



Awadesh Yadav

.. Appellant

-vs-

Suresh Thakur and others

.. Respondents

O R D E R

It is alleged that on 4.12.73, one Ramnarain Thakur who was the Karta of a Joint Hindu family which comprised his father, brothers and nephew, executed an agreement to sell the suit land to the plaintiff appellant for a sum of Rs. 2400/- and a Mahadanama was executed and the appellant paid a sum of Rs. 2000/- out of the aforesaid amount. It is also alleged that the agreement provided that the sale deed was to be executed within 8 months. It also alleged that Suresh Thakur, who was the nephew of Ramnarain Thakur and also a member of the Joint Hindu family of Ramnarain Thakur, executed two sale deeds dated 31.1.74 and 24.4.74 in favour of Ramashish Singh for a total sum of Rs. 4000/- in regard to the same land for which the agreement was already executed. It is further alleged that since Ramnarain Thakur evaded to execute the sale deed, the appellant was compelled to file a suit for specific performance of the agreement. The defendants, other than Ramnarain Thakur, contested the suit and filed written statement wherein it was stated that prior to agreement there was partition in the family and as a result of which the property covered by the agreement ceased to be the Joint Hindu family property and, further, Ramnarain Thakur at no point of time was the Karta of the Joint Hindu family and, therefore, he was not competent to execute the agreement for sale. The trial court decreed the suit and granted the decree for specific performance of the agreement for sale. Aggrieved, the defendants went up in appeal. The first appellate court found that as a result of partition, the property in dispute no longer remained a Joint Hindu family property and further defendant No. 1, Ramnarain Thakur was never a Karta of the Joint Hindu family and, therefore, was not competent to execute the agreement for sale. In this view of the matter, the appeal preferred by the respondents was allowed and decree of the trial court was set aside.

The appellant herein thereafter preferred a second appeal. The High Court dismissed the appeal and affirmed the judgment of the first appellate Court. It is against the said judgment of the High Court the appellant has preferred this appeal.

Learned counsel appearing for the appellants urged that there being no issue in regard to legal necessity for the family to sell the property and no determination of the said question either before the trial court or the first appellate court, the High Court was not legally correct in sustaining the judgment of the first appellate court on the said ground. We do not find any merit in the submission. It may be noticed that the impugned judgment of the High Court is judgment of affirmation. By the impugned judgment the High Court has declined to interfere with the discretion exercised by the first appellate Court and thereby affirmed the judgment and decree passed by the first appellate Court. The result of the affirming judgment is that the finding and the reasoning given by the first appellate Court for allowing the appeal were affirmed by the High Court. The High Court, in addition to other grounds on which the first appellate court allowed the appeal gave an other reason also for dismissal of the suit filed by the appellant. The first appellate court held that the property was not a Joint Hindu family property and Ramnarain Thakur was not the Karta of the joint family and, therefore, was not competent to execute the sale deed. These findings have been affirmed by the High Court when it declined to interfere with the judgment of the first appellate Court. The finding recorded by the High Court that

since there was no legal necessity for the family to sell the property and, therefore, the agreement is invalid even if is excluded the same would not render the judgment of the High Court erroneous.

For the aforesaid reasons, we do not find any merit in this appeal. The appeal is, therefore, dismissed. There shall be no order as to costs.

& & & & & & & .J.  
(V.N.KHARE)

& & & & & & & .J.  
(B.N.AGRAWAL)

New Delhi;  
August 2, 2001

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