

Bhagwan Das Vs. Mt. Bitton

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Court : Allahabad

Decided On : Nov-24-1944

Reported in : AIR1945All227

Appellant : Bhagwan Das

Respondent : Mt. Bitton

Judgement :

Sinha, J.

1. This is a defendant's appeal and arises out of a suit for possession and mesne profits with a declaration that the sale of 15th January 1912 granted by Mt. Radhi of the house in dispute, was invalid. The plaintiff is the daughter of Mt. Radhi. The facts are briefly these. One Sucha Sahu carried on a flourishing grain business. He died on 28th March 1904 leaving a widow, Mt. Radhi, a son, Bachcha, and a daughter, Mt. Bittan. The son died soon after the father, on 7th July 1904. On 26th September 1911 Mt. Radhi purchased a house from one Mb. Dilasi for a sum of Rs. 398-12-0. On 15th January 1912, that is within less than four months of the purchase, Mt. Radhi sold it to a man named Bhagwan Das for a sum of Rs. 499. This Bhagwan Das, it must be borne in mind, was a servant or, to use the words of the learned Counsel for the appellant, a trusted servant of the family. The lady died on 23rd May 1935 and the present suit by the daughter was instituted on 19th May 1938.

2. The sale was challenged on the ground that there was no consideration for it and, assuming that there was one, it was not justified by legal necessity. There was a distinct allegation in the plaint that Bhagwan Das was an all powerful servant and the lady was a mere puppet in his hands. We might leave the plaintiff's case at this stage. The defence was that there was full consideration for the transaction which was justified by legal necessity. It was also pleaded that the lady was a free agent of her conduct and that there was no undue influence exercised on her. The learned Munsif held that the bulk of the consideration had not been established. In that view no question of legal necessity arose in the case. He, however, dismissed the suit on the finding that, although the purchase of 26th September 1911 by Mt. Radhi had been made by her out the savings of the estate of her husband, nevertheless she had intended to keep those savings as a separate estate and she had, therefore, become the absolute or the stridhan owner of the house. On this finding he came to the conclusion that the question of consideration or legal necessity did not arise.

3. On appeal by the plaintiff, the learned Additional Civil Judge came to an opposite conclusion. While he agreed with the learned Munsif that the bulk of the consideration had not been established and he further agreed with him that there was no legal necessity for it, he disagreed with him on the main question of the intention of the lady to keep the property separate. He came to the following findings:

(a) There is no evidence on the record to show that Mt. Radhi ever intended to treat this house in suit as her own property or stridhan.

(b) Considering the evidence and circumstances of the case, I hold that the house in dispute was an accretion to the estate of Sucha Teli and Bachcha minor and it did not constitute the stridhan property of Mt. Radhi.

It might be mentioned here that the* defendant claimed compensation under Section 51, T.P. Act. The learned Munsif accepted this plea in defence and held that even if the suit had been decreed the plaintiff would have been bound to pay a sum of Rs. 3000 before she could obtain possession. The learned Additional Civil Judge was not at one with him on this point. He distinctly held that he did not 'think

that he (the transferee) acted bona fide in obtaining the sale deed, dated 15th January 1912 from Mt. Radhi.' On these findings, he decreed the suit unconditionally.

4. On the findings recorded by the lower appellate Court the defence has no merits. Once it is found that the bulk of the consideration did not pass, and it is further found that there was no justification for the sale-no legal necessity had been established-and it is also found that the defendant did not act bona fide, the plaintiff is entitled to an unconditional decree. But Mr. Walter Dutt, who has argued the case with ability and earnestness, contends that the questions involved are legal deductions from the proved facts and he is entitled to raise them in second appeal. His main contention centres round the question of the intention of the lady. Before considering the argument, it is necessary to bear in mind what was the age of the lady and under what circumstances the document in question was executed. The learned Counsel for the parties have admitted before us that the lady was above fifty years of age at the time of the sale deed. It is not suggested that there was any other relation of hers, either her husband's or her own, present with her. It is the parties' case that Bhagwan Das was a trusted servant. It is, in these circumstances, imperative upon the transferee to prove every link in the chain of the evidence which would establish this transaction as above board.

5. The learned Counsel for the appellant has strenuously contended that he is, in the first place, entitled to rely upon the recital in the document itself that the lady was the absolute owner of the property which she intended to sell. The rule of law which holds that recitals in the sale deeds would not bind the reversioners would, perhaps, not apply to the present case, but when the transaction itself is being impeached and when it was brought about under circumstances set forth above, the transferee was, in our opinion, bound to prove, by evidence, that this was a good transaction and the mere recital could not discharge that burden. The learned Counsel contends that that recital does afford some evidence of her intention and that, it was in any case for the plaintiff, who wants to avoid the sale, to prove that the lady did not evince an intention to keep the property separate. The argument is, to our mind, much too broadly stated. It is settled law that it is for the transferee from a limited owner to establish justification for the transfer. But the

learned Counsel takes his stand upon *Isri Dut Koer v. Hansbutti Koerain* ('84) 10 Cal. 324, *Akkanna v. Venkayya* ('02) 25 Mad. 351, *Wahid Ali Khan v. Tori Ram* ('13) 35 All. 551, *Baikunth Nath v. Jai Kishun* : AIR1929 All449 , *Keshav v. Maruti* ('22) 9 A.I.R. 1922 Bom. 144 and *Nirmala Sundari Dassi v. Deva Narayan Das Choudhuri* : AIR1927 Cal868 . The relevant passage in 10 Cal. 3241 is at p. 335 and reads as follows:

If she has made no attempt to dispose of them in her lifetime, there is no dispute but that they follow the estate from which they arose.

6. It is sought to be argued on the strength of this passage that their Lordships meant to hold that if she has disposed of the property, she has evinced an intention to treat it as separate from the corpus of the husband's estate. The learned Counsel is perhaps right in taking his stand upon this passage as a matter of inference but as a matter of inference only. There have, however, been later pronouncements which do not leave any room for inference. Their Lordships are clear, precise and definite. 35 ALL. 5513 is, as far as it goes, in favour of the appellant. The purchase was made in that case by a lady Mt. Lachman Kunwar in 1874 and the mortgage was made by her soon after. Their Lordships were of opinion that because she mortgaged the property 'not very long after the acquisition of the property' she meant to deal with it as her own. The Bombay case is not quite clear, although there are certain passages in the judgment which lend countenance to the argument of the learned Counsel for the appellant. 51 ALL. 341 4 does not deal with the question at all. So far as the other High Courts are concerned, the case in 55 cal. 2696 no doubt supports the appellant's contention, but there are several dicta in the case which are in conflict with the decision of their Lordships of the Privy Council to which we shall refer presently.

7. The learned Counsel has also relied upon the observations of Mulla at p. 173, 9th Edn. It is a long paragraph but the material portion of it is as follows:

The acquirer of property presumably intends to retain dominion over it, and in the case of a Hindu widow the presumption is none the less so when the fund with which the property is acquired is one, which though derived from her husband's property, was at her absolute disposal.... Her absolute power of disposition over

the income derived from (her) limited estate being now fully recognized, it is only reasonable that, in the absence of an indication of her intention to the contrary, she must be presumed to retain the same control over the investment of such income. The mere fact that properties thus acquired by her are managed and enjoyed by her without any distinction, along with properties inherited from her husband, can in no way affect this presumption.

This passage is based upon several decisions of the Madras High Court, the latest of them being *Ayiswaryanandaji Saheb v. Shivaji Raja Saheb* ('26) 13 A.I.R.1926 Mad. 84. It specifically refers to the decision of their Lordships of the Privy Council reported in *Nabakishore Mandal v. Upendrakishore Mandal* ('22) 9 A.I.R. 1922 P.C. 39. This is the latest pronouncement of their Lordships of the Judicial Committee and this is really the bedrock on which the entire case law, on this point, has, of late, grown. We have, therefore, to see if the appellant can successfully found his contention on it. Their Lordships in that case were dealing with certain alienations made by two ladies, Prassanna Kumari Dasi and Bamakali Dasi. Prassanna was the widow of one Madhusudan and Bamakali was the widow of Harinarayan, his brother. The transferee in that case was a lessee from the ladies. One of the transfers, however, was made by one of the ladies only. It was established in that case that the property transferred had been acquired by them with the income of the husband's estate. Besides pleading legal necessity and benefit to the estate, the transferee also pleaded that the ladies intended to keep the acquisition separate from the corpus of the estate and they must, therefore, be held to have full dominion and full disposing capacity over it. While dealing with this question their Lordships made the following observation at p. 25:

A person who deals with a Hindu widow having a limited estate is bound to establish the facts which justify the transactions under which he claims.

If there were nothing else, we would be entitled to put the plaintiff to a strict proof of the validity of the transaction. The transaction can stand if there was consideration and also if there was justification for it, and even in the absence of these two, it will be a good transaction, if it can further be established that the lady meant to keep the property separately. These observations are, therefore,

authority for the proposition that the burden of proving every part of the case rests upon the shoulders of the transferee. But their Lordships have gone further and left no room for inference or doubt. Say their Lordships:

Now there can be no doubt that whatever stridhan she possessed was due to the accumulated savings from the income of the property which she received from her husband's estate, and though it is true that when that property had been received it would be possible for her so to deal with it that it would remain her own, yet it must be traced and shown to have been so dealt with, and in this case there is no sufficient evidence of this having been done.

8. This leaves no room for doubt that it is for the person, who alleges that the lady meant to keep the property separately, to prove that it was so. The case viz., 55 Cal. 2696 goes the whole length with the appellant's contention but suffers from this disadvantage that it makes no reference to the Privy Council case although it was decided in 1927 and the Privy Council case had been decided in 1921. Mr. Dutt finally invited us to refer this case to a Full Bench, inasmuch as there are certain authorities which support him. But there can be no room for any controversy after 1922 A. L. J. 228 and, so far as this Court is concerned, the matter came up very recently and it was held in *Maseetunnissa Bibi v. Mahesh Chander* : AIR1944 All228 that

It has been held by their Lordships of the Privy Council in 1922 A. L. J. 228 that it is for the party who says that the widow kept her self-acquisition separate from the husband's estate, to prove that it was so.

9. It has also been contended that the appellant is entitled to claim compensation under Section 51, T.P. Act. We do not think that the benefit of that section can, on the distinct finding that the conduct of the appellant was not bona fide, be extended to him. Mr. Dutt sought to argue that this was again a matter of inference from facts and would, therefore, be a question of law. Their Lordships of the Judicial Committee have in numerous cases refused to accept this contention. To quote just one viz., *Wall Mohmmad v. Mohammad Bakhsh* "

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.

10. Both parties went into evidence and the learned Judge after a consideration of that evidence came to the conclusion that the transferee's bona fides had not been proved. We must, in second appeal, accept this finding. We are fortified in the view we have taken by *Ram Ranbijaya Prasad Singh v. Krishna Madho Singh* ('39) 26 A.I.R. 1939 Pat. 364 and *Joychand Seraogi v. Shyama Charan Nath* : AIR1942 Cal448 . We have, therefore, come to the conclusion that the appeal has no merits and it must, therefore, be dismissed. We accordingly dismiss it with costs.

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