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Court : Allahabad

Decided On : Sep-10-1980

Reported in : AIR1981All222

Judge : D.N. Jha, J.

Acts : [Contract Act, 1872](#) - Sections 16 and 17; [Evidence Act, 1872](#) - Sections 101 to 104 and 111

Appeal No. : Second Civil Appeal no. 89 of 1974

Appellant : Ashok Kumar and anr.

Respondent : Gaon Sabha, Ratauli and ors.

Advocate for Def. : R.N. Gupta and ;A.N. Verma, Adv.

Advocate for Pet/Ap. : K.N. Misra, Adv.

Disposition : Appeal dismissed

Judgement :

D.N. Jha, J.

1. Defendants have directed this second appeal against the judgment and decree passed by the Civil Judge, Barabanki who decreed the plaintiff's suit for cancellation of sale deed executed on 24-12-70 by the plaintiff in favour of the

defendants.

2. Plaintiff Smt. Rukmin is alleged to have executed a sale deed in favour of the respondents on 24-12-1970 after depositing twenty times of land revenue and obtaining the Bhumidhari Sanad. Plaintiff brought a suit for cancellation of the sale deed executed by her in favour of the defendants on the ground that she actually intended to execute a waqf in favour of the Shivala and not the sale deed in favour of the appellants. No consideration was paid to her. She was an illiterate lady and the alleged sale deed was neither read over to her nor she was made to understand it and it was under the undue influence and fraud practised by the maternal grandmother and others related to the defendants to get the sale deed be cancelled, The suit was resisted by the defendants. It was alleged that a Shivala was constructed after taking money from their father and even for Brahmabhoj and going for pilgrimage she had taken loan. Apart from that on the date of execution of sale deed a sum of Rs. 5400/- had been paid in cash while the rest had been spent towards depositing twenty times of the land revenue and purchase of necessary stamp papers. In all a sum of Rs. 13,000/- had been paid. The other allegations that the sale deed was not read out or that no sale consideration had passed or that undue influence or fraud had been practised were also denied.

3. The learned Munsif who tried the suit held that the plaintiff intended to sell her Arali and that there was no evidence of exercise of undue influence by the defendants nor the defendants were in dominating position so as to prevail upon the plaintiff to execute the sale deed. He further held that there was no allegation of plaintiff being a Pardanashin lady. He also held that the consideration had been duly paid. On these findings he dismissed the suit. The learned appellate Court on appeal being preferred by the plaintiff was pleased to reverse these findings. He accordingly decreed the plaintiff's suit for cancellation of the sale deed. This is how the defendants feeling aggrieved by the judgment and decree passed by the lower appellate Court are before this Court by means of this second appeal.

4. I have heard the learned counsel for the parties. At the very outset I would like to observe that the issues framed in the case were most unhappily worded. In fact

instead of a jumbled up issue number being framed, the learned trial Court ought to have spelt out various ingredients pleaded in paragraph 6 of the written statement by framing a separate issue on them. The appellate Court also did not apply its mind properly. But however since nothing turns on this shortcoming, I proceeded to hear the parties on merits.

5. The learned counsel for the appellants vehemently argued three main points, namely, he asserted that the plaintiff might be an illiterate lady but she could not be termed in the category of being an ignorant lady. He maintained that the benefit available to the Pardanashin lady could not be extended in the case of the plaintiff. Secondly he argued that the burden was on the plaintiff to prove the allegation of non-payment of consideration and it has wrongly been placed on the defendants. It was lastly argued that the learned appellate Court did not record its reason for upsetting the findings recorded by the learned Munsif. I have given my anxious consideration to the arguments and I propose to deal with them in seriatim.

6. The statement of P. W. 1. Smt. Rukmin has been read out by the learned counsel for the plaintiff. A perusal of the same clearly established beyond reasonable doubt that she was of advanced age of about 70 years at the time of execution of the sale deed and she was an illiterate rustic village woman who could not even fix her signatures. Nothing could be shown by the learned counsel for the appellants from the evidence existing on record that the plaintiff in spite of being an illiterate village lady was fully capable of understanding and distinguishing between good and bad. She was emphatic in her statement that she only intended to create a waqf in favour of the Shivala that had been constructed by her and she never intended to part with her property. I have not been able to find anything unnatural in her statement. In order to controvert her assertion the defendants even went to the extent of examining the lawyer Sri Sunder Lal as D. W. 1 who asserted that he was engaged by the plaintiff Smt. Rukmin to deposit twenty times of land revenue and to obtain Bhumidhari Sanad. I have perused the statement of D. W. 1 It does not inspire any confidence. He categorically stated that the plaintiff was not known to him and she was informed to be Smt. Rukmin by the Qurk Amin and Lekhpal. He could not tell the names of persons who accompanied the lady. He could not tell whether he had written out the application

or his clerk had written out the application. But he was emphatic that he deposited twenty times of land revenue. He at one place stated that the impugned sale deed was written by one Jagat Narain who sits near his Takhat but still he did not go through it. At the same time he stated that when the draft of the impugned sale deed was being read over to the plaintiff he had heard it. He emphatically stated that the sale deed was executed by Smt. Rukmin in favour of the defendants and that was the only thing which he remembered. The lawyer does not pay any income-tax. He is a casual visitor to the Tahsil. He did not care to get the impugned sale deed understood to the plaintiff for which purpose she had gone to him. I find myself in agreement with the observation of the learned trial Court that the testimony of this witness is of extremely doubtful nature. It was probably for this reason that he was not examined by the plaintiff. It has come in the statement of D. W. 3 Jagjiwan that Smt. Rukmin was aged 70 years and that she had become blind for the last one or one and a half years. The date of execution of the sale deed is 24-12-70 and thus it appears that sometimes in the later part of 1971 she had lost her eyesight. Naturally she could not read what had been written out at the time of the execution of the sale deed. After going through the statement of the lady and the witnesses examined by the defendants I have no hesitation in holding that Smt. Rukmin was not only of advanced age but was possessed of a very weak eyesight and she was an illiterate rustic village woman. She was therefore entitled to the benefits which are available to a lady who is pardanashin.

This Court in *P.N. Rai v. Tilesra Kuar* (1965 All LJ 1080) has held that (at p. 1081):--

'Rules regarding transactions by pardanashin lady-Applied equally to illiterate and ignorant woman though she may not be pardanashin.'

7. It is not merely by reason of par-dah itself that the law throws its protection around a pardanashin lady but by reason of those disabilities to which the life of a section of people living in seclusion gives rise to the disabilities and with which a pardahnashin lady suffers. Thus the protection necessarily arises from the causes such as old age, infirmity, ignorance, illiteracy, mental deficiency, inexperience and dependence upon others. I have therefore no hesitation in holding that the learned

trial Court was in error in recording ' a contrary finding to the one recorded by the appellate Court.

8. I do not find myself in agreement with the submission of the learned counsel for the appellants that the burden was wrongly placed regarding payment of consideration. When the parties are aware of their respective cases, the question of burden loses its importance, and it is not of much significance. Both the parties knew with respect to exchange of consideration with respect to the property involved in the sale deed. It has categorically been stated by the plaintiff that she did not receive any consideration. The copy of the sale deed also mentions that no money was passed over to the lady before the registering authority. Such a nature of transaction always raises doubt with respect to payment of consideration. On behalf of the appellants it was asserted that payments had been made to the plaintiff at various occasions, such as payment of Rs. 500/-at the time of Brahmbhoj being prepared and a sum of Rs. 500/- at the time when the lady went for pilgrimage and a sum of Rs. 1000/- was advanced to install the Murti in the Shivala. There is also mention of other payments at various other times. It may be mentioned that not a whisper was made in the cross-examination of the lady when she entered the witness box with respect to these advances of money made to her from time to time. I therefore find myself in full agreement with the findings recorded by the lower appellate Court that in all probability no consideration was paid. There is nothing in the statement of Smt. Rukmin to cast any shadow of doubt on her truthfulness when in clear terms she stated that she did not receive any money. This argument also therefore in my opinion as advanced by the learned counsel for the appellants deserves to be rejected being devoid of merits.

9. Much emphasis was laid by the learned counsel for the appellants in order to substantiate his argument that there was no evidence on record to show that any undue influence had been exercised on the plaintiff by the defendants and the findings recorded by the trial Court were correct while the appellate Court miserably failed in rejecting this finding. I am not impressed by this argument. It has come in the statement of D.W. 5 Ashok Kumar--one of the appellants that Smt. Rukmin used to live in her house all alone and used to take advice from his mother, from his maternal grandmother and maternal uncle, Therefore, in my

opinion, even if it is believed that the maternal grandmother of the respondent did not live with the appellants, there is clear evidence of the fact that Smt. Rukmin used to seek advice from the appellants' mother, maternal grandmother and maternal uncle. The entire evidence on record fully satisfies that this old, illiterate and ignorant lady was made to sign a document which she never intended to execute. The recital made in the sale deed also lends support, in my opinion, to the straightforward statement made by Smt. Rukmin. The findings therefore recorded by the appellate Court call for no interference. There is not an iota of evidence that she at all intended to sell her Araj. She in her statement clearly stated that she wanted to create a waqf in favour of the Shivala that had been constructed. I do not agree with the findings recorded by the learned Munsif which undoubtedly are of a very perfunctory nature.

10. No other point has been pressed.

11. In view of the aforesaid discussion, in my opinion, the appeal is completely devoid of merits. The appeal therefore fails and is dismissed. I, however, make no order as to costs.

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