

**Dina Nath and Another Vs. Dan Behari Lal (Decd.) Through L.Rs. and Another**

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**SooperKanoon Citation :** [sooperkanoon.com/449663](http://sooperkanoon.com/449663)

**Court :** Allahabad

**Decided On :** Feb-27-1998

**Reported in :** 1999(1)AWC90

**Judge :** R.K. Singh, J.

**Appeal No. :** Second Appeal No. 2596 of 1977

**Appellant :** Dina Nath and Another

**Respondent :** Dan Behari Lal (Decd.) Through L.Rs. and Another

**Advocate for Def. :** Y.S. Saxena and ;A.N. Bhargava, Advs.

**Advocate for Pet/Ap. :** J.N. Dubey, ;Satya Prakash, ;K.N. Tripathi, ;S.N. Babalkar and ;Piyush Dubey, Advs.

**Judgement :**

**R.K. Singh, J.**

1. This second appeal is directed against the judgment and decree dated 5th August, 1977 passed by Civil Judge, Court No. 3. Agra in Civil Appeal No. 80 of 1973 arising out of the Original Suit No. 137 of 1971 decided by II Additional Munsif, Agra by its judgment dated 22nd January, 1973.

2. One Smt. Jagrani (died) executed a sale deed dated 20th February, 1968 in favour of the appellants Deena Nath and Mahavir Prasad both sons of Atmaram Pandey of Tal Firoz Khan. Agra. Smt. Jagrani died on 4th November, 1969. The plaintiff-respondents Shyam Prasad and others filed Original Suit No. 137 of 1971 on 16th of February, 1971 alleging that the sale deed was obtained by playing fraud on Smt. Jagrani.

3. The plaintiff-repondents alleged that Smt. Jagrani at the alleged time of execution of the sale deed in question was a very old lady and she had become invalid and lost eye-sight as well and was practically blind. She had become very weak and frail and lost memory and had no capacity of understanding. The defendants were Intimately connected with the family of Smt. Jagrani as well as with the plaintiffs. It is alleged that the defendants were appreciated by the plaintiff and Smt. Jagrani and they used to look after Smt. Jagrani's cultivation and also the litigations in Courts on behalf of Smt. Jagrani. Taking undue advantage of their influence on Smt. Jagrani and without her know the transaction got a sale deed for 1/2 share in the plots of Khata scribed and registered on 20th February, 1968. The defendants further played fraud and got a fictitious Will executed by Smt. Jagrani, The plaintiffs alleged that the sale deed was without consideration and it was outcome of fraud played on Smt. Jagrani which the plaintiffs had no knowledge and for the first time they came to know in December, 1970. On these facts the plaintiffs prayed for cancellation of the sale deed and injunction.

4. The defendants-appellants contested the suit and filed written statement. They denied the allegations of the plaintiffs and asserted that Smt. Jagrani was quite hale and hearty at the time of execution of the sale deed dated 20th February, 1968 and she executed sale deed for valuable consideration out of her own free-will and after understanding the contents of the sale deed. The defendants further denied the correctness of the pedigree given by the plaintiffs showing the closeness with Smt. Jagrani and they further alleged that the plaintiffs have no right to sue. According to the defendants, plaintiffs and Gokul Prasad had full knowledge of the execution of the sale deed and the will in favour of the defendants from the very beginning but still they did not take any action during the life time of Smt. Jagrani. the names of the defendants have been mutated in the

revenue court.

5. On the pleadings of the parties following issues were settled for decision :

(i) Whether defendants practised fraud as alleged in para 12 on Smt. Jagrani and got the sale deed dated 20.2.1968 executed? if so. Its effect?

(ii) Whether defendants took advantage of the helplessness of old lady Smt. Jagrani? if so. Its effect?

(iii) Whether Smt. Jagrani was related to the plaintiff as alleged in plaint? if so. Its effect?

(iv) Whether Smt. Jagrani suffered from disabilities as alleged by plaintiffs. If so. Its effect?

(v) Whether sale deed was executed by Smt. Jagrani? if so, Its effect.

(vi) To what damages the plaintiffs are entitled?

(vii) To what relief, if any, the plaintiffs are entitled?

6. The learned trial court decided all the issues against the plaintiffs and dismissed the suit. Lower appellate court has recorded findings on issues in favour of the plaintiffs and has allowed the appeal and decreed the suit.

7. The appellants in this appeal have raised following substantial questions of law :

(1) The finding of the lower appellate court that the respondents belong to the family of Smt. Jagrani is vitiated in law due to misreading of the entries of 1285F?

(2) Mere mentioning the names of the plaintiffs witnesses without considering the serious contradictions in their statements would amount to proper appreciation of the evidence on record?

(3) The respondents-plaintiffs themselves purchased half share in the house from Smt. Jagrani after one month of her executing the sale deed in favour of the appellants was not sufficient to prove that the respondents did not belong to her

family?

(4) The finding of the lower appellate court that Smt. Jagrani was an old, infirm and illiterate lady and incapable of understanding the nature of transaction can be legally sustained in the fact and material of the case?

(5) if the finding that Smt. Jagrani was not paid the sale consideration is legally sustainable?

(6) if any fraud played on Smt. Jagrani in obtaining the said sale deed is proved by the respondents?

(7) if the consent given by respondent Shyam Prasad on the application of Smt. Jagrani moved for obtaining Bhwnidhari Sanad a day prior to her executing the sale deed was binding on the respondents will amount to their admission of the fact that she was quite hale and hearty and capable of understanding the things at that time?

8. in the memo of appeal as many as twenty five grounds have been taken but during arguments, Stress has been laid only on the abovenoted seven grounds. Other grounds have been left out with the submission that they are connected with these very grounds.

9. Sri Satya Prakash advocate has been heard for the appellants and Sri A. N. Bhargava for the respondents.

10. The learned IInd Additional Munsif in judgment dated 22nd January, 1973 has discussed the evidence of all the witnesses examined by both the parties and also the sale deed in question and few letters said to have been written by the defendant Deena Nath to the plaintiffs produced as paper Nos. 92-C/1 and 92-C/2 and other documentary evidence in detail while considering the issue Nos. 1, 2, 4 and 5 jointly and has given good reasons to find that the evidence of prosecution witnesses Shyam Prasad (Plaintiff). Udai Ram (P.W.2). Ramji Lal (P.W.3), Tula Ram (P.W.4). Ram Beharl (P.W.5) and Narayan (P.W.6) is not convincing. So far the merit of evidence of these witnesses are concerned, it is crystal clear that they are not the eye-witnesses of the sale deed in question. They have given evidence

only on the physical condition of Smt. Jagrani to create a circumstantial evidence that due to old age, weak eye-sight and ailing health, Smt. Jagrani could not have understood the contents of the documents in question. The learned Additional Munsif has held that from the evidence of these witnesses the allegation of fraud is not proved. On the point of payment of consideration of Rs. 7,000 as consideration money for the sale deed in question, it has also been held by the trial court that the payment has been proved. The lower appellate court has reversed the finding of the trial court but has not given the due consideration to the evidence of six plaintiff's witnesses scrutinised by the trial court. Lower appellate court has simply disagreed with the trial court but the facts remain that even if the total evidence of all these witnesses is accepted, then also there is no evidence worth the name to prove that any fraud was actually played on Smt. Jagrani. As against that, the lower appellate court has itself noted in the impugned judgment that there is a note of Sub-Registrar before whom the sale deed in question was presented for registration that Rs. 2,000 out of the consideration money was paid in his presence to Smt. Jagrani and Smt. Jagrani moved out of the registration office with difficulty. This note of the Sub-Registrar, of course, speaks about the difficulty in the movement of Smt. Jagrani, but the fact that she had come to the registration office to get the sale deed registered and she received the part consideration money in the registry office before the Sub-Registrar, has not been given any weight by the lower appellate court. The lower appellate court has taken the note of Sub-Registrar that Smt. Jagrani moved with difficulty as a supporting material of the plaintiff's story that she was very weak and unable to understand but this inability of understanding or blindness or any other allegations of the plaintiff is in no way supported by this note of the Sub-Registrar. The allegation of fraud was to be proved by the plaintiffs for which there is no evidence on record except a few remote circumstances to show ill health, old age and poor eye-sight of Smt. Jagrani. These circumstances in themselves are of no help to prove the allegation of fraud. The case law relied on by the plaintiff-respondents *Paras Nath Rai v. Tileshra Kuar*, 1965 ALJ 1080 ; *Manohar Lal v. Smt. Rajeshwari Devi and another*, AIR 1977 36 ; *Satyadeo Prasad v. Smt. Chanderjoti Debi and others*, AIR 1966 Pat 111, have not been properly appreciated by the lower appellate court. In all these cases, the fraud was alleged by the ladies themselves who challenged the

documents on the ground that the fraud was played on them. Here in the present case. Smt. Jagrani has not come as a plaintiff to challenge the sale deed in question, rather the plaintiffs who claimed to have interest in the property, have filed the suit. None of these cases taken help by the lower appellate court, help the respondents in the present case. Learned counsel for the respondents has tried to take support from the case law of Smt. Kharbuja Kuer v. Jangbahadur Rai and others, AIR 1963 SC 1203, that the burden of proof proving the genuineness of the sale deed was on the defendants but in this case also as well as in the case of Dudh Nath a. Sat Narayan Ram and others, 1966 ALJ 107. the plaintiff or defendant alleging fraud was the party of the deed and not a third person like the plaintiff in the present case. So this case do not help the respondents and they are clearly distinguishable.

11. Since the fraud was alleged by the plaintiff so the onus to prove the same was on the plaintiffs which they have not discharged at all. They have given evidence only to show the ill health or weak eye-sight of Smt. Jagrani and about the confidence which the defendant-appellant had got from Smt. Jagrani and the plaintiffs but there is no evidence to show that actually any fraud was played on Smt. Jagrani. The lower appellate court has devoted much energy on the letters written by the defendant Deena Nath to the plaintiff to infer that defendant kept the plaintiff in dark about any such sale deed or Will executed by Smt. Jagrani. This alleged fraud played by Deena Nath on plaintiff is not of any consequence in this suit to prove that Deena Nath or any defendant had played fraud on Smt. Jagrani. The lower appellate court has wasted energy on Irrelevant considerations and has lost sight of undisputed facts that Smt. Jagrani had gone to the Sub-Registrar's office to affirm the execution of the sale deed and had received Rs. 2,000 in the presence of Sub-Registrar. The sale deed stated that Rs. 5,000 out of the consideration of Rs. 7,000 has already been received. To disbelieve the payment of consideration money or to doubt the genuineness of the deed is simply personal discretion utilised by the lower appellate court without any evidence to support these findings.

12. The Judgment and decree passed by the lower appellate court is without proper appreciation of evidence on record and also suffers from misreading, mis-

interpretation of the oral and documentary evidence on the points in issue. So the Impugned judgment is fit to be Interfered with.

13. Based on the above discussions, the appeal is fit to be allowed. The Judgment and decree passed by the trial court are fit to be confirmed.

14. The appeal is accordingly allowed on contest with costs. The judgment and decree passed by the lower appellate court, are set aside and the judgment and decree passed by the trial court are affirmed.

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