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Court : Allahabad

Decided On : Jan-17-1936

Reported in : AIR1936All401

Appellant : Nawab Singh

Respondent : Daljit Singh

Judgement :

1. This is a plaintiff's appeal arising out of a suit for recovery of possession brought by Nawab Singh against the defendant Daljit Singh on the basis of a registered sale deed dated 21st April 1921, executed by Daljit Singh in favour of one Gajraj Singh, who was the uncle of the present plaintiff Nawab Singh. The defendant pleaded that the document did not represent a genuine transaction but was a fictitious one and no title under it had passed to Gajraj Singh. He supported this plea by alleging that previously one Mt. Phul Kunwar had sold this property to Daljit Singh, who was not a co-sharer in the village, and that there was an apprehension of a suit for pre-emption and in order to defeat the claim for pre-emption Daljit Singh fictitiously executed the sale-deed in favour of Gajraj Singh, who was a co-sharer. It has been found that a pre-emptor, Narain Singh actually instituted a suit for pre-emption on 21st June 1920, against the vendee Gajraj Singh, presumably impleading Daljit Singh also, and the suit was dismissed on the ground that the property had passed to a co-sharer and was no longer liable to be pre-empted. Thus the alleged fraud actually succeeded. It appears however that Gajraj Singh did not succeed in getting mutation of names effected, as previous to

him Daljit Singh had not got his own name mutated. Daljit Singh however later on got his name mutated on the strength of the previous sale-deed dated 28th June 1920. It is an admitted fact in this case that Daljit Singh is in possession of the property, whereas plaintiff No. 1 is not.

2. The Court of first instance held that the sale did not represent a fictitious transaction and decreed the claim. The appellate Court has however come to the conclusion that it was a fictitious document and had been executed fraudulently in order to defeat the claim of Narain Singh, pre-emptor, and that the fraud was committed by Daljit Singh and Gajraj Singh jointly and that the fraud actually succeeded. The Court declined to help the plaintiff and dismissed the suit. On appeal a learned Judge of this Court has affirmed the decree, holding that the plaintiff is not entitled to any relief from a Court of law when the person from whom he has derived a title was a party to the fraud. If Daljit Singh had come to Court seeking some relief against Nawab Singh, then even if it had been found that the transaction was a fictitious one we would have certainly declined to grant any relief to Daljit Singh when the fraud committed by him had actually succeeded. The question that arises in this case is the converse one, namely whether Nawab Singh can be given some relief against Daljit Singh who is in possession; that is to say, whether Daljit Singh can be prevented from exposing the true nature of the transaction and showing that the sale deed was fraudulently executed and that Gajraj Singh was a party to that fraud.

3. There is some conflict of opinion on this point in India. In the case of *Sidlingappa v. Hirasa* (1907) 31 Bom 405, the owner of a property had executed a benami sale deed and the benamidar had sold the property to the plaintiff's father and the attachment of that property was successfully resisted on the strength of that benami transaction against a creditor; the Court held that the defendant owner could not be allowed to set up his own fraud when the plaintiff brought a suit to claim possession of the immovable property, and the Court decreed the plaintiff's claim for possession holding that he was entitled to succeed. This case was followed by a Bench of the Madras High Court in *Sidlingappa v. Hirasa* (1907) 32 MLJ 484, where a person who had conveyed property benami to another for the purpose of effecting a fraud on his creditors, was not allowed, where the fraud had

been effected, to set up the benami character of the transaction by way of defence in a suit by the transferee for possession under the conveyance. A similar view was expressed by a single Judge of the Patna High Court in *Shiva Narain Ram v. Mt. Phuljharria* 1919 52 IC 402. The learned Counsel for the plaintiff also relies on the remark of their Lordships of the Privy Council in *Petherpermal Chatty v. Muniandy Servai*(1908) 35 Cal 551, that the result of the authorities on the subject of the benami transactions had been correctly stated in *Mayne's Hindu Law*, Edn. 7, para 446, p. 595. In the case before their Lordships the fraud had not actually been carried out and the plaintiff, the true owner, was allowed to recover possession of the property.

4. On the other hand in the case of *Raghupati Chatterjee v. Nrishingha Hori Das* 1923 71 IC 1, a Bench of the Calcutta High Court, after an examination of numerous authorities, came to the conclusion that on no principle of justice, equity and good conscience is a transferee, under a fictitious and fraudulent conveyance never intended to pass title and executed without consideration to defraud the creditors of the transferor, entitled to recover from the transferor possession of the property through the Court, if the fraudulent purpose has in fact been accomplished, and that the balance of authority was in favour of the view that in such cases the defendant should be permitted to set up the true transaction. In this Court there is the authority of the ruling in *Vilayat Husain v. Misran* 1923 21 ALJ 303, where it was definitely held that once it was held that the parties are in *pari delicto* the Courts will not assist the illegal transaction in any respect, that is the person who asks the Court to do something will fail; and that in all cases where the plaintiff is relying on the deed, the defendant is entitled to give evidence of the circumstances under which the document came into existence, and that when these circumstances include an allegation of a general fraud by both plaintiff and defendant, the particulars of that fraud can be pleaded by the defendant, and it is then the duty of the Court to look into the matter, and if the Court comes to the conclusion that the parties were acting together with a view to perpetrating a fraud and did in fact perpetrate the fraud and that there is no difference in the degree of guilt of the plaintiff and that of the defendant, the duty of the Court is not to assist either party. The earlier case of the Bombay High Court was not followed by the Bench but adversely criticised. A Full Bench of the Lahore High Court in *Qadir*

Bukhsh v. Hakam 1932 13 Lab. 713, after a re-examination of the various authorities including the case of Vilayat Husain v. Misran 1923 21 ALJ 303, decided by this Court, came to the same conclusion and held that in a suit by a benamidar to recover possession of the property from the beneficiary, the latter is not precluded from pleading that both parties were in pari delicto and thus showing the real nature of the transaction, and that if the fraud had succeeded the plaintiff's claim for possession should be dismissed. The question was argued before their Lordships of the Privy Council in Ma Ngwe Naing v. Maung Tha Maung 1929 56 MLJ 244. Their Lordships pointed out that there had been various decisions on this point in India which appear to be conflicting, but their Lordships found it unnecessary in that case to decide the point. In this state of affairs it is obviously our duty to follow the ruling of this Court which has now stood for over 12 years until it is overruled by their Lordships of the Privy Council.

5. It seems to us that in the present case the defendant is in possession of the property and does not seek any relief from the Court at all. It is not necessary for him even to rely on the sale-deed in dispute. All that he urges is that his possession should not be disturbed by the Court for the benefit of the plaintiff whose predecessor was a party to a fraudulent transaction. There is nothing illegal in a benami transaction in itself. The mere fact that a registered deed stands in favour of the plaintiff's predecessor is not absolutely conclusive, and if the defendant can show that the deed was a fictitious one and no title really passed to the plaintiff's predecessor, the suit must fail. It is the plaintiff who has to rely on this sale-deed and he wants to shut out the defendant from exposing the true nature of the transaction and showing that a joint fraud had been intended by the parties to the deed and carried out. The fraud consisted in getting a fictitious sale-deed executed and registered, but not in delivering the property to the ostensible vendee. It was therefore a partial fraud that was committed by the parties, What the plaintiff now wants is that the Court should help him in completing the fraud and carrying it further still by not only upholding the sale-deed as a valid document but also putting the plaintiff in possession of the property which had been allowed to remain with the defendant. The plaintiff therefore seeks to obtain relief from the Court and his claim cannot be decreed unless the Court allows itself to be made an instrument to help the plaintiff at the expense [of the defendant. Any person

who comes to seek relief from a Court of law should not be a party to a fraud, and if both parties are in pari delicto the Court should decline to help either party and let things remain as they are and let both parties reap the consequences of their own fraud and dishonesty. There is no reason why the Court should help the plaintiff in preference to the defendant and give him what he did not obtain under the fraudulent transaction. The well-known principle approved of by their Lordships of the Privy Council 'let the estate lie where it falls' should apply to such a case and the Courts ought not to help either party. Following the ruling in *Vilayat Husain v. Misran* 1923 21 ALJ 303, we hold that the view taken by the learned Judge of this Court is correct and that the plaintiff on the findings, of the lower appellate Court, cannot succeed.

6. Nawab Singh no doubt is not the original party who joined in the fraud, but he is an heir of Gajraj Singh. He is not bona fide transferee for value, but has acquired the property from Gajraj Singh as an inheritance. There is absolutely no reason why an heir of Gajraj Singh should be in any better position than Gajraj Singh himself, and be allowed to 'obtain benefit of the fraud committed by Gajraj Singh which Gajraj Singh himself was not able to secure, namely possession of the property in dispute. We accordingly dismiss this appeal with costs.

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