Wali Mohammad Vs. Mohammad Baksh

Wali Mohammad Vs. Mohammad Baksh

SooperKanoon Citation : sooperkanoon.com/344908

Court : Mumbai

Decided On : Dec-16-1929

Reported in : (1930)32BOMLR380

Judge : Viscount Dunedin,; George Lowndes and ;Binod Mitter, JJ.

Appellant : Wali Mohammad

Respondent : Mohammad Baksh

Disposition : Appeal dismissed

Judgement :

Binod Mitter, J.

1. The following genealogical tables will show the relationship of the parties to this litigation, and will be helpful in understanding the disputes between them :-

A PIR BAKHSH.----------| |Muhammad Bakhsh (original mortgagor), Sultan (originalPlaintiff No. 1, mortgagor) now represented by his son Umaiv.----------| |Muhammad Hueain Shera Kala Nawab| | Plaintiff No. 3 (died childless).Rahmat Ali | Plaintiff No. 3 |----------| |Hakim Ali Muhammad AliDefendant No. 8 Plaintiff No. 4BMIRAN BAKHSH (the original mortgagee)| ----------| |Allah Bakhsh Nur ElahiDefendant No. 1 Defendant No. 2CDARE

KHAN.----------| |Wali (Purchaser Ali Muha- (Purchaser MuhammadMuhammad from mmad from BakhshDefendant No. 3 Miran Bakhsh | Miran Bakhsh) (Purchaser fromAppellant No. 1 | Miran Bakhsh)---------- || | | Muhammad Husain Hassan Muhammad |Defendant No. 4 Defendant No. 5 |Appellant No. 2 Appellant No. 3 |----------| |Muhammad Yusaf Muhammad YunisDefendant No. 6 Defendant No. 7Appellant No. 4 Appellant No. 5

2. The facts out of which this present appeal arises are shortly as follows :~-

By a registered deed dated March 15, 1880, and executed by Sultan and Mahammad Bakhsh, certain lands and wells were mortgaged to the aforesaid Chaudhri Miran Bakhsh in consideration of the sum of Rs. 1200. The mortgagees went into possession, and, it was a term of the mortgage that the mortgagors would not be competent to redeem the mortgaged premises until after twenty years from the date of the mortgage.

3. About the year 1891, Miran Bakhsh transferred his interest to Wali Mohammad, Ali Mohammad, and Mohammad Bakhsh, sons of Dare Khan, all named in the above-named genealogical tables, and they went into possession after their purchase.

4. It is alleged by the defendants that the mortgagors Mohammad Bakhsh and Sultan sold their equity of redemption about the year 1891 or 1892 to the defendant No. 3, and the said Ali Mohammad and Mohammad Bakhsh for Rs. 1,200 and, Miran Bakhsh released the mortgaged premises to them.

5. The plaintiffs, who are the mortgagor Mohammad Bakhsh and the descendants of Sultan, denied such sale, and instituted the present suit in the Court of the Subordinate Judge of Shiekhupura on November 17,1920, against' the sons of Miran Bakhsh and the present appellants for the redemption of the mortgaged premises. The only point discussed before the Board is whether the appellants have proved the sale.

6. The learned Subordinate Judge who tried the case held that the alleged sale had been proved. From his judgment and decree there was as an appeal to the Additional District Judge of Shiekhupura (hereinafter referred to as the appellate Court) who came to an opposite conclusion. There was a second appeal to the High Court of Judicature at Lahore, and they held that the question whether there had been a sale or not is a question of fact, and that it was not open to them to consider the evidence, as the appellate Court had not contravened any of the provisions of Section 100 of the Civil Procedure Code.

7. The first question, therefore, for their Lordships' consideration is whether the decision of the appellate Court, namely, that there had been no sale, is a pure question of fact, for, if that is so, then its decision was final.

8. In the Punjab the sale might have been oral, as it was not governed by the Transfer of Property Act. The case for the appellants is that the sale was oral, and the mortgagors on such sale executed a receipt showing that Rs. 800 had been paid to them and Rs. 1,200 to Miran Bakhsh. The appellant Wali Mohammad gave evidence and called witnesses to prove the execution of the receipt, but both the trial and appellate Court held that the receipt had not been proved.

9. The appellants' case further was that on the sale there was mutation in favour of Wali Mohammad and his brothers, but that the mutation records had been burnt during the Gujranwala riots in the Punjab in 1919. They, however, relied on a number of entries in the record of rights prepared under the Punjab Land Revenue Act, being Act No. XVII of 1887, and they contended that these entries recognised the appellants or their predecessors as the owners of these properties, and that such entries duly made under Section 44 of the said Act are to be presumed to be correct as to the facts they record until the contrary is proved. The appellate Court held that the mortgage being admitted, the onus was on the appellants to show that the mortgage had been extinguished by subsequent sale. Their Lordships agree with the High Court that the appellate Court was right in its view on the question of onus.

10. In the view of the latter Court some of the entries in the record of rights were proved to be wrong, and after considering the evidence, both oral and

documentary, and giving effect to the statutory presumption, it held that the onus upon the appellants had not been discharged. The first question, therefore, for consideration is whether its decision that the sale has not been proved is a question of fact or involves any question of law. It has been argued by the counsel for the appellants that the inference drawn from the various entries in the record of rights is a question of law, and that the appellate Court drew a wrong inference from them. The respondents contended that these various entries are merely links in the chain of evidence to prove the sale and that the question whether there was a sale or not is a pure question of fact.

11. Section 100 of the present Code of Civil Procedure has replaced Section 584) of Civil Procedure Code of 1882. These sections are substantially the same in their terms and have often been considered by the Board and the different High Courts in India. No doubt questions of law and fact are often difficult to disentangle, but the following propositions are clearly established.

(1) There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of facts, however gross the error may see to be, (See Mussummat Durga Choudhrain v. Jawahir Singh Choudhri (1890) L.R. 17 I. A. 122 .

(2) The proper legal effect of a proved fact is essentially a question of law, but the question whether a fact has been proved when evidence for and against has been properly admitted is necessarily a pure question of fact. (Nafar Chandra Pal v. Shukur (1918) L.R. 45 I. A. 183

(3) Where the question to be decided is one of fact, it does not involve an issue of law merely because documents which were not instruments of title or otherwise the direct foundations of rights but were really historical materials, have to be construed for the purpose of deciding the question. (See The Midnapur Zamindary Co. Ld. v. Uma Charan Mandal 29 C. W. N. 131 P.C..

12. In the last cited case the question the Board had to decide was the date of the origin of an under-tenure. The first appellate Court fixed the date from the contents of some documents. No oral evidence had been called in this case.

(4) A second appeal would not lie because some portion of the evidence might be contained in a document or documents and the first appellate Court had made a mistake- as to its meaning. (See Mowbut Singh v. Chutter Dharee Singh (1890) L.R. 17 IndAp 122. The judgment in this case was delivered by Sir Richard Couch, under Section 372 of the Civil Procedure Code of 1859, but it has repeatedly been followed in decisions under the Civil Procedure Codes of 1882 and 1908.

13. Great reliance was placed by the appellants' counsel on Dhanna Mai v. Moti Sagar (1927) L.R. 54 IndAp 178 but there the tenancy was admitted and the question was whether it was permanent or not, and the solution of it depended upon what was the legal inference to be drawn from proved facts, or, in other words, the question was what was the legal effect of proved facts. The question whether a statutory presumption is rebutted by the rest of the evidence, as is the case here, is always a question of fact. (See Kumeda Prosunna Bhuiya v. The Secretary of State for India in Council 19 C.W.N. 1017.

14. This case was recently approved by the Board in the case of Midnapur Zamindary Co. v. Secretary of State for India .

15. Their Lordships are of opinion that whether there was a sale or not is a question of the fact. In this case both parties led evidence oral and documentary. The appellate Court, as has already been stated, held that many of the entries, notwithstanding the presumption under Section 44, were incorrect. The entries relied on by the appellants were not the foundations of their title but were mere items of evidence adduced by them to prove the sale. The only question as regards the entries is their evidentiary value on the fact in issue, viz., the sale. Their Lordships, therefore, have no hesitation in holding that the finding of the appellate Court that there was no sale is final, and that the judgment of the High Court is right. The appeal should, therefore, be dismissed with costs, and they will humbly advise His Majesty accordingly.