

**Ramdeo Vs. Smt Dulari Devi**

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**SooperKanoon Citation :** [sooperkanoon.com/453312](http://sooperkanoon.com/453312)

**Court :** Allahabad

**Decided On :** Aug-28-1995

**Reported in :** AIR1996All253

**Judge :** R.B. Mehrotra, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 100 and 107; [Evidence Act, 1872](#) - Sections 16, 67 and 101; Office Language Act - Sections 7

**Appeal No. :** S.A. No. 631 of 1983

**Appellant :** Ramdeo

**Respondent :** Smt Dulari Devi

**Advocate for Def. :** Fauzdar Rai, Adv.

**Advocate for Pet/Ap. :** U.K. Misra, Adv.

**Judgement :**

ORDER

1. The present appeal has been filed by the plaintiff-appellant.
2. The facts necessary for adjudication in this appeal are as under:

Ram Deo Yadav filed suit No. 30/73 against Smt. Dulari Devi, Smt. Indrawati and Smt. Parvati Devi in the Court of Civil Judge Azamgarh and later on Moti Yadav

and Shrawan Yadav were also impleaded as defendants. In the said plaint relief prayed was for specific performance of the agreement for sale dated 27-1-72 by deceased Sri Jhabbar Yadav in favour of plaintiff regarding the property in dispute and as per that agreement the defendants be directed to execute sale deed in favour of the plaintiff, in the alternative it was prayed that if for any reason it is not possible to get the sale deed executed, there should be a decree for return of earnest money to the tune of Rs. 8000/- paid to defendant at the time of execution of agreement for sale, along with interest thereon.

3. The defendants contested the above suit. The trial Court framed issues on the basis of the pleadings of the parties. Out of the said issues the following issues are appropriate for decision of the present appeal.

Issue No. 1:

Whether 27-1-72 Jhabbar Yadav, the deceased husband of defendant No. 1 and father of defendants 2, 3 agreed to sell the property in suit in favour of the plaintiff for a consideration of Rs. 10000/-?

Issue No. 2:

Whether the plaintiff paid earnest money to the tune of Rs. 8000/- to Jhabbar Yadav in terms of the agreement?

Issue No. 3:

Whether Jhabbar Yadav executed the agreement dated 27-1-72 paper No. 9A1 in favour of the plaintiff

Issue No. 4:

Whether the defendants 2 to 5 had knowledge of the aforesaid agreement, and whether the said defendants are bona fide purchaser of the property in suit?

4. The trial Court decided issues Nos. 1, 2 and 3 together and on the evaluation of evidence led by the parties recorded finding of fact that it is proved from the evidence that Jhabbar Yadav executed agreement dated 27-1-72 in respect of

property in suit in favour of the plaintiff and Jhabbar Yadav got earnest money of Rs. 8000/- from the plaintiff at the time of execution of agreement.

5. The issue No. 4 was also decided by the trial Court in favour of plaintiff and against defendants and recorded finding of fact that the defendants 2 to 5 had the knowledge of the agreement of sale in respect of disputed property by Jhabbar Yadav in favour of plaintiff and the defendants 2 to 5 are not bona fide purchasers and apart from it also recorded the finding that defendant No. 1 executed sale deed dated 12-7-73 in favour of defendants 2 to 5 where as according to the terms of the agreement the plaintiff had filed the suit on 31-4-73 for execution of sale deed, thus the sale deed in favour of defendants 2 to 5 has been executed during the pendency of suit and the sale deed is hit by the doctrine of lis pendens.

6. Aggrieved by the aforesaid judgment the defendants preferred civil appeal No. 85/ 74. The District Judge Azamgarh by his judgment dated 10 January, 1983 allowed the appeal of defendants and by setting aside the judgment of trial Court dismissed the suit with cost for the specific performance of contract. Aggrieved by the aforesaid judgment the present second appeal has been instituted by plaintiff. This Court by order dated 4-10-83 admitted the appeal for hearing and found that the following substantial questions of law arise in this appeal.

1. Whether it was justified on the part of lower appellate Court to upset the view of trial Court based on appreciation of oral evidence and the marked demeanour of witnesses?

2. Whether the lower appellate court was justified to ignore the admission of the defendants, the trial Court having based the judgments on admission?

3. Was the lower appellate Court justified in relying upon surmises and conjectures?

7. I have heard Sri Umakant Misra in support of appeal and Sri Faujdar Rai in support of respondents.

8. For determining the above points it is proper to dwell upon as what finding has been recorded by lower appellate Court with reference to the relevant issues and

how the said conclusion are against law.

9. The lower appellate Court has considered some circumstances in connection with the issues and it is essential to refer to same in connection with the decision of this appeal. According to the plaint the disputed agreement between the plaintiff and Jhabbar Yadav was executed on 27-1-72. It is admitted position that Jhabbar Yadav died on 15 September, 1972. Jhabbar Yadav left behind his heirs only his widow and the two daughters. The plaintiff Ramdeo Yadav was the brother of Jhabbar Yadav and according to law in the presence of the widow and the two daughters of Jhabbar, Ramdeo could not inherited to the property of Jhabbar Yadav. The lower appellate Court has considered this aspect of the matter that till Jhabbar Yadav was alive the plaintiff did not institute any proceeding for execution of sale deed in terms of the alleged agreement of sale. Jhabbar Yadav was illiterate person. There is no evidence on record to indicate that during the lifetime of Jhabbar Yadav, the plaintiff ever asked Jhabbar Yadav as regards getting the specific performance of the agreement effected.

10. The disputed agreement has been filed as Exhibit No. 4 from the side of the plaintiff. This Ex. Ka-4 is on a general stamp of Rs. 4.50. Sri Jhabbar Yadav has put his thumb mark on this stamp paper and has endorsed in the agreement that its executant Jhabbar Yadav has only two daughters who are married and the wife of the executant is alive. The executant has grown very old and after the death of the executant the agricultural land can be frittered away, hence he has resolved to sell the aforesaid land to his brother Ram Deo Yadav for Rs. 10000/- and has accepted Rs. 8000/- as earnest money to executing the agreement, the remaining Rs. 2000/- will be received on the date of the execution of the sale deed. It is clear from the statement the said document that Jhabbar Yadav wanted to sell his land in his lifetime and in view of that circumstances there was no justification for the plaintiff to have waited for long span of 8 months, why the plaintiff did take any steps to get the sale deed executed from Jhabbar Yadav is in an important circumstance which put to question mark on the truthfulness of the agreement and in' the context of this circumstances the conclusion drawn by the lower appellate Court cannot be said to be based on merely conjecture and surmises.

11. It is an established principled law that if any conclusion is drawn on the basis of circumstantial evidence, then that is a finding of fact and under the limited jurisdiction of Section 100, C.P.C. the High Court should not interfere with such finding of fact. In this very sequence the lower appellate Court has referred to the wrong conclusion drawn by the trial Court by misreading the evidence of Smt. Dulari Devi. The trial Court by disbelieving the evidence of Smt. Dulari Devi recorded finding that Smt. Dulari has admitted that Jhabbar Yadav was desirous of selling his cultivable agricultural land, where from the evidence of Smt. Dulari it is clear that Jhabbar Yadav told Smt. Dulari merely this that in any way he wants to give his land to his daughters. The Lower Appellate Court in this connection and circumstances also drawn the conclusion that as the plaintiffs was not the heir of Jhabbar there remains a possibility of the plaintiff obtaining the thumb mark of the defendant on the alleged agreement without telling the facts. By referring to the above evidence the lower appellate Court recorded finding of fact that Smt. Dulari in her statement merely stated that Jhabbar Yadav wanted to sell his land to daughters, however, on that statement the trial Court held that Jhabbar Yadav was desirous to sell his land. The lower appellate Court held, that the said findings based on misreading of evidence by the trial Court and considering all the circumstances the lower appellate Court recorded the finding of fact that plaintiff has failed to prove that Jhabbar in his lifetime wants to deprive his daughters and widow from his cultivable agriculture land.

12. In this very sequence the lower appellate Court has disbelieved the version of the plaintiff that he had taken a loan of Rs. 2500/- from others for paying the earnest amount of Rs. 8000/- in respect of the agreement of sale to Jhabbar Yadav. To disbelieve this evidence the lower appellate Court advanced the reasoning that it is not credible in view of the assertion of the plaintiff that Jhabbar used to love him and was on terms of intimacy with him then what was the necessity for him to take a loan for advancing earnest money and if the plaintiff could allow Rs. 2000/- to remain outstanding at the time of agreement then what was the difficulty in keeping Rs. 4 1/2 thousand as outstanding? In view of the above circumstances the lower appellate Court has disbelieved the plaintiffs version. The lower appellate Court in this very sequence disbelieved the execution of Rukkas for Rs. 1500/-, 1000/- in favour of the two witnesses of plaintiff by

holding that the plaintiff has failed to prove the above Rukkas and there is a lot of contradiction between plaintiffs statement and the facts stated in the pronotes and on the aforesaid basis lower appellate Court also disbelieved the plaintiffs evidence and statement.

13. Thereafter lower appellate Court analysed the evidence of the plaintiff and his witnesses and as a result of that analysis recorded finding of fact that Dayashankar P.W, 2 who is alleged to be the scribe of the alleged agreement is not a reliable witness. Sri Dayashankar has stated in his evidence that Shambhunath used to come to Tahsil usually and he used to see him with Jhabbar Yadav and that is how he knew Jhabbar also.

14. From the statement of Smt. Dulari and the above statement, it is clear that Shambhunath was relation of the plaintiff and he was knowing Jhabbar Yadav from before and Shambunath defendant No. 5 has stated in evidence that prior to the execution of the agreement in question he had never gone to Ghosi Tahsil and he was not known to the scribe of the agreement from before. In view of the contradiction inter se between the two statements, the lower appellate Court disbelieved the above evidence and on that footing recorded the finding that the plaintiff has failed to prove that the defendant on 27-1-1972 executed the alleged agreement in his favour. I have myself perused the evidence of the above mentioned witnesses. I am satisfied that the lower appellate Court has recorded finding of fact in accordance with the evidence of witnesses and there is no force in the argument of learned counsel for the appellant that the lower appellate Court has misread the evidence in recording the finding of fact.

15. Apart from this, as regards the evidence, the lower appellate Court has drawn logical conclusions from the circumstances of the case and the inferences drawn on the basis of these circumstances cannot be said to be merely based on conjecture and surmises rather the said conclusion are based on the circumstances and the same are wholly finding of facts and I do not find any justification to interfere with those finding in exercise of limited jurisdiction under Section 100 of Civil Procedure Code.

16. Apart from this, in the present appeal one more context is worthy of consideration. The disputed agreement is alleged to be executed by Jhabbar Yadav in favour of the plaintiff. Jhabbar Yadav was illiterate person and used to put thumbmark. That agreement contains the thumbmark of Jhabbar, signature of Shambhunath and the thumbmark of Dudhnath, the name of the scribe as written on the paper is Dayashankar. The plaintiff examined merely Shambhu Lal and Dayashankar as witnesses, Dudhnath has not been examined as witness. The lower appellate Court has recorded the inter se contradiction in the evidence of Shambhunath and Dayashankar. Shambhunath was relation of plaintiff hence not an independent witness.

17. It is an established principles of law that when an illiterate person executes some document then the person in whose favour the document is executed has burden to prove that the document has been executed by the said executant. Vide *Parasnath Rai v. Tile-sara Kaur* 1965 ALJ 1080;

'Obviously it is not by reason of the pardah itself that the law throws its protection round a pardahnashin lady but the reason of those disabilities which a life of seclusion lived by a Pardahashin lady rise to, and which are consequently presumed to exist in the case of such a lady. But the disabilities which make the protection necessary may arise from other causes as well. Old age, infirmity, ignorance, illiteracy, mental deficiency, inexperience, dependence upon others, may by themselves create disabilities that may render the protection equally necessary. If therefore, it is proved that a woman although she is not a pardahnashin lady suffers from the disabilities to which a pardahnashin lady is presumed to be subject, the validity and the binding nature of a deed executed by her have to be judged in the light of those very principles which are applied to a deed by a paradahna-shin lady.'

18. Under the above circumstances, the burden to prove by independent evidence that Jhabbar Yasdav since deceased had executed the alleged agreement, was on the plaintiff.

19. On the basis of the analysis of the entire evidence, the lower appellate Court has recorded a finding that the plaintiff has failed to establish that Jhabbar Yadav

had executed the agreement in favour of plaintiff.

20. Sri Umakant Misra, the learned counsel for the appellant argued that in view of Sarju Prasad Ram Sahu v. Jwaleshari Pratap Narain Singh, AIR 1951 SC page 120 and Harnandan v. Deo Narain, 1982 ACJ page 427 the Hon'ble Supreme Court and High Court respectively have laid down the that if there is contradiction in evidence of witness and the judgment depended merely on the belief or disbelief of evidence of witnesses, then unless something substantial is shown in the evidence to which the attention of trial Court was not drawn, the lower appellate Court should not interfere with the findings of fact recorded by the Court of first instance and on the basis of above decision it was argued that ignoring the Yardsticks laid down in the above cases, the lower appellate Court committed an error of law in interfering with the finding of fact recorded by trial on the basis of assessment of oral evidence.

21. In this judgment the statement of the witnesses has been analysed, from which it is obvious that the lower appellate Court has recorded a finding pointing the misreading of the evidence by the trial Court, and has interfered with the finding by indicating the mistake. Apart from this, fact has been clearly mentioned that the trial Court has ignored the inter se contradiction of evidence of witnesses while recording the findings. From the above analysis it is clear that the lower appellate Court has interfered with the finding of trial Court in accordance with the Yardsticks laid down in the above decisions. The contention of the learned counsel for the appellant in this regard does not deserve to be accepted. On the basis of the total analysis I am satisfied that there is no justification to interfere with the findings of fact arrived at by the lower appellate Court. .

22. Accordingly the appeal is dismissed with cost. Dated 28-8-1995.

23. Under the mandatory provision of Section 7 of Office Language Act, the Registrar of the Court is directed to get English Translation of a copy of this judgment done through a competent person within a moth, after approval of the Court copies be issued to parties as per rules. Without annexing a copy of English Translation, the copy be not issued to the parties.

24. Appeal dismissed.

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