State Of Gujarat vs Vora Salebhai Gulamali And Ors. on 30 March, 1977

Equivalent citations: AIR1977SC1815, (1977)3SCC225, 1977(9)UJ347(SC), AIR 1977 SUPREME COURT 1815, 1977 2 SCWR 201, 1977 3 SCC 225, 1977 U J (SC) 34

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Bench: M.H. Beg, A.C. Gupta, P.S. Kailasam

JUDGMENT

A.C. Gupta, J.

1. The facts are similar in these two appeals on certificate from a common judgment of the Gujarat High Court disposing of two letters patent appeals. Respondents 1 and 2 in C. A. 2283 and the predecessor-in-interest of the respondents in G. A. 2284 were forest contractOrs. The said respondents in C. A. 2283 acquired from the jagirdars of village Jinjarvani in Ghhotaudepur Taluka in District Baroda the right to cut certain trees standing on 32 survey numbers and also on survey No. 200 by two documents executed on April 25, 1954 by the jagirdars. The predecessor of the respondents in G. A. 2284 obtained a similar right in respect of certain trees in 80 survey numbers situated in village Sanada in the same taluka and district the transaction in this case is evidenced by two documents dated May 25, 1953 and June 25, 1954. Respondents 1 and 2 in C. A. 2283 instituted a suit in the court of the Joint Civil Judge, Senior Division, Baroda, on October 16, 1954 for a declaration of their title to the trees purchased from the jagirdars and for permanent injunction restraining the State of Gujarat from obstructing the plaintiffs from cutting, felling and removing the said trees. The predecessor of the respondents in C. A. 2284 filed a suit in the same court on January 7, 1957 for similar reliefs in respect of the trees he had purchased. The State of Gujarat filed a written statement in each case contending that the plaintiffs' vendors had no title to the trees because of the Jagir Abolition Act, 1954 and the plaintiffs therefore had acquired no right by their purchase. In the suit out of which C. A. 2283 arises the trial court found that by virtue of Section 5 of the said Act the Jagirdars had become occupants of 9 of the survey numbers and the plaintiffs had acquired by transfer a valid right to cut the trees standing on these survey numbers. The claim as regards survey No. 200 and also in respect of the other 23 survey numbers was dismissed. In the other suit the plaintiff's title to the trees standing on 20 out of the 80 survey numbers was declared and the claim regarding the other 60 survey number was dismissed. The plaintiffs in the two suits preferred appeals to the District Judge, Baroda, against the decision of the trial Court. The defendant, State of Gujarat, did not file any appeal or cross-objection against the part of the judgments that was adverse to it. The District Judge in the appeal giving rise to C. A. 2283 affirmed

the finding of the trial court as regards survey No. 200 but reversed the decision as regards the remaining 23 survey numbers & declared the plaintiffs' title to the trees in all the 32 survey numbers. According to the District Judge and the Jagirdars continued to have the right to the trees in these survey numbers in view of Section 8 of the Jagir Abolition Act. The District Judge also allowed the other appeal upholding the plaintiff's claim with regard to the 60 survey numbers which was rejected by the trial court. The State of Gujarat preferred two second appeals to the High Court of Bombay challenging the decision of the District Judge in regard to 23 survey numbers in one case and 60 survey numbers in the other. A single Judge of the High Court held that the documents executed by the Jagirdars in favour of the plaintiffs in the two suits required registration and, not being registered, these documents were not admissible in evidence and did not create any title in favour of the plaintiffs. From the decision of the learned single Judge the plaintiffs in the two suits preferred two appeals under Clause 15 of the Letters patent Act. The Division Bench of the High Court disposed of the appeals by a common Judgment allowing the same holding that the State of Gujarat not having appealed against the part of the decision of the trial court which was adverse to it, was deberred from raising the question of the registrability of the documents. It was held that the partial success of the plaintiffs in the trial court was based on these very documents, and, as the defendant had not challenged the validity of the documents on the ground of want of registration, the question sought to be raised in the second appeals before the High Court was barred by the principle oontrfs cuctive res judicata.

2. In the appeals before us it is contended on behalf of the appellant, state of Gujarat, that the Division Bench of the High Court was in error in holding that the question whether the documents required registration was barred by the principle of res judicata. Counsel for the respondents in these appeals besides trying to support the decision of the Division Bench on the question of res judicata contends that the documents were not compulsorily registrable. A document creating an interest in immovable property of the value of Rs. 100/-or more requires registration under Section 17 of the Registration Act and, if unregistered, such a document will not affect any immovable property and will not be received as evidence of any transaction affecting such property in view of Section 49 of that Act. Immovable property as defined in Section 2(6) of the registration Act includes "things attached to the earth", which will take in trees, but excludes standing timber. According to counsel for the respondents the trees covered by the documents in question were standing timber and therefore the documents did not require registration for their Validity. The question of registration cannot be decided without an enquiry as to the nature of the trees concerned. Whether or not the trees in question were in a question of fact. As the question was raised for the first time at the second appeal stage, this aspect of the matter was not investigated. On the material on record it is not possible to reach any conclusion as to the nature of the trees and, therefore, we are not able to agree that the impugned documents were void for want of registration. We think that the learned single Judge of the High Court was not right in allowing the question which is not pure question of law to be raised at that stage. If the issue as to the registrability of the documents does not arise the question of res judicata also does not arise for decision and we express no opinion on the point. The appeals are accordingly dismissed with costs. One set of hearing fee.