

HEMKUNWAR BAI

Appellant(s)

VERSUS

SUMERSINGH & ORS.

Respondent(s)

O R D E R

This appeal is directed against the judgment of the High Court whereby it reversed the judgment and decree of the Trial Court decreeing the suit of the plaintiff - appellant before us. Devisingh was the original owner of the suit property. On the death of Devisingh in the year 1961, the property was mutated in favour of his widow Ratankuwarbai in terms of the Madhya Pradesh Land Revenue Code.

On 06.04.1995, Ratankuwarbai executed two sale-deeds [Exhibit D-1 and D-2] in favour of her nephews - Manohar Singh and Sumer Singh. On the same day, as far as his entire remaining property which was not the subject matter of the two sale deeds, she executed a Will in favour of Inder Singh. It would be pertinent to mention that Manohar Singh, Sumer Singh and Inder Singh are real brothers being the sons of sister of Devisingh.

It is an admitted fact that Ratankuwarbai was suffering from throat cancer and had undergone some treatment and a document dated 17.04.1995 has been placed on record. Unfortunately, Ratankuwarbai expired on 21.07.1995. Soon thereafter, on 18.09.1995 Hemkuwarbai filed a civil suit for declaration that the two sale-deeds and the Will are sham and fraudulent documents and not binding upon her.

She claimed to be in possession of the property and she prayed for a declaration that she be declared to be the owner in possession of the suit property and also prayed that the respondents be enjoined from interfering in her possession. The defendants contested the suit and the entire defence is based on the sale deeds and the Will being validly executed documents.

Both sides led evidence and the Trial Court, on consideration of the evidence, came to the conclusion that the defendants had failed to prove the source of the consideration for the sale deeds and transfer of the consideration to Ratankuwarbai. There were also some discrepancies with regard to time as to when the possession of the suit property was allegedly handed over to the defendants. There are some other discrepancies pointed out but those are minor in nature.

The main issue is whether Ratankuwarbai, who was an illiterate lady and suffering from cancer, has executed these documents or not. The defendants examined Antar Singh and Laxman Singh who are witnesses to all the three documents. As far as Laxman Singh is concerned, he clearly stated that at the time of registration of the sale-deeds and the Will, the sub-Registrar concerned had read out the subject matter of the three documents in short to Ratankuwarbai. He also heard the sub-Registrar at that time. It has been contended that both these witnesses have stated that they were not aware of the contents of the documents, when they signed as witnesses. The witnesses need not necessarily know what is contained in the documents. Furthermore, when these witnesses state that the sub-Registrar had told the gist of the documents to

the deceased then they become aware of the nature of the documents at the time of registration thereon. In fact both Antar Singh and Laxman Singh had deposed with regard to transfer of the consideration.

We are not going into the factual aspect of the matter at this stage which is in the nature of the second appeal. The findings were given by the Trial Court which findings have been upset by the High Court. It may be possible to urge both the views but it cannot be said that the finding of the High Court is a perverse finding which could not be given in the facts and circumstances of the case. On the basis of the evidence, the High Court has taken a view which is a possible view. This Court in second appeal does not ordinarily enter into factual aspect of the matter and therefore, we find no merit in the appeal and the same is accordingly dismissed.

The Receiver appointed is discharged and he shall give accounts as per the order of the Trial Court.

.....J.
[DEEPAK GUPTA]

.....J.
[ANIRUDDHA BOSE]

NEW DELHI;
September 25, 2019.

**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS**

Civil Appeal No(s). 8827/2011

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VERSUS

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Date : 25-09-2019 This appeal was called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE DEEPAK GUPTA
HON'BLE MR. JUSTICE ANIRUDDHA BOSE**

**For Appellant(s) Ms. Christi Jain, Adv.
Mr. Puneet Jain, Adv.
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Mr. Harsh Jain, Adv.
Mr. Abhinav Deshwal, Adv.
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**For Respondent(s) Mr. Shoeb Alam, Adv.
Mr. D.S. Parmar, Adv.
Mr. Ujjwal Singh, Adv.
Mr. Mojahid Karim Khan, Adv.
Mr. Susheel Tomar, Adv.
Ms. Abha R. Sharma, AOR
Mr. Mahendra Singh, Adv.**

UPON hearing the counsel the Court made the following

O R D E R

The civil appeal is dismissed in terms of the signed order.

Pending application, if any, stands disposed of.

**(MEENAKSHI KOHLI)
COURT MASTER**

**(NISHA TRIPATHI)
COURT MASTER**

[Signed order is placed on the file]