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Court : Karnataka

Decided On : Jul-08-1949

Reported in : AIR1953Kant6; AIR1953Mys6

Judge : Venkata Ramaiya and ;Puttaraj Urs, JJ.

Acts : [Evidence Act, 1872](#) - Sections 92

Appeal No. : Second Appeal No. 242 of 1947-48

Appellant : Doddamadiah and ors.

Respondent : Mallappa

Advocate for Def. : T. Rangaswamy Iyengar and ;B.V. Balaji, Advs.

Advocate for Pet/Ap. : Malur Subba Rao, Adv.

Judgement :

Ramaiya, J.

1. This is an appeal by the defendants in a suit for possession of a house conveyed by them under a registered sale deed to the plaintiff. Out of the consideration of Rs. 800/- mentioned in the sale deed Rs. 400/- was paid on the date of the document. Towards the balance of Rs. 400/- Rs. 185/- was payable at the time of registration and Rs. 215/- had to be paid to one Nanjundaradhya a prior

mortgagee of the property. Exhibit E is the sale deed dated 19/2/1944 and Exhibit E (1) is the consideration receipt for payment of Rs.400/- executed by the defendants on the same day.

Possession of the property was not delivered to the plaintiff and one of the terms of the sale deed is that the defendants could remain in possession of the same for 3 months within which they had to construct a new residence. The defendants while admitting the execution of the sale deed and the consideration receipt pleaded that the sale was cancelled by means of the document, Exhibit I, dated 8/5/1944 wherein the plaintiff admitted repayment of Rs. 400/- paid by him on the date of sale and that the sale was cancelled. He also promised not to present the sale deed for registration. Exhibit II is the receipt for repayment of Rs. 400/-.

In spite of the agreement contained in Exhibit I, the sale deed was presented for registration by the plaintiff on 22/6/1944 and in spite of the defendants' statements before the Sub-Registrar that the plaintiff had agreed not to get the document registered after taking back Rs. 400/- from them, the document was registered on 22/11/1944. The suit from which this appeal arises was filed on 12-2-1945. The learned Munsiff dismissed the suit upholding the defendants' plea; but on appeal the learned Additional Subordinate Judge reversed this decision and granted a decree to the plaintiff.

2. Although the plaintiff in the pleadings totally denied having executed Exhibits I and II and having received Rs. 400/- from the defendants, the finding of the learned Munsiff that these documents are genuine has to be preferred to that of the learned Subordinate Judge taking a contrary view. In the first place the observation of the learned Subordinate Judge that although the thumb impression contained in Exhibit I is that of the plaintiff, as spoken to by the Finger Print Expert and the witnesses, it was fixed to a blank paper later on filled up by the defendants is not warranted by the evidence on record. In the second place, no such plea was raised at all in the pleadings or suggested in the course of the trial.

On the other hand, the question put at the end of the examination of D. W. 2 as to whether it was not so obtained implies that the plaintiff must have executed it. The evidence of D. Ws. 2 and 3 is not shown to be untrustworthy. The illness of the

plaintiff which necessitated his being an in-patient in the hospital a few days after the execution of Exhibit I does not render his having executed Exhibits I and II impossible on the date these bear. We are, therefore, of opinion that Exhibits I and II are genuine and the plaintiff must have received Rs. 400/-. This is not, however, sufficient to help the defendants to successfully resist the claim. Exhibit E is a registered document and it is common ground that on the date it was executed money was paid by the plaintiff and was received by the defendants and that the intention of the parties was that it should be an effective transaction. It is only on a subsequent date that an arrangement was entered into to cancel the sale.

Unfortunately the terms agreed upon for cancellation as set forth in Exhibit E (Sic) cannot prevail over the sale deed for the reason that while the sale deed is registered, Exhibits I and II were unregistered. The mere fact that the defendants mentioned to the Sub-Registrar that the money had been received and the plaintiff had agreed not to present the document for registration cannot take away the legal effect of Exhibit E. It is curious that even after the defendants became aware of the plaintiff having played false in seeking registration of the Sale deed, they did not choose to present Exhibit I for registration likewise. Section 92 of the Evidence Act forbids evidence such as Exhibit I to overcome a registered document such as Exhibit E.

In -- 'Umedlal Motiram v. Davu', 2 Bombay 547 a sale deed was executed for conveyance of a house and no money was paid and possession was not delivered to the purchaser. Shortly after the conveyance had been registered the purchaser made an endorsement thereon to the effect that he was unable to pay the purchase-money and returned it. Meanwhile a third person obtained a decree against the purchaser and himself purchased it in a Court sale. The question was whether the sale was cancelled and the purchaser in the Court sale has really a right in the property. The learned Judges observed: -

'The deed of conveyance purports to make an immediate transfer of the ownership of the house, in consideration of value already received. It is not an agreement to convey, but a conveyance; and it is not open to the party who executed it to show that it was intended to be something quite different and the document had been

executed, delivered, and duly registered, it operated as a conveyance, and the purchaser became the owner of the house. It is not pretended that he ever re-conveyed the house to the vendor. What is alleged, would, if proved, amount to an agreement to rescind the purchase; but the evidence offered to establish such agreement is not admissible. The endorsement made on the sale deed when it was returned cannot affect the property, because it is not registered, and as the sale deed has been registered no oral agreement to rescind it can be proved (Indian Evidence Act, Section 92, proviso (4)).'

These observations may be applied to the facts of the present case. In -- 'pichammal v. Ponnambala Bhotter', 15 Ind Cas 326 (Mad) the question was whether in a suit for possession of property on the basis of a sale deed, the defendant's plea of an oral agreement whereby plaintiff had agreed to return the sale deed to the defendant and to relinquish his claim to the property could be countenanced. It was held that the evidence of the oral agreement was inadmissible under Section 92 of the Evidence Act and no question of estoppel arises in the case. At page 282 of the same volume there is another case in which also it was held that oral evidence to prove that parties to a sale deed which was duly executed and registered, subsequently rescinded it by mutual consent, is inadmissible under Section 92 of the Evidence Act. 29 Mys C. C. R. 332, is an authority for the view that where the original lease is in writing and registered, it is not open to parties to prove by oral evidence that that lease was surrendered under a later agreement and that oral evidence as to the surrender is inadmissible under the proviso 4 to Section 92 of the Evidence Act.

8 Mys L. J. 225 relied upon by the counsel for the appellants is distinguishable as it was held in that case that the sale deed was inoperative from the very inception and intended not to be effective. The conduct of the parties and the evidence in the present case go to show that the sale was effective at the beginning and intended to be such but by reason of a subsequent understanding it was sought to be cancelled. Such a plea is hit by the provisions of Section 92 of the Evidence Act and not saved by any of the explanations to it.

3. The conclusion reached by the learned Subordinate Judge in the case is, therefore, correct though we are not in agreement with him with all the reasons assigned by him therefor. It is open to the appellants to seek relief by taking such steps as are available under the law. The appeal is therefore dismissed. Having regard to the conduct of the plaintiff and the circumstances of the case we direct that the parties do bear their own costs throughout.

4. Appeal dismissed.

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