

JUDGEMENT AND ORDER

The plaintiffs in Title Suit No.153/2003 filed the present petition invoking the jurisdiction of this Court under Article 227 of the Constitution of India challenging the legality and validity of the orders dated 16.01.2007 and 10.06.2008 respectively passed by the learned District Judge, Kamrup in Title Suit No.153 of 2003 whereby the Title Suit was transferred on the file of the learned Civil Judge (Jr. Div.) No.3 Kamrup, Guwahati for adjudication whereof on transfer the Title Suit No.153/2003 (old), 45/07 (new). The learned trial Court vide judgment and decree dated 10.06.2008 dismissed the suit filed by the plaintiffs.

2. In order to decide the dispute raised, the facts of the case is summarized hereinbelow:

The petitioners herein as plaintiffs have brought a suit being Title Suit No.153/2003 on the file of the learned Civil Judge (Sr. Div.) No.2, Kamrup against the defendants/opposite parties herein seeking the following reliefs:

a) Declaring that the Gift Deeds bearing No.1430/98 dated 23/09/98 (read with the Rectification Deed bearing No.160/1999 dated 1/2/99) and 1431/98 dated 23/09/98 (read with the Rectification Deed no.159/1999 dated 1/2/99), registered on 24/09/1998 executed in favour of defendant Nos.1 and 2 by Late Narayan Chandra Sarma are void, fraudulent instruments and therefore inoperative in law and not binding on the plaintiffs;

b) Declaring that the defendant Nos.1 and 2 did not acquire right, title and interest over the suit property on the strength of the fraudulent Gift Deeds bearing No.1430/98 and 1431/98 dated 23/09/98 (executed on 24/09/98;

c) Cancelling the fraudulently obtained Gift Deeds bearing Nos. 1430/98 and 1431/98 dated 23/09/98 (registered on 24/09/98 directing the Sub-Registrar, Rangia to record the fact of cancellation accordingly;

d) Declaring right, title and interest of the plaintiffs jointly with the proforma Defendant No.3 over the suit lands described in the schedules;

e) For recovery of possession over the suit lands described in the Schedule 3 by evicting the defendant Nos.1 and 2;

f) For recovery of suit land described in the Schedule 4 from the possession of the defendant No.4; and

g) All costs of the suit.

3. On receipt of summons, the defendant Nos.1 and 2 have entered appearance and contested the suit by filing written statement contending inter alia that the plaintiff No.1 and her husband and mother-in-law Jayanti Devi had mentally tortured Late Narayan Chandra Sarma (the predecessor-in-interest of the plaintiffs in the suit) and on being highly displeased of such behaviour and torture meted to Late Narayan Chandra Sarma, he had married again Smti Bhubaneswari Devi. Even a village Panchayat was convened at the initiation of Late Narayan Chandra Sarma. The properties both movable and immovable were partitioned amongst the legal heirs of Late Narayan Chandra Sarma and divided into two equal shares viz: one share for the only son from the first wife i.e., husband of the plaintiff No.1 and other share for the children of the second wife vide Bibhagnama (partition) dated 23.07.85. Moreover late Narayan Chandra Sarma took the defendant No.1 on ad

option from her childhood as Late Sarma did not had/have any daughter and did not deprive his son Late Jitendra Nath Sarma from the share of both moveable and immovable properties and the matter of transfer of the immovable properties to defendant No. 1 and 2 through the Gift Deeds were in respect of the share of the Second Party wherein the 1st party plaintiffs have no shares. Other allegations have been denied and prayed for dismissal of the suit.

4. On the pleadings of the parties the learned trial court framed as many as 6 (six) issues, which are quoted hereunder:

- a) Whether the suit is barred by limitation ?
- b) Whether the suit is barred by waivers, estoppel and acquiescence ?
- c) Whether the defendant Nos.1 and 2 obtained the Gift Deeds bearing Nos.1430/98 and 1431/98 fraudulently and the same are liable to be cancelled?
- d) Whether the plaintiffs have right, title and interest over the suit land ?
- e) Whether the plaintiffs are entitled to get the decree as prayed for?
- f) What other relief/reliefs the parties are entitled to?

5. During the trial the plaintiffs examined two witnesses and they were cross-examined and Defendant Nos.1 and 2 examined four witnesses but they were not cross-examined by the plaintiffs and the learned trial Court after hearing the counsel of the defendant Nos.1 and 2 have decided all the issues in the negative i.e. against the plaintiff and accordingly dismissed the suit of the plaintiffs on 10.06.2008 which is now under challenge in this revision petition under Article 227 of the Constitution of India.

6. Questioning the legality of the jurisdiction to try the suit by the Civil Judge (Jr. Div.) No.3, Guwahati on transfer by the District Judge, Guwahati considering the amendment of the Bengal, Agra and Assam Civil Courts Act, 1887 whereby the pecuniary jurisdiction of the Civil Judge (Sr. Div.) No.2 Kamrup was enhanced wherefor the learned Civil Judge (Sr.Div.) No.2 Kamrup transferred the suit to the learned District Judge, Kamrup for appropriate order vide order dated 13.03.2006 directing the parties to appear before the learned District Judge, Kamrup on 12.04.2006 for follow-up action in the matter but the learned District Judge, Kamrup did not take any steps for transfer of the suit to the appropriate Court of Civil Judge (Jr. Div.), Rangia having pecuniary jurisdiction but transferred the suit on 16.01.2007 to the learned Court of Civil Judge (Jr. Div.) No.3, Kamrup wherein the suit was renumbered as Title Suit No.45/2007 culminating in dismissal of the suit without any notice being served on them amounting to exercise a jurisdiction not vested in it by law and as such the interference is required in exercise of power under Article 227 of the Constitution of India.

7. Mr. AD Choudhury, learned counsel appearing for the petitioner would urge that the transfer of the suit to the Civil Judge (Jr. Div.) No.3 Kamrup vide order dated 16.01.2007 by the District Judge, Kamrup to try the suit lacks jurisdiction in view of the provisions of Sections 15, 16, 20, 21 and 24 of the Code of Civil Procedure, 1908 (hereinafter 'the Code') since the subject matter of property situated within the local jurisdiction of the learned Civil Judge (Jr. Div.) Rangia where the defendants also resided and cause of action for the suit arose at Rangia and therefore the learned Civil Judge (Jr.Div.) No.3 Kamrup lacks the competence and jurisdiction to try the suit and the judgment and decree passed by the learned Civil Judge (Jr.Div.) No.3 Kamrup requires to be interfered with in exercise of jurisdiction under Article 227 of the Constitution of India.

8. The learned counsel would further urge that the entire order sheet on transfer from the learned District Judge, Kamrup vide order dated 16.01.2007 would show that no notice was served on the counsel representing the petitioners nor notices were served on the petitioners. On the otherhand, the petitioners being on bonafide belief that the suit would be transferred to the Court of Civil Judge

e (Jr. Div.) Rangia, which is the only Court competent and having jurisdiction to try the suit, the petitioners time and again enquired about the transfer of the suit in the Office of the Civil Judge (Jr. Div.), Rangia, whereas without any notice/intimation the suit was transferred to the Court of learned Civil Judge (Jr. Div.) No.3 at Guwahati, who had no jurisdiction either pecuniary or territorial to try the suit and therefore the judgment and decree passed by the learned Court below deserves to be interfered with under Article 227 of the Constitution of India.

9. Mr. Choudhury, learned counsel in support of his contentions has referred the decision reported in 1998 (4) GLT 202 (Registrar, Gauhati University - Vs - Surya Kumar Borah), wherein this court has held that if the irregularities and improprieties committed by a Subordinate Court shakes the conscience and are in gross violation of the provisions of law, the High Court has power to quash the ex-parte decree in exercise of power under Article 227 of the Constitution of India.

10. Refuting the contentions raised by the counsel representing the petitioner, Mr B. Kalita, learned Senior Counsel, assisted by Mr D. Talukdar, Advocate, representing the opposite parties would urge that vide order dated 13.03.06, the learned Civil Judge (Sr. Div.) No. 2 Kamrup had sent the case record to the learned District Judge, Kamrup for taking necessary action considering the enhancement of pecuniary jurisdiction of the civil courts directing the parties to receive information by appearing on 12.04.06 and accordingly both the parties have entered appearance on 12.04.06 and thereafter neither the counsel representing the petitioners nor the party took any follow up action in the matter and therefore learned court had passed the impugned judgment and order under challenge which do not require to be interfered with in this revision petition.

11. Considered the arguments advanced by the parties. Perused the records. The findings and the decision thereof is summarized herein below:

i) Admittedly the plaintiffs filed the suit before the learned Civil Judge (Sr. Div.) No. 2 Kamrup being T.S. 153/93 against the defendants seeking the reliefs as indicated above. The suit was valued at Rs. 46, 000/-. The suit was duly contested by the parties. The parties filed their evidences on affidavit and the witnesses on behalf of the plaintiffs were cross-examined save and except the witnesses on behalf of the defendants were left out to be cross-examined when the pecuniary jurisdiction of the Civil Courts were enhanced on amendment of the Bengal, Agra and Assam Civil Courts Act, 1887 whereupon the learned Civil Judge (Sr. Div.) No. 2 Kamrup vide order dated 13.03.06 sent the case record to the learned District Judge, Kamrup for taking necessary action since the pecuniary jurisdiction to try the suit by the learned Civil Judge (Sr. Div.) No. 2 Kamrup was ousted by such amendment of the Act of 1887. In the said order dated 13.3.06 the parties were directed to receive further information fixing for appearance on 12.04.06. Learned Counsel for the parties accordingly appeared before the District Judge, Kamrup to receive order.

ii) The learned District Judge, Kamrup did not pass any order for transferring the case to the competent Court till 16.01.07 whereby the case was transferred to the learned Civil Judge (Jr. Div.) No. 3 Kamrup for trial and the case record was received on 14.2.07. On receipt of the case record the learned Civil Judge issued the court notice on 21.05.07 to the plaintiffs since the defendants were represented by their counsel fixing 25.06.07 for service report and appearance and notice was issued on 24.05.07. The said notice dated 24.05.07 could not be served since the Process Server (Jarikarak) submits its report contending that since the date of summon was expired in the office itself it could not be served. Thereafter the learned court vide order dated 25.06.07 directed the office to inform the advocate for the plaintiffs fixing 30.07.07 as next date. On 30.7.07 again the Court directed to inform the parties fixing 28.8.07 for appearance. But thereafter the learned trial court passed an order on 28.08.07 whereby it was ordered that the plaintiffs are un-represented even after the court notice was

as affixed in the court Notice Board. However, no order is found available in the record as to whether notices have been served properly upon the plaintiffs or their counsel. Thereafter the Court fixed 28.09.07 for cross-examination of DWs.

The plaintiffs have failed to appear on that date too and consequently thereupon the case was heard on 15.05.08 and the judgement was delivered on 10.06.08 which is under challenge in this revision petition.

12. A reading of the order sheet would show that the learned District Judge, Kamrup, transferred the suit for trial on 16.01.07 to the learned Civil Judge (Sr. Div.) No. 3 Kamrup even though the counsels for the parties were directed to appear on 12.04.06 before the learned District Judge, Kamrup for receiving information vide order dated 13.03.06. The counsel representing the plaintiffs did not make any endeavour to take information regarding the case pending right from 13.03.06 till 15.05.08 when the case was finally heard though the judgement was delivered on 10.06.08.

13. The original suit being Title Suit No. 158/03 was filed before the learned Civil Judge (Sr. Div.) No. 2 Kamrup and the trial proceeded accordingly till the amendment of Act of 1887, whereby the pecuniary jurisdiction of the Civil Courts were enhanced and as a result the order dated 13.03.06 was passed sending the case record to the learned District Judge, Kamrup, whereupon the case was transferred to the learned Civil Judge (Jr. Div.) No. 3 for trial.

14. The question now raised before this Court is whether the judgment and decree passed by the learned Civil Judge (Jr. Div.) No.3 Guwahati is legal, valid within jurisdiction and sustainable under the law.

15. The provision of the Code mandates that in absence of the plaintiff on the date fixed for hearing, the court has got the power only to dismiss the suit for default in exercise of power under Order 9 Rule 8 of the Code. In passing the impugned judgment and decree, the learned trial Court has thus exceeded its jurisdiction.

16. One important fact is to be noted in this case is that the title suit was originally pending before a Court at Guwahati although the subject matter of the suit and the decree sought for over the schedule land is situated at Rangia and the parties at the commencement of the suit actually and voluntarily resides at Rangia i.e. outside the territorial jurisdiction of the Court at Guwahati. But when the suit was filed at Guwahati, the Court at Guwahati had jurisdiction to try the suit. Thereafter, the territorial jurisdiction of the Court at Guwahati has been taken away in view of the amendment of Bengal, Agra and Assam Civil Courts Act, 1887, wherefor, only the Court at Rangia has jurisdiction to try the suit. Therefore, while passing the impugned judgment and decree, the learned trial Court overlooked this material fact. When a court passed a decree without having territorial jurisdiction over the suit property, the decree is nullity.

17. When these errors apparent on the face of the record are found, the impugned judgment and decree passed by the learned court below is liable to be interfered with being void, illegal and without jurisdiction which I hereby do.

18. In the result, the revision petition is allowed. The Judgment and decree passed by the learned Civil Judge, (Jr.Div) No.3, Kamrup, Guwahati is set aside and quashed. The TS No.153/2003 (old), 45/2007 (new) is hereby restored to file for retrial. The case records of TS No.153/2003 (old), 45/2007 (new) is transferred to the Court of learned Civil Judge, Jr. Div., Rangia from the Court of learned Civil Judge (Jr. Div.) No.3, Guwahati.

19. Parties are hereby directed to appear before the learned Court at Rangia on 23.4.2010 for obtaining necessary instruction.

20. The trial Court at Rangia is hereby directed to dispose of the suit on m

erit within a period of 4 (four) months from the date of receipt of the record.

21. Registry is directed to send down the case records forthwith directly to the Court at Rangia with information to the learned Civil Judge (Jr. Div.) No.3 at Guwahati.