

Krishna Prasad Vs. Gopal Prasad and ors.

Krishna Prasad Vs. Gopal Prasad and ors.

SooperKanoon Citation : sooperkanoon.com/135921

Court : Patna

Decided On : Jul-19-2000

Judge : Sudhir Kumar Katriar, J.

Acts : [Transfer of Property Act, 1882](#) - Sections 122; [Evidence Act, 1872](#) - Sections 101

Appeal No. : A.F.A.D. No. 83 of 1993 (R)

Appellant : Krishna Prasad

Respondent : Gopal Prasad and ors.

Advocate for Def. : P.K. Prasad and V.K. Prasad, Advs.

Advocate for Pet/Ap. : Debi Prasad, Sr. Adv. and L.K. Lal, Adv.

Disposition : Appeal allowed

Judgement :

Sudhir Kumar Katriar, J.

1. This Second Appeal arises out of judgment dated 21-8-93, and the consequent decree, passed by Smt. Vidyut Prabha Singh, 5th Addl. Judicial Commissioner, Ranchi, in Title Appeal No. 89 of 1990 (Smt. Lalin Devi and Anr. v. Krishna Prasad), whereby she has set aside the judgment dated 10-8-90, passed by Sri

Kiran Shankar, Munsif, Ranchi, in T.S. No. 47 of 1989 (Smt. Lalin and Ors. v. Krishna Prasad). The defendant is the appellant against a judgment of reversal. The suit had been dismissed by the trial Court, and the plaintiffs appeal was allowed. For the purpose of disposal of the present appeal we shall go by the description of the parties in the suit.

2. This is an unfortunate litigation amongst first decree relations. Plaintiff No. 1 is the mother, plaintiff No. 2 is her son, the sole defendant is the grand-son of plaintiff No. 1, and the son of plaintiff No. 2 from his first wife. The mother of the defendant (i.e. the first wife of plaintiff No. 2) died when the defendant was six months old, whereafter plaintiff No. 2 married a second wife, the defendant, therefore, fell in the care of his grand-mother, i.e. plaintiff No. 1 and was brought up by her. On account of natural love and affection, plaintiff No. 1 executed a registered deed of gift dated 6-3-87 (Ext. 4), in favour of the defendant with respect to the suit property which was a small plot of land along with a Kachacha house thereupon. The suit property is the absolute property of plaintiff No. 1. After the deed of gift was registered, the defendant demolished the same and constructed a spacious, Pucca house thereupon in which he is living continuously ever since then. Thereafter plaintiff No. 1 cancelled the aforesaid deed of gift (Ext. 4), by a registered deed of cancellation dated 23-5-88 (Ext. 4/a), and on heels of which executed a registered deed of absolute sale dated 31-5-88 (Ext. 3), in favour of plaintiff No. 2. As a matter of abundant precaution and in order to consolidate the title of plaintiff No. 2 with respect to the suit property, the two plaintiffs instituted title suit No. 4 of 1989 in substance seeking declaration to the effect that the deed of gift dated 6-3-87 is illegal & inoperative, having been procured by exercising fraud and misrepresentation, and for the further declaration of right, title and interest of plaintiff No. 2 with respect to the suit property as well as confirmation of possession and, In the alternative, recovery of possession. The suit was dismissed. The plaintiffs appealed which has been allowed, inter alia, on the ground that the defendant has not been able to discharge his onus that plaintiff No. 1 had executed the deed of gift free from fraud or misrepresentation. Hence the present appeal at the instance of the defendant against a judgment of reversal. There is no controversy between the parties with respect to this much effects.

3. The controversy between the parties as emerging from the rival pleadings should now be stated. According to the plaint, plaintiff No. 1 is an old and infirm lady, the defendant took undue advantage of her love and affection for him, and obtained her left thumb impression on the controversial deed of gift by exercising fraud and misrepresentation that she was recording her left thumb impression on a paper which would get her old age pension. In due course, plaintiff No. 1 realised that she had at the instance of the defendant become a victim of fraud and misrepresentation and, therefore, executed the registered deed dated 23-5-88 (Ext. 4/a), whereby she cancelled the deed of gift in favour of the defendant. She was in need of money and, therefore, executed a registered deed of absolute sale with respect to the suit property in favour of plaintiff No. 2 on account of legal necessity.

4. On the other hand, the defendant's case as set up in his written statement is that plaintiff No. 1 was and is in good health, and has herself been doing her work properly. The second wife of plaintiff No. 2, i.e. the step-mother of the defendant, started ill-treating him from the very beginning and was therefore, brought up by plaintiff No. 1 ever since he was a child of six months. On account of her natural love and affection she executed the deed of gift voluntarily, without any fraud or misrepresentation, whereafter the defendant demolished the Kutcha house and constructed a Pucca spacious house at his own cost, and has been living continuously ever since then without any objection from any quarter whatsoever. In fact, plaintiff No. 1 has although been living with plaintiff No. 2 at the instance of his second wife and their son got the deed of gift cancelled, the sale deed in question executed, and along with plaintiff No. 1 instituted the present suit. The registered deed of gift was duly executed in the presence of witnesses and others. It is also stated in the written statement that plaintiff No. 1 had no legal necessity to execute the sale deed in question, and the plaintiff No. 2 has got the sale deed executed without any consideration.

5. Both the sides examined witnesses in support of their respective cases and proved documents. On a consideration of the materials on record, the trial Court dismissed the suit holding that the onus is on the plaintiffs to prove fraud and misrepresentation, which they have not been able to establish. The trial Court has

further held that plaintiff No. 1 was an intelligent lady, and was in a fit state of mind and body. She understood all the question, gave evidence properly, and also narrated the case of the plaintiffs. The plaintiffs appeal succeeded on the ground that in case of old and infirm lady, the onus is on the donee to prove that the same was executed free from fraud, misrepresentation or the like. In that view of the matter, he has held that the defendant has not been able to discharge his onus and has consequently allowed the appeal and decreed the suit.

6. While assailing the validity of the impugned judgment, learned counsel for the appellant (defendant) submitted that the Court of appeal below has upset the findings of the trial Court without appreciating the oral and documentary evidence of the defendant which were properly considered by the trial Court. He relies on the following reported judgments in support of the proposition that it is open to the High Court in second appellate jurisdiction to set aside the judgment of the first appellate Court, particularly in a case of judgment of reversal which has been arrived at in view of non-consideration or absence of proper consideration of the entire relevant evidence of the adversely affected party.

i) AIR 1994 SC 532, Sundra NaikaVaidyar v. Ramaswami Ayyar.

ii) AIR 1998 SC 427, Smt. Mehrunnisa v. Visham Kumari.

iii) AIR 2000 SC 426, Ishwar Dass Jain v. Sohan Lal.

iv) (1996) 1 Pat LJR 483, Moti Koeri v. Magaru Moeri.

v) AIR 1997 Patna 59, Haquik Mian v. Rajendra Prasad.

6.1. He next submitted that the Impugned judgment is bad in law because he has erroneously shifted the onus on the defendant. In his submission, the onus to prove fraud, misrepresentation and the like is on the person alleging it, and the plaintiffs have not been able to establish the same. He relies on the following reported judgments.

i) AIR 1963 SC 1279, Ladli Parshad v. Karnal Distillery Co.

ii) AIR 1967 SC 878, Subhash Chandra Das Mushib v. Garga Prosad Das Mushib.

iii) AIR 1975 Patna 140. Samrathi v. Parsuram.

6.2. Learned counsel lastly submitted that even if it is held that the onus in the present case is on the defendant, the same has been duly discharged by the defendants. The Court of appeal below has failed to discharge its duty to appraise the entire evidence independently and has, in fact, failed to take into account vital evidence on this point on behalf of the defendant.

7. Learned counsel for the plaintiffs (respondents) has submitted in opposition that the onus is on the person claiming benefit under the deed and prove its due execution, Therefore, in his submission, the trial Court had erred in placing the onus on the plaintiff, which has been corrected by the Court of appeal below by shifting the onus on the defendant. He relies on the following reported judgments.

i) AIR 1963 SC 1203, Kharbuja Kuer v. Jangbahadur.

ii) (1999) 4 SCC 350 : (AIR 1999 SC 2216), Arumugham v. Sundarambal.

iii) AIR 1933 Patna 306, Sabitri Thakurain v. Mrs. F. A. Savi.

iv) 1984 BBCJ 822, Lallu Singh v. Chandramani.

In that view of the matter, the Court of appeal below, in his submission, rightly came to the conclusion that the defendant was not able to discharge his onus. He also submits that the defendants failed to cross-examine the witnesses on behalf of the plaintiffs on vital issues. He lastly submits that the issue is concluded by findings of facts and the scope of interference by the High Court in second appellate jurisdiction is very limited. He relies on the following reported judgments.

i) (1999) 3 SCC 722 : (AIR 1999 SC 2213). (Kondiba Dagadu Kadam v. Savitribai Sopan Gujar.

ii) (1999) 4 SCC 350: (AIR 1999 SC 2216), Arumugham v. Sundarambal.

8. I have considered the rival submissions carefully and gone through the materials on record. The overriding factor with its brooding omni-presence in this protracted litigation is the question of onus. In a case like the present one where

the donor is aged more than 90 years, the donee is her grandson, and on whom she has showered mother-like love and affection and in fact has reared him like a son ever since he lost his mother when he was six months old and the proverbial step-mother when he was six months old and the proverbial step-mother had started tormenting the toddler, and the natural love and affection of the grandmother was in ample measure reciprocated by the grand-son, and the equal measure has been the subject of the proverbial pulls at the instance of the step-mother in conspiracy with her husband, the poorson (plaintiff No. 2) trying to be an effective bridge between all. Para 10 of the written statement clearly states that '.....it is incorrect to say that the plaintiff No. 1 is an infirm lady. She has good health and she is doing her work herself properly.....'. D.W. 12 (Krishna Prasad) has stated In his deposition that plaintiff No. 1 is old but not infirm, she is intelligent and has been doing all her work herself. I have thus no manner of doubt that plaintiff No. 1 at the time of execution of the deed was an old lady, but not an infirm lady, and was intelligent and capable enough to understand the implications of her acts. Her mind and hand had acted in tandem with each other at the time of execution of the document. In my view, the lower appellate Court lost sight of this aspect of the matter and erroneously shifted the onus on the defendant in case of pardanashin, old or infirm lady that onus is on the person who has got the benefit under the document. The very basic premise to apply the exception with regard to onus in this connection is absent in the present case, namely, plaintiff No. 1 is neither infirm nor incapable of understanding the implications, nor is confined to the house.

9. The leading judgment of the Supreme Court in Kharbuja Kuer v. Jangbahadur, AIR 1963 SC 1203 (supra), illumines the position. The relevant portions of paragraph 5 and paragraph 6 are relevant in the present context and are quoted hereinbelow for the facility of quick reference :

'5.In India paradanashin ladies have been given a special protection in view of the social conditions of the times; they are presumed to have an imperfect knowledge of the world, as, by the pardah system they are practically excluded from social intercourse and communion with the outside world. In Farid-Un-Nisa v. Mukhtar Ahmad, 52 IA 342 at p. 350 : AIR 1925 PC 204 at p. 209, Lord Sumner

traces the origin of the custom and states the principle on which the presumption is based. The learned Lord observed ;

'In this it has only given the special development, which Indian social usages make necessary, to the general rules of English law, which protect persons, whose disabilities make them dependent upon or subject them to the influence of others, even though nothing in the nature of deception or coercion may have occurred. This is part of the law relating to personal capacity to make binding transfers or settlements of property of any kind,'

The learned Lord also points out :

'Of course fraud, duress and actual undue influence are separate matters.'

It is, therefore, manifest that the rule evolved for the protection of pardanashin ladies shall not be confused with other doctrines, such as fraud, duress and actual undue influence, which apply to all persons whether they be pardanashin ladies or not.

(6) The next question is what is the scope and extent of the protection. In *Geresh Chunder Lahoree v. Mst. Bhuggobutty Debia*, (1869 - 1870) 13 Moo I.A. 419 (PC) the Privy Council held that as regards documents taken from pardahnashin women the Court has to ascertain that the party executing them has been a free agent and duly informed of what she was about. The reason for the rule is that the ordinary presumption that a person understands the document to which he has affixed his name does not apply in the case of a pardahnashin woman. In *Kali Baksh v. Ram Gopal*, (1916) 43 I.A. 23 at P. 29(PC), the Privy Council defined the scope of the burden of a person who seeks to sustain a document to which a pardahnashin lady was a party in the following words :

'In the first place, the lady was a pardhnashin lady, and the law throws round her a special cloak of protection. It demands that the burden of proof shall in such a case rest, not with those who attack, but with those who found upon the deed, and the proof must go so far as to show affirmatively and conclusively that the deed was not only executed by, but was explained to, and was really understood by the

grantor. In such case it must also, of course, be established that the deed was not signed under duress, but arose from the free and independent will of the grantor.'

The view so broadly expressed, though affirmed in essence in subsequent decisions, was modified, to some extent, in regard to the nature of the mode of discharging the said burden. In 52 Ind App 342 at p. 352 : AIR 1925 PC 204 at p. 210 it was stated :

'The mere declaration by the settlor, subsequently made, that she had not understood what she was doing, obviously is not in itself conclusive. It must be a question whether, having regard to the proved personality of the settlor, the nature of the settlement, the circumstances under which it was executed, and the whole history of the parties. It is reasonably established that the deed executed was the free and intelligent act of the settlor or not. If the answer is in the affirmative, those relying on the deed have discharged the onus which rests upon them.'

While affirming the principle that the burden is upon the person who seeks to sustain a document executed by a pardahnashin lady that she executed it with a true understanding mind, it has been held that the proof of the fact that it has been explained to her is not the only mode of discharging the said burden, but the fact whether she voluntarily executed the document or not could be ascertained from other evidence and circumstances in the case. The same view was again reiterated by the Judicial Committee, through Sri George Rankin, in *Hem Chandra v. Suradhani Debya*, AIR 1940 PC 134. Further citation is unnecessary. The legal position has been very well settled. Shortly it may be stated thus : The burden of proof shall always rest upon the person who seeks to sustain a transaction entered into with a pardahnashin lady to establish that the said document was executed by her after clearly understanding the nature of the transaction. It should be established that it was not only her physical act but also her mental act. The burden can be discharged not only by proving that the document was explained to her and that she understood it, but also by other evidence, direct and circumstantial.'

It is thus manifest that the primary law with regard to fraud, duress and actual undue influence is that the onus is on the person who alleges the same and apply

to all persons whether they be pardanashin lady or not. However, as a matter of exception in India, pardanashin ladies have been given special protection by courts in view of the social protection of the times who are presumed to have imperfect knowledge of the world, as by the pardah system they are practically excluded from social intercourse and communion with the outside world.

10. In the present case, the Court of appeal below has applied the exception to the rule of onus evolved by judicial decisions when the basic premises is lacking. Therefore, it is very doubtful whether or not the law by way of exceptional clause applies in the facts and circumstances of the present case. Even if it were extended to old and infirm ladies, the evidence is to the contrary. The same is to the effect, as stated above, that plaintiff No. 1 is old but not weak, is intelligent and has been doing all her works including the outdoor works herself. She had taken advice on the proposed gift from her neighbours. She had announced after execution of the deed of gift that she had gifted the suit property to the defendant. I, therefore, come to the conclusion that the Court of appeal below has erred in displacing the onus. In view of the evidence on record, the onus was on the plaintiffs to prove that the defendant had played fraud and misrepresentation.

11. This takes me on the another important aspect of the matter. If the onus is on the plaintiff, then to what extent the same has been discharged. It is first of all to be noted that the gift in the present case is after all to a very dear grandson out of natural love, affection and solicitude. On account of strong feeling in the heart of the grandmother that the defendant had lost his mother when he was six months old and was tormented by his step-mother, there must have been a natural desire on her part to compensate him in life. Such an act in Indian conditions is also the product of selfish interest in the mind of the donor that the donee will be a worthy and effective support in the evening of her life. In that view of the matter, and also in view of the fact that it is a registered document, the onus is very heavy on the plaintiffs to prove fraud and misrepresentation. P.W. 11 (Govind Prasad), plaintiff No. 2, has stated in his deposition that his mother lives with him, and she had no need of money. P.W. 6 (Balram Prasad), step brother of the defendant, has deposed to the effect that his grandmother was not in need of money. This means that plaintiff No. 1 was under the convinced influence of plaintiff No. 2 & his wife. In

view of the clear evidence on record that the second wife of plaintiff No. 2 had been tormenting the defendant, seems to be undesirable influence in the present case, and the step-mother in collusion with her helpless husband torn as under by divided loyalties, must have persuaded plaintiff No. 1 to cancel the deed of gift and institute the present suit so that the suit property ultimately passes on to their own son. There is yet another vital aspect of the matter. D.W. 12 (Krishna Prasad), the defendant, stated in his deposition that the suit property at the time of execution of the deed of gift consisted of a small plot of land along with a Kachcha house thereupon, whereafter the defendant had demolished the same and built a spacious, pucca house thereupon and has with his family been living in that house ever since then. No explanation has come forward from the plaintiffs as to why this was allowed. The pucca construction was allowed in the face of the plaintiffs case that the plaintiff No. 1 did not intend to execute the deed of gift. In that view of the matter, I reject the evidence adduced on behalf of the plaintiffs that the defendant had played fraud on plaintiff No. 1 by misrepresentation.

12. Even if it is held that the primary onus was on the defendant to prove the deed of gift was unblemished, I find that the defendant has been able to discharge the same. D.W. 1 (Md. Alim Ansari), is an attesting witness and was present at the time of execution of the deed of gift. He has stated in his deposition that the contents of the deed of gift dated 6-1-1989 was read over and explained to Lalin who understood the same and then put her left thumb impression in his presence whereafter he had put her left thumb impression in his presence whereafter he had put his signature and subscribed to the genuineness of the certificate. D.W. 2 (Md. Mohid) is also a witness to the deed of gift who has deposed that Lalin had put her left thumb impression on the deed of in his presence. He has identified the left thumb impression of Lalin. D.W. 5 (Seraj Ansari) is another witness to the deed of gift. He has deposed to the effect that plaintiff No. 1 had executed the deed of gift and put her left thumb impression on every page in his presence, and he had put his signature on the deed of gift after she had recorded her left thumb impression. He has also deposed to the effect that she was in good health. D.W. 9 (Ganga Ram) had stated in his deposition that P.W. 1 had later on told him that she had executed the deed of gift in favour of Krishna Prasad D.W. 10 (Suraj Bansi Sahu) is the Dewar of Lalin and has stated in his deposition that Lalin had looked after

and brought up Krishan Prasad after the death of his mother and that she had taken advice from her neighbour about the desirability and feasibility of the proposed gift. D.W. 11 (Bito Devi) is the daughter of Lalin and has stated in her deposition that she had accompanied her mother to the Court for registration of two deeds including the deed of gift In question. The trial Court had the benefit of watching the P.W. 10 (Smt. Lalin. Plaintiff No. 1) in the witness box, and has described in paragraph '10' of his judgment that'. . . . she understood all the question properly. Further, she evidence properly after understanding all the questions and also narrated the case of the plaintiffs. Her degree of Intelligence is material one when she understands the facts properly'. Further more, I take judicial notice of the fact that a step-son in Indian conditions evokes greater, affection and sympathy at the hands of the grand-parents in the family because of the proverbial step-mother, & the father feeling helpless against such atrocities. It is thus manifest that the defendants have been able to prove by overwhelming evidence of unimpeachable character that the deed of gift was unblemished, was free from the vice of fraud or misrepresentation, and was properly executed. Plaintiff No. 1 had full knowledge and awareness of her acts and the fact that she was gifting her property in favour of the defendant out of natural love and affection.

13. In view of the foregoing discussion, I hereby hold that the plaintiffs have not been able to prove their case that plaintiff No. 1 had executed the deed of gift dated 6-3-1987 (Ext. 4), in favour of the defendant because of the fraud and misrepresentation played on her. Therefore, the deed of gift dated 6-3-1987 (Ext. 4) is hereby upheld, and the right, title and possession of the defendant with respect to the suit property is hereby confirmed . In that view of the matter, the registered deed of cancellation dated 23-5-1988 (Ext.4/a), is also declared to be null and void, non-est in law, and inoperative. It is well settled law of hoary antiquity that nobody can pass on a title higher than what he has. In view of my conclusion hereinabove, plaintiff No. 1 was divested of all her right, title and interest in the suit property after execution of the registered deed of gift and therefore, not even remain of the same was left with her to enable her to execute the registered deed of absolute sale dated 31-5-1988 (Ext. 3), in favour of plaintiff No. 2, which was with respect to just the same property as the deed of gift. Therefore, the sale-deed is hereby declared to be null and void Ab Initio, non-est

in law, and inoperative.

14. In the result, this appeal is allowed, the impugned judgment dated 21-8-1993, passed by Smt. Vidyut Prabha Singh, 5th Addl. Judicial Commissioner, Ranchi, in Title Appeal No. 89 of 1990 (Smt. Lalin Devi v. Krishna Prasad) is hereby set aside and the judgment of the trial Court dated 10-8-1990, passed by Sri Kiran Shankar, Munsif, Ranchi, in Title Suit No. 47/89 (Smt. Lalin and Ors. v. Krishna Prasad), is hereby restored the suit is, accordingly, dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com