(2019) 08 CHH CK 0030

Chhattisgarh High Court

Case No: Second Appeal No. 211 Of 2006

Sudama Yadav	APPELLANT
Vs	
Awlad Shah And Ors	RESPONDENT

Date of Decision: Aug. 2, 2019

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Malay Shrivastava, Hamida Siddique, Rahul Agrawal, Ravi Kumar Bhagat

Final Decision: Dismissed

Judgement

Sanjay K. Agrawal, J

1. This plaintiff's second appeal was admitted for hearing on the following substantial questions of law: -

1(a) Whether the finding that the entire consideration was not paid to defendant No.1 vitiates because, the said plea raised by defendant No.1 has not

been substantiated by examining himself or any other witness?

1(b) Whether the Courts below committed an error of law in holding that the sale-deed dated 31/3/1998 (Ex.P-1) does not confer any valid title upon

the plaintiff and the same vitiates on the above ground?

2. Whether the Courts below should have drawn adverse inference and have rejected the contention of defendant No.1 regarding the plea of non-

payment of full consideration, when he himself did not appear in the witness box to substantiate the plea?

2. The suit property was originally held by Peer Khan. It is the case of the plaintiff that he has purchased the suit land from the nephew of Peer Khan

by registered sale deed dated 31-3-1998 (Ex.P-1) and obtained possession and got the name recorded in the revenue record, but since the defendants

started quarrelling on the basis of gift deed dated 18-3-1989 and on account of the revenue proceedings initiated and pending, he filed the suit on 1-8-

2000 seeking declaration of title and permanent injunction in which defendant No.1 filed written statement and admitted the fact of execution of sale

deed in favour of the plaintiff, but further averred that the consideration amount of only ₹ 15,000/- has been paid out of ₹ 75,000/- and therefore no

title has been passed. However, defendant No.3 setup the plea of gift in his favour by Peer Khan on 18-6-1989 and also filed counter-claim seeking

possession, before the trial Court.

3. The trial Court by its judgment & decree dated 30-9-2004 dismissed the suit as well as the counter-claim and on appeal preferred by both the

parties, dismissal of suit and counter-claim was upheld by the first appellate Court. Now, only the plaintiff has filed second appeal in which the above-

stated three substantial questions of law have been formulated for determination.

4. Mr. Malay Shrivastava, learned counsel appearing for the appellant herein / plaintiff, would vehemently submit that defendant No.1 had already

admitted sale in his favour, but allegedly pleaded that he has not been paid full consideration, however, he has not entered into the witness-box and

therefore his stand cannot be accepted in view of the decision rendered by the Supreme Court in the matters of Vidhyadhar v. Manikrao and another

1 and Janki Vashdeo Bhojwani and another v. Indusind Bank Ltd. and others 2. Therefore, both the Courts below ought to have held that valid

consideration has been passed in favour of defendant No.1 and he has conveyed full title to the plaintiff for which he is entitled for decree of

declaration of title and permanent injunction.

5. None present for respondents No.1 & 2 herein / defendants No.1 & 2, though served.

6. Mrs. Hamida Siddique, learned counsel appearing for respondent No.3 herein / defendant No.3, would submit that the plaintiff has failed to prove

that he has succeeded original holder Peer Khan, as defendant No.1 was a man of bad repute and he used to torture original holder Peer Khan and

thereby Peer Khan has executed a gift deed dated 18-6-1989 in his favour on the basis of which revenue records have already been corrected and

those documents have been exhibited as Exs.D-1 & D-2. As such, the first appellate Court has rightly held that the plaintiff has failed to establish that

he has inherited the property from Peer Khan being nephew and he has no legal representative and therefore dismissal of first appeal cannot be taken

exception to by the plaintiff. Therefore, the judgment & decree of the first appellate Court dismissing the appeal of the plaintiff deserves to be

affirmed.

7. I have heard learned counsel for the parties and considered their rival 1 (1999) 3 SCC 573 2 (2005) 2 SCC 217 submissions made herein-above and

also went through the record with utmost circumspection.

8. The suit property was admittedly owned by Peer Khan. The first appellate Court has held that he died leaving his son at Afghanistan, Kabul and

therefore defendant No.1 Awlad Shah being his nephew had no right to sell the suit property in favour of the plaintiff. The plaintiff is purchaser from

Awlad Shah. He had filed suit that by sale deed dated 31-3-1998 (Ex.P-1) made by Awlad Shah, valid title has been conferred to him. Since the

original owner was Peer Khan and the plaintiff is claiming title, therefore, the plaintiff was required, not only to plead, but also to establish that Peer

Khan died issue-less and his nephew defendant No.1 inherited the property of Peer Khan in inheritance which he did not do. The plaint is blissfully

silent on the fact that whether Peer Khan died issue-less or he had a legal heir to inherit the property. Merely claiming that he is the near relative of

Peer Khan and he inherited the property and thereafter he had right to sell the property, it cannot be held that Awlad Shah - defendant No.1 has in his

lawful right transferred the property by way of Ex.P-1 in favour of the plaintiff. The plaintiff has failed to establish that Peer Khan died issue-less and

therefore defendant No.1 inherited the property, as he was claiming through the sale deed executed by Awlad Shah who was claiming to be nephew

of Peer Khan. Since the plaintiff has failed to establish and plead that Awlad Shah had right to transfer the suit property, therefore, even the questions

of law are answered in favour of the plaintiff. The plaintiff would not be entitled for decree for the reason that the plaintiff had failed to establish that

Awlad Shah - defendant No.1 had the right to sell the property of Peer Khan to the plaintiff. As such, the substantial questions of law as framed at the

time of admission do not arise for consideration for the reasons mentioned herein-above. I do not find any perversity or illegality in the said finding.

The second appeal deserves to be and is accordingly dismissed. No order as to cost(s).

9. Decree be drawn-up accordingly.