagendranath was a primary teacher and literate person. He had reasonable understanding unless and until it is proved otherwise.

The unchallenged facts that Khagendranath Bera sold some non suit lands to Srikanta Sekher Dakua by executing a sale deed dated 07.08.89, in absence of any proof that at the relevant time of execution of the sale deed dated 07.08.89 Khagendranath Bera was mentally and physically unfit to execute the sale deed, itself goes to prove that at the relevant time of execution of the sale deed dated 07.08.89. Khagendranath Bera was mentally and physically fit to execute the sale deed dated 07.08.89.

It is to be mentioned here that the impugned deeds of gifts were executed by Khagendranath Bera on 06.08.89 and 19.09.89 and registered on 07.08.89 and 20.09.89 and when the execution and registration of the impugned deeds of gifts are proved by the evidence of D.W.-4 and 5 and also by those documents marked as Ext- 1 to 5 on behalf of the plaintiff and marked as Ext- A to D and F on behalf of the documents. The plaintiff alleged that her father was ill at the time of execution of such deeds of gift. However, she could not prove such illness. During the cross-examination, she admitted that the signatures in the name of her

father Khagendranath Bera appearing on the impugned deeds of gifts are the signatures of her father Khagendranath Bera.

It was on such consideration, the trial court and the first appellate court disbelieved the plaintiff. The suit was dismissed and the trial court decree was affirmed by the appellate decree. The findings of facts based on proper appreciation of evidence cannot be interfered with.

The second appeal stands dismissed. However, there shall be no order as to costs.

(Uday Kumar, J.)

(Soumen Sen, J.)