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Court : Allahabad

Decided On : Nov-12-1974

Reported in : AIR1975All259

Judge : K.N. Seth, J.

Acts : Contract Act, 1872 - Sections 16; Code of Civil Procedure (CPC) , 1908 - Order 10, Rule 2

Appeal No. : Second Appeal No. 1380 of 1969

Appellant : Sher Singh and ors.

Respondent : Pirthi Singh and ors.

Advocate for Def. : Vinai Singh, ;K.B. Garg and ;K.B.L. Gaur, Advs.

Advocate for Pet/Ap. : Dhan Prakash, ;G.P. Bhargava and ;A.N. Bhargava, Advs.

Disposition : Appeal dismissed

Judgement :

K.N. Seth, J.

1. The suit giving rise to the present appeal was filed by the plaintiff respondent Pirthi Singh (deceased) for cancellation of a deed of gift dated 12-12-1967 executed by him in favour of the defendants in respect of his agricultural

Bhumidhari and other immovable properties detailed at the foot of the plaint. It was alleged that the plaintiff was an old illiterate person, weak in intellect and physically infirm. He was ailing for the last ten years and had lost his capacity to understand anything; that he had no male issue to look after him and his cultivation and had only two married daughters. His wife had died long time back. The defendants were the grandsons of his uncle Harnam.They colluded with a view to usurp his properties and taking advantage of the plaintiff's weakness and the absence of his daughters got the gift deed in suit executed by him on the representation that it was a deed of will in favour of his daughters. The plaintiff fell a victim to their persuasion and deceit and put his thumb impression on the document which was not read over or explained to him. When the plaintiff came to know of the defendants' fraud, he called upon the defendants through his daughter Smt. Phoolwati to get the deed cancelled but the defendants paid no heed to it. It was further asserted that the plaintiff was still in possession of the properties. The document was sought to be avoided on the ground that it was not the outcome of the free will of the plaintiff and had been obtained by fraud and deceit taking undue advantage of the physical and mental infirmities of the plaintiff.

2. The suit was contested on the ground that the gift deed in suit was not the result of any fraud or misrepresentation on part of the defendants. It was alleged that since the death of his wife the plaintiff was looked after by the defendants; his cultivation was also done by the defendants; the gift deed was executed after it had been read over and explained to him and he had fully understood the disposition. It was further alleged that some persons instigated the plaintiffs daughters and son-in-laws who started pressing the plaintiff to get the deed cancelled. These very persons compelled the plaintiff to file the present suit against his wishes.

3. The learned trial Judge dismissed the suit holding that no fraud had been practised by the defendants and that the deed in question was executed by the plaintiff after it had been read over and explained to him. It was the outcome of his own free will as he was being looked after by the defendants since after the death of his wife. The court negatived the plaintiff's case of undue influence on the reasoning that requisite details regarding undue influence were not set out in the

plaint and it was, therefore, not open to the plaintiff to plead that undue influence vitiated the transaction. The court appears to have been impressed by the statement of the plaintiff recorded under Order X, Rule 2, Civil P. C. The lower appellate court set aside the decree of the trial court on the finding that the deed had been obtained by fraud and that it was procured due to undue influence. The appellate court also took the view that it was incumbent on the defendants to prove due attestation of the document and as they had failed to do so, the gift deed could not be considered valid.

4. Learned counsel for the appellants assailed the reasoning of the lower appellate court with regard to the attestation of the document. The suit for cancellation of the gift deed was based primarily on the allegation of fraud. It was not even whispered during the trial that the document was notproved and was invalid as the defendants had failed to establish due attestation of the document. It may be noted that the plaintiff himself filed a certified copy of the gift deed and it was admitted by the defendants' counsel. The defendants were not required to prove due execution and attestation of the document. The plaintiff had come forward with a case that he had put his thumb mark on the deed of gift which was sought to be avoided on the ground that it was procured as a result of deceit and fraud practised upon him and was, therefore, not binding. In view of the averments made in the plaint it was not necessary for the defendants to establish due attestation of the document. The Court below was, therefore, in error in embarking on an enquiry whether the document had been duly attested.

5. Admittedly the plaintiff was over eighty years in age when the impugned gift deed was executed by him. His wife had died several years earlier. His two daughters had been married and were living with their husbands in a different village. The plaintiff had no male issue. The case set up by the defendants was that ever since his wife's death the plaintiff was looked after by the defendants. They also managed his cultivation. Sher Singh in his deposition in court admitted that the plaintiff was infirm and could not look after himself personally. His limbs had become practically useless and he needed assistance even for easing himself. The defendants claimed that for the last several years the plaintiff used to take his meals with them. It is also established beyond doubt that the plaintiff was

illiterate. At one stage Sher Singh in his statement in court alleged that the plaintiff was able to sign his name, but the finding recorded by the courts below is that the plaintiff was in fact illiterate and could not even sign his name. The fact that the plaintiff was physically infirm was demonstrated before the court. The trial court noticed that he was assisted by two persons when he entered the court room on two occasions : (1) when his statement was recorded under Order X, Rule 2, and (2) when he examined himself as a witness in support of his case. Even during the course of his testimony the plaintiff was allowed to lie down for some time as he appeared to lack strength to remain standing while deposing in court. About the mental capacity of the plaintiff too there appears to be little doubt. His statement recorded under Order X, Rule 2, Civil P. C. as well as his testimony in court contain such confused and conflicting matters which no person with even the least grip over his mental faculty could be expected to make.

The trial court while recording the statement of the plaintiff observed at more than one occasion that the plaintiff started answering the questions put to him without understanding their import. In fact the court had to intervene on several occasions to explain the questions to the plaintiff even then the plaintiff made several statements which cannot be explained except on the theory that the plaintiff was not in control of his mental faculties and could be led to make any statement. He appears to have no idea even of time. The lower appellate court has detailed various circumstances which lead to the irresistible conclusion that the plaintiff was not only infirm in body but had lost practically all control over his mental faculties. The defendants were his nearest relations living close to him. On their own showing they not only managed his cultivation but also looked after his daily needs. The defendants were obviously in a position to dominate his will. Courts have always afforded protection to such persons from being a victim to the machination of those who are in a position to dominate their will and to influence them to their own detriment even though nothing in the nature of deception or coercion may have taken place. Old age, infirmity, ignorance, illiteracy, mental deficiency, inexperience and dependence upon others create disabilities that need the protective hand of the court and courts are ever keen and vigilant to protect such unfortunate people from being tricked or misled by greedy, unscrupulous and deceitful persons.

6. Section 16 of the Indian Contract Act incorporates the principles relating to undue influence. As pointed out by the Supreme Court in Ladli Prasad Jaiswal v. The Karnal Distillery Co. Ltd., (AIR 1963 SC 1279) the doctrine of undue influence under the common law was evolved by the Court in England for granting protection against transactions procured by the exercise of insidious forms of influence spiritual and temporal. The doctrine applies to acts of bounty as well as to other transactions in which one party by exercising his position of dominance obtains an unfair advantage over another. The Indian Contract Act is founded substantially on the rules of English common law. Sub-section (1) of Section 16 of the Contract Act lays down the principle in general terms. By Sub-section (2) a person is deemed to be in a position to dominate the will of another if the conditions set out therein are fulfilled. Sub-section (3) lays down the conditions for raising a rebuttable presumption that a transaction is procured by the exercise of undue influence. The reason for the rule in the third sub-section is that a person who has obtained an advantage over another by dominating his will, may also remain in a position to suppress the requisite evidence in support of the plea of undue influence. In the present case, as observed earlier, the plaintiff was an illiterate, rustic villager aged about 80/90 years, physically infirm and mentally in distress. He had none to look after him after the death of his wife and the marriage of his two daughters. The defendants were his nearest relations who at one time formed a joint family. They looked after his daily needs and managed his cultivation. They were obviously in a position to dominate hiswill. It was, therefore, for the defendants to establish to the satisfaction of the court that the gift deed had been obtained without exercising undue influence. The law did not require the plaintiff to establish positively that in fact the deed had been obtained by exercising undue influence and in that view of the matter the plaintiff could not be expected to set out in detail the elements of undue influence in the plaint. It was enough to point out that the defendants were in a position to dominate his will and that they obtained an unfair advantage by using that position. The plaintiff has led undisputed and unassailable evidence to establish the aforesaid facts and the same position emerges from the stand taken by the defendants. The transaction in question is unconscionable on the face of it. Under the impugned deed the plaintiff was deprived of all his transferable properties during his lifetime. Moreover, there

appears to be no apparent reason to impel the plaintiff to deprive his daughters and their sons the right to inherit the properties after his death. In such a situation the burden lay on the defendants to rebut the presumption and to establish by cogent evidence that the confidence was not abused and the transaction was not induced by undue influence and the gift deed was executed under circumstances which enabled the donor to exercise an independent will. The defendants have miserably failed to discharge the burden cast on them. It appears from the testimony of Sher Singh himself, who is the solitary witness in support of the defence case, that the document was not prepared at the instance of the plaintiff. The scribe has not been examined who could depose whether he prepared the document on the instructions of the plaintiff or was directed to do so by the defendants. Sher Singh admitted that he collected all the details of the Bhumidhari plots.

It appears doubtful if the document was read over and explained to the plaintiff before registration. Sher Singh admitted in his cross-examination that the document was read over only once when the scribe took it from the registration office after it had been registered. The defendants did not examine Budh Singh and Tika Singh, the two attesting witnesses, who had been cited as witnesses and were even present in court when the plaintiff's evidence was closed and the defendant Sher Singh examined himself. Tika Singh was present in court even on the next day. The failure to examine these witnesses, who according to Sher Singh were present when the document was scribed and had accompanied Pirthi Singh to the registration office where the document was registered, creates serious doubts about the bona fide of the transaction. Their examination may not have been necessary to prove due attestation of the document but it was certainly necessary to rebut the presumption and explain the circumstances in which the gift deed came into existence. The statement of Sher Singh is not sufficient to discharge the burden which lay on the defendants. His testimony to the effect that the idea of executing a gift deed in favour of the defendants was initiated by the plaintiff himself and it was outcome of his own free will has been rightly rejected as he does not appear to be a truthful witness. In his anxiety to show that he was a totally disinterested and innocent person he went to the extent of stating that he was not even aware that the daughters were the legal heirs of the plaintiff and that

he did understand what was meant by 'Washiyatnama' and 'Hibbanama'. The defendants took a prominent part in the execution of the gift deed. They collected all the material details of the Bhumidhari plots, purchased the stamps and appear to have got the document scribed under their instruction. The plaintiff due to his physical and mental infirmities remained unaware and ignorant of the consequences of the act which he was induced or misled to perform. Being a simple illiterate villager, he was left with no will or mind of his own due to extreme old age and serious physical ailments which made him totally dependent on others and the defendants took advantage of his helplessness and got the gift deed executed in their favour.

7. The view taken by the learned Judge that the deed in question had been obtained by practising fraud is based on relevant facts and circumstances and it has not been shown that the learned Judge committed any error in arriving at the finding that the deed had been obtained by fraud and that in fact the plaintiff did not intend to execute a deed of gift in favour of the defendants. The plaintiff in his statement in court deposed to the effect that he was misled to understand that he had executed a will in favour of his daughters. He was taken to Deoband on the pretext of getting his eyes tested. The statement of the plaintiff was sought to be assailed by reference to his statement under Order X, Rule 2, Civil P. C., wherein he had admitted to have executed a deed of gift. That statement has certainly to be taken into consideration but it cannot take the place of statement made in court on oath. It cannot be given the status of an admission which may be conclusive. The statement under Order X, Rule 2, Civil P. C., relates only to the land and makes no reference to other immovable properties covered by the impugned gift deed. The plaintiff stated that he knew that the document was in favour of the defendants and thereby he was transferring his land to them but he added that it was his misforture that he put his thumb mark under fraud. When questioned further he admitted that the document had been read over and explained to him by the Sub-Registrar but added that a fraud had been practised upon him and the only fraud practised was that the defendants got his land in their favour from him. The statement read as a whole leavesa clear impression that the plaintiff was a person with a weak and feeble mind and had been led to do something which he never intended. His statement that he was defrauded and that it was due to his ill

luck that he put his thumb mark on that document indicates that he had not done so knowing that he was transferring his Bhumidhari land and his residential property by way of gift to the defendants. In his statement in court he clearly stated that he had absolutely no intention of gifting away his Bhumidhari land and other properties to the defendants.

8. Reliance was also placed by the defendants on the application dated 23-1-1968 (Ex. A-1) moved before the Additional District Magistrate (E), Saharanpur. In this application it' was recited that the defendants were not only looking after him but were also paying his debts. No evidence has been led to support the allegation that the plaintiff was in debts. Besides the properties covered by the gift deed he possessed considerable area of Sirdari land. The plaintiff had absolutely no liabilities and had considerable properties more than enough to support him. As observed by the learned Judge, this application furnished another clue to the fraud practised by the defendants and was a link in their attempt to create an impression that they were in fact the well wishers of the plaintiff always willing to come to his rescue whenever their assistance was needed. Apparently the story of indebtedness was introduced to fortify their case against the daughters who might raise some dispute after his death.

9. It was contended by the learned counsel for the respondents that the decree of the appellate court could be sustained on the finding that the deed had been obtained by fraud. The contention appears to be sound. Details of the fraud had been set out in the plaint and in arriving at the finding the learned Judge has taken into consideration all relevant materials and circumstances. The finding on the question of fraud, being a finding of fact, could not be assailed in a second appeal.

10. In view of the observations made above the decree of the court below cancelling the gift deed must be affirmed. The appeal has no merits and is accordingly dismissed with costs.

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