

Sangira Malappa Vs. Ramappa Sangappa

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Court : Mumbai

Decided On : Aug-16-1909

Reported in : 4Ind.Cas.257

Judge : Chandavarkar and ;Heaton, JJ.

Appellant : Sangira Malappa

Respondent : Ramappa Sangappa

Judgement :

Chandavarkar, J.

1. The learned District Judge has found upon the evidence that there was between the plaintiff and the first defendant an oral agreement, at the time the formal sale transaction was arranged, to reconvey the property on payment by the latter of Rs. 200; and he has held that the said agreement is a fact which, under the proviso to Section 92 of the Indian Evidence Act, entitles the plaintiff to have the sale-deed executed by him in favour of the first defendant set aside and to recover the property on payment of Rs. 200. In support of this view the learned District Judge has relied on two decisions of this Court; Keshavrao Bhagwant v. Rai Pandu 8 Bom. L.R. 287 and Abaji Annagi v. Luxman Tukaram 8 Bom. L.R. 553; 30 B. 426. These decisions followed Pertap Chander Ghose v. Mohendra Purkait 16 I.A. 233; 17 C. 291. In this last case the facts were that the plaintiff therein had induced his tenants to sign certain kabuliyats by representing that certain stipulations therein,

to which they had objected before signing, would not be enforced. It was held that that statement of the effect of the law was a misrepresentation.' Their Lordships said:

Where one party induces the other to contract on the faith of representations, made to him any one of which is untrue, the whole contract is in Court of equity, considered as having been obtained fraudulently. If such a representation had not been made the tenants might have refused to sign the kabuliyats. Further, if there is any stipulation in the kabuliyat which the plaintiff told the tenants would not be enforced, they cannot be held to have assented to it and the Kabuliyat is not the real agreement between the parties and the plaintiff cannot sue upon it.

2. The facts in the present case before us are entirely different. The plaintiff has never alleged either in his pleadings or in his deposition that he was induced to sign the deed of sale executed by him under any misrepresentation. His case throughout has been that by the agreement of both parties the transaction between them was reduced to writing as one of sale of the property to the first defendant with a contemporaneous oral agreement that it should be treated as a mortgage. That was his allegation in the plaint and that is what he and his witnesses, relied upon by both the Courts below, state in their deposition. To this state of facts neither the proviso to Section 92 of the Evidence Act nor any of the decisions above cited, applies. There is no element of fraud, or misrepresentation or failure of consideration or the like in them to render the deed of sale invalid. Mr. Kelkar, the learned pleader for the respondent, in supporting the decree of the Court below, has argued that the 1st defendant's promise to enforce the deed of sale as a mortgage and his refusal now to abide by that promise amounts to misrepresentation and brings this case within the principle of the Privy Council decision above mentioned. But that is not an accurate way of stating the principle. What their Lordships laid down is that where one party to a contract does not agree to any of its stipulations and the other party induces him not indeed to agree to it, but to its formal insertion in the written contract, by representing that the stipulation in question would be in reality treated by him as a dead letter, it cannot be enforced because the party induced had never assented to it and its inclusion in the written contract was the result of misrepresentation. It was the result of

misstatement of the intention of the party inducing and such a mis-statement is one of fact and an action of deceit may be founded on it. *Edgington v. Fitzmaurice* (1885) 29 Ch. D. 459.

3. In the present case there was no inducement of one party by the other; no want of assent at any time on the part of the plaintiff to the execution of a deed of sale and no mis-statement of his intention by the first defendant which led the plaintiff to sign the deed of sale. According to the finding of the District Judge and indeed according to the plaintiff's own pleadings, both parties from the beginning arranged the terms by mutual agreement; there was no misleading of the one by the other; and the intention to treat the deed, as a mortgage rather than sale was not due to any mis-statement by the first defendant. Such a case is governed by the decision of the Privy Council in *Balkishen Das v. Legge* 2 Bom. L.R. 522; 27 I.A. 58; 4 C.W.N. 153 22 A. 149.

4. For these reasons the decree of the District Court must be reversed and that of the Subordinate Judge restored with costs throughout on the respondent (plaintiff).

Heaton, J.

5. It is now well understood that a contemporaneous oral agreement to vary the terms of a deed, should not be allowed to be proved, for the purpose of varying or adding to the terms of a deed; that is, where, as in this case, Section 10A of the Dekkan Agriculturists' Relief Act does not apply. In this case, however, the only circumstance established by way of invalidating the deed, is proof of such an oral agreement. I cannot find from the judgments of the lower Courts that anything else is established. It is not found explicitly, or even so far as I can see, impliedly, that the sale-deed did not represent the real agreement between the parties. If that had been found then the deed would have been invalidated: see *Navalbai Fulchand v. Sivubai Genu Korpe* 8 Bom. L.R. 761. What is found is that there was a sale-deed which both parties understood and considered to be a contract between them and that by an oral agreement a subsequent reconveyance was provided for. The District Judge proceeded quite correctly in his order framing issues for trial, and had in mind what it is essential to remember in cases of this kind, viz., that a sale-

deed cannot be construed as or converted into a mortgage-deed (that is, where Section 10-A of the Dekkhan Agriculturists' Relief Act does not apply) but that the person who executed the sale-deed may show, if he can, that the sale-deed did not represent the real agreement between the parties; or for some other reason is of no effect. This the plaintiff was allowed an opportunity of doing, but as indicated above it has not been found that he succeeded in doing it. Therefore, I agree that the decree of the first Court must be restored.

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