

HIGH COURT OF ORISSA : CUTTACK
RSA No.184 of 2012

In the matter of appeal under Section-100 of the Code of Civil Procedure assailing the judgment and decree passed by learned Additional District Judge, Jagatsinghpur in RFA No. 15 of 2011 reversing the judgment and decree passed by the learned Civil Judge (Senior Division), Jagatsinghpur in C.S.No.187 of 2007.

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Beleswar Sethy & Others :::: Appellants.

-:: VERSUS ::-

Sanatan Sethy & Others :::: Respondents.

Advocate(s) who appeared in this case through virtual mode.

For Appellants ... M/s. P.C. Mishra, S. Verma & S.K. Samal, Advocates.

For Respondents ... M/s. R.K. Patnaik, S.Jena, B.C. Parija & R.R. Rout, Advocates
M/s. Biplab P.B. Bahali, P.B. Sinha, Advocates
Mr. S. Dash, Advocate

**CORAM :
MR. JUSTICE D. DASH**

Date of Hearing: 12.01.2022 :: Date of Judgment: 21 .01.2022

The Appellants, by filing this Appeal, under Section-100 of the Code of Civil Procedure (for short, 'the Code') have assailed the judgment and decree passed by learned Additional District Judge, Jagatsinghpur in RFA No. 15 of 2011.

By the above judgment and decree, the First Appeal filed by the Respondent No.1(Plaintiff) under section 96 of the Code has been allowed and thereby the judgment and decree passed by the Trial Court

in C.S. No.187 of 2007 declining the Respondent No.1 (Plaintiff) to grant the relief of declaration that registered sale deed dated 30.6.2003 is void has been reversed and it has been allowed. Therefore, the Appellants (Defendant Nos.1,4 and 5) are now on Appeal before this Court.

2. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Trial Court.

3. Plaintiff's case:-

One Anadi, who is the common ancestor of the parties. He died leaving behind his son Baistamba. Baistamba died leaving behind Plaintiff and Defendant No.1 as sons and two daughters arraigned as Defendant Nos. 2 and 3. The Defendant Nos. 2 and 3 having married since long are living separately in their respective in-law's place. Defendant No. 1 being a police personnel had started his career as a police constable in the year 1977 when the Plaintiff was studying at the matriculation level. The father-in-law of Baistamba (father of Baisnab's, wife of Champa) was financially sound. After death of Champa's father, Champa sold her share to other brothers as also some of her ornaments for purchasing some lands in the name of her husband Baistamba who was then earning his livelihood as a washerman in the village. The Plaintiff on completion of his studies was appointed as lecturer in the Govt. college and with some financial aid by him and utilizing the self-proceed of Champa, some properties were also purchased in the name of his father who was the 'Karta' of the family. The Plaintiff used to come to his native village on holidays and vacation and was providing regular financial assistance to his old father. Champa died in June, 1996 when the Plaintiff spent everything for the 'Sudhikrias'. After the death of Champa, the Defendant No. 1 kept his wife at native village. It is alleged

that it was with an alternative motive to grab the properties and debar the Plaintiff from having any family properties. Father of the Plaintiff was then staying with Defendant No. 1. So, it is said that the Defendant No. 1 and his wife being able to poison the mind of Baistamba obtained a bogus sale deed in favour of Defendant Nos. 4 and 5 who are their sons. The sale is said to be without any consideration and there was no legal necessity for Baistamba to alienate the property. It is also stated that the Defendant Nos. 4 and 5, the vendees had no independent income for paying such huge amount of consideration. It is further stated that Baistamba although knew to sign; yet on the sale deed, his thumb impressions appear. In fact, Baistamba has not gone to the Sub-Registrar Office and he was not present at the time of registration of the sale deed. It is stated that the deed in question dated 30.6.2003 was kept under cold storage for some time. The Plaintiff only came to know about this mischievous act on the part of the Defendant Nos.1,4 and 5 from the local gossip but these was no such concrete information in that regard. So, he filed a suit for partition. At that time, since the Plaintiff was not aware about the illegal sale deed, he had not mentioned anything in that Civil Suit No.126 of 2003. Having come to know about that at a later point of time from the case projected by the Defendants in their written statement, he filed an application for amendment of the plaint. The amendment although was necessary for just decision of the suit, the prayer was, however, rejected. So, he next filed an application for withdrawal of the suit which was also rejected. He then carried a revision to the Court of the Additional District Judge vide Revision Case No. 4 of 2004. The revision was allowed and the Plaintiff's prayer to withdraw the suit to tile a first suit was allowed on condition of payment of cost to the Defendants which he has paid. The Plaintiff then filed the present suit for partition seeking a declaration that the registered sale

deed dated 30.6.2003 as illegal and void. He prayed for partition of the entire properties of the family including those indicated in the sale deed, which are schedule 'A' and 'B' as stated in the plaint.

4. The Defendant Nos. 2 and 3 in their joint written statement admitted that the properties had been purchased in the name of Baistamba. Having supported the case of the Plaintiff, they asserted that the sale deed in question in favour of Defendant Nos. 4 and 5 is without any consideration and there was no legal necessity for the same and it was somehow brought into being by manipulation.

The Defendant Nos. 1, 4 and 5 in their written statement submitted that Baisnab had never inherited any properties from anybody. It is said that Baistamba had purchased the properties with his own income as also with the support of Defendant No.1 on different dates and all those properties are his self-acquired properties of Baisnab. They finally asserted that Baisnab had knowingly executed the sale deed and sold the properties to Defendant Nos. 4 and 5 on receipt of consideration for repayment of loan and for meeting expense for repairing of the house. It is also stated that after sale, Baistamba had delivered possession of the suit land to the purchasers and they are in possession of the same. They state that the sale deed in question is valid, is not a fake one and is genuine.

5. The Trial Court on the above rival pleadings has framed five issues. It has held that the suit for relief of declaration of the sale deed dated 30.6.2003 is not maintainable as said declaration has not been made without the period of limitation prescribed under Article 59 of the Limitation Act. So far as the rest part properties are concerned, the Trial Court directed for partition allotting 1/4th share to the Plaintiff and entitling Defendant Nos. 1 to 3 to 1/4th each.

6. The Plaintiff being aggrieved by the decision of the suit by which his prayer for declaration of sale deed as invalid has been disallowed, carried the Appeal; the Appeal, has been allowed.

7. The present Appeal has been admitted only on the following substantial question of law:-

“Whether the First Appellate Court was justified in holding that section 14 of the Limitation Act is applicable for the purpose of calculation of period of limitation for institution of the suit?”

8. I have heard Mr. P.C. Mishra, learned counsel for the Appellants. None appeared on behalf of the Respondents despite service of notice.

Learned counsel for the Appellants strenuously argued that the principle of section 14 of the Limitation Act would have no application to the facts and circumstances of the case. He submitted that when the suit has not been filed within the period of three years from the date of execution of the sale deed and when the Plaintiff is not stating as to when he came to know about the said sale deed for the first time, the trial court was right in holding the said prayer to be barred by limitation. He, therefore, urged that the Lower Appellate Court's view that the suit for that relief is not barred by limitation in so far as the above relief is concerned is not sustainable in the eye of law and thus the Lower Appellate Court has committed the error in declaring the said sale deed dated 30.6.2003 as illegal and void and decreeing the suit for partition in respect of schedule 'A' as well as 'B' properties.

9. Coming to dwell upon the above submission in searching out the answer to the substantial question of law as to the applicability of section 14 of the Limitation Act to the benefit of the Plaintiff, it is seen that the Plaintiff has very much pleaded at paragraphs 9, 10 and 11 of the plaint as regards his filing the previous suit i.e. C.S. No. 126 of 2003 and about its final withdrawal on 28.11.2007 with leave/permission to

file a fresh suit. That suit had been instituted in the year 2003 and it remained pending till 28.11.2007. During this period, the Plaintiff had prayed to amend the plaint to insert the pleading regarding invalidity of sale deed dated 30.6.2003 (Ext.K). That being contested from the side of the Defendants being disallowed; the Plaintiff wanted to withdraw the suit seeking the leave to file a fresh suit, by filing a petition stating that as the suit is likely to fail due to said defect. However, that prayer was also disallowed. Then having moved the Revisional Court, finally withdrawal of the suit granting the leave as prayed for has been allowed and thereafter the present plaint containing the said prayer of declaration and partition has been presented.

10. The policy behind engraftment of section 14 of the Limitation Act is to afford protection to the suitor against the bar of limitation if he is honestly prosecuting a litigation to get his case decided on merit, but failing through the Court being unable to give him such trial due to the defect of jurisdiction or other cause of like nature. The principle behind the section is that running of the period of limitation would remain under suspension for said period spent in the earlier litigation which the suitor is bonafidly litigating his rights in a forum. The section contains the general principle based on justice, equity and good conscience and the principle may be applied without strict regard to the limitation prescribed in the section. The word “other case of a like nature” as finds mention in the section thus receives liberal construction. The proceeding by the suitor must have been prosecuted with due diligence and in good faith in a Court which either on account of defect of jurisdiction or other causes of like nature was not entertained.

11. It has been held in catena of decisions including in **Consolidated Engg. Enterprises Vrs. Irrigation Department**; (2008) 7 SCC 169 that while considering the provisions of section 14 of the Act, the proper

approach would be in the direction of interpretation so as to advance the course of justice rather than to stall the proceedings. It is intended to provide relief against bar of limitation in cases of mistaken remedy or wrong forum or other causes of like nature. The principle is clearly applicable not only to a case in which the litigant brings his application in court, that is a court having no jurisdiction to entertain it but also where he brings the suit or application in a wrong court in consequence of bona fide mistake of law or defect of procedure. Its application should be to the fullest extent. Sub-section 3 of section 14 of the Act provides that if a suit or application is withdrawn under Order 23 of the Code on the grounds similar to those specified in this section, the time spent in prosecuting such proceedings shall be excluded. This was introduced after having felt that there is no justification for delaying a litigant this right when the grounds of withdrawal are those contemplated by this section and to this extent the provision of Rule 2 of Order 23 of the Code requires to be suspended.

Keeping in view the above set out principle, the facts and circumstances of the instant case as discussed being examined, the Plaintiff's claim in this regard is found to be satisfying all the conditions for applicability of the provision in subsection 3 of section 14 of the Act. Here, it cannot be said that his actions in prior litigation lack bonafides and not in good faith. Thus this Court finds all the reasons and justifications to accept the view taken by the Lower Appellate Court that the prayer advanced by the Plaintiff to declare the sale deed dated 30.6.2003 (Ext. K) is not barred by limitation and say that the lower Appellate Court has rightly corrected the error committed by the trial court in this regard.

12. The Lower Appellate Court has taken up the challenge to the said sale deed on merit. Upon examination of evidence and their evaluation

having applied the settled principle of law it has held the sale deed (Ext. K) to be void. The Lower Appellate Court has differed with the findings of the Trial Court in that regard by assigning the reasons.

13. The Lower Appellate Court has made a strenuous exercise of analyzing the evidence on record as to find out whether the Defendant Nos. 4 and 5 have established the factum of execution of the sale deed by Baistamba, then an old man aged about 80+ years. Furthermore the vendor and vendees being in fiduciary relationship, keeping in view all other surrounding circumstances, the lower appellate court has rightly said that the burden of proof of due execution of that document by Baistamba consciously and knowing fully well about all its contents as well as consequences lies on the vendees, here, the Defendants Nos.4 and 5. The evidence has been examined too in detail and upon thread bare discussion of the same, it has found that the Defendant Nos. 4 and 5 have not been able to discharge the burden of proof lying on them in sustaining the sale deed when also the Lower Appellate Court has found that the suspicious circumstances surrounding the document's purported execution emanating from the evidence on record are at galore. Having carefully read the entire discussion of evidence made by the Lower Appellate Court, this Court finds itself in agreement with the same and is of the view that the surfaces no such substantial question of law on that score being answered.

In that view of the matter, the substantial question of law receives its answer against the Defendants. Consequent upon the same, the judgment and decree passed by the Lower Appellate Court are hereby confirmed.

14. In the result, the Appeal stands dismissed. There shall however, be no order as to cost.

15. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 as modified by Court's Notice No.4798 dated 15th April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7th January, 2022.

***(D. Dash),
Judge.***

Aksethy

