

irshad Ali Vs. Mt. Nadari Begam

irshad Ali Vs. Mt. Nadari Begam

SooperKanoon Citation : sooperkanoon.com/465607

Court : Allahabad

Decided On : Dec-20-1940

Reported in : AIR1941All179

Appellant : irshad Ali

Respondent : Mt. Nadari Begam

Judgement :

Mohammad Ismail, J.

1. This is an appeal from an order of the civil Judge of Budaun reversing a decree of a Munsif of that district. Mt. Nadri Begum, plaintiff, brought a suit to recover Rs. 50 as arrears of Kharch pandan from defendants 1 and 2 on the basis of an agreement dated 21st December 1937. The defendants pleaded, inter alia, that the deed in question was ineffective for want of registration in accordance with law. The instrument in suit was executed by Irshad Ali, appellant, in favour of the respondent as a pre-nuptial agreement. In the document certain properties were hypothecated to secure the payment of the stipulated amount. Learned Counsel for the appellant has argued that the property in Budaun town did not belong to the executant and therefore the sub-registrar of Budaun had no authority to register the document. In the deed some other properties outside the jurisdiction of the sub-registrar of Budaun were also hypothecated. It is now found as a fact that the plaintiff failed to prove the title of Irshad Ali in the property in Budaun town. If the

contention of learned Counsel for the appellant is accepted, it follows that the plaintiff would lose her claim not only against the property in which the title of Irshad Ali was defective but in other properties also in which he had undoubtedly proprietary title. A number of authorities have been cited by learned Counsel for the parties. It would be convenient to refer to Section 28, Registration Act, to determine the requirements of law. Section 28 runs as follows:..every document mentioned in Section 17, Sub-section (1), Clauses (a), (b), (C) and (d) and Section 18, Clauses (a), (b) and (C), shall be presented for registration in the office of a sub-registrar within whose sub-district the whole or some portion of the property to which such document refers is situate.

2. It is not disputed that the property in Budaun town is situate within the sub-district of the sub-registrar in whose office the instrument in question was registered. It is however contended that for practical purposes the property should be deemed to be non-existent because the executant had no right in it. Reliance has been placed by learned Counsel for the appellant on the case in Bisal Singh v. Roshan Lal ('24) 11 A.I.R. 1924 All. 373 in which a learned Judge of this Court made the following observations:

No question of fraud by one party or the other enters into the language of the law. The question of fraud may be pleaded only to stop a party from raising a plea, but the jurisdiction of a registering officer cannot come into play simply because one of the parties to a transaction has been guilty of fraud.

3. These observations were made on the facts of that particular case. In that case there was no property within the jurisdiction of the sub-registrar of Allahabad and yet the instrument was registered by the sub-registrar of that place. On those facts the instrument was held to be ineffective and inoperative. Learned Counsel for the respondent has referred to the case in Pahladi Lal v. Mt. Laraiti ('19) 6 A.I.R. 1919 All. 450. In that case it was held that where in a mortgage deed certain immovable property was included which actually existed within the jurisdiction of the registering officer but the mortgagor had no title thereto, the deed would be deemed to be duly registered according to law. It is not necessary for me to cite all the authorities that have been discussed at the bar. The ratio decidendi deducible

from the cases cited before me is that where the property is not in existence at all and has been included in an instrument for the purposes of registration, the registration would be invalid. Similarly, if the property exists and the parties did not intend it to be effected by the document, the registration would be invalid. But if the property actually exists and the parties intended to transfer it, the registration would not be affected merely because the mortgagee or transferee fails to prove the title of the mortgagor or the transferor. In *Biswanath Prasad v. Chandra Narayan* ('21) 8 A.I.R. 1921 (P.C.) 8 their Lordships reviewed the case law on the subject and held that the document in question was inoperative as it was registered at the office of the sub-registrar within whose sub-district certain property covered by the deed although existed was not intended to be transferred. At p. 516 their Lordships observed:

In coming to the conclusion that this appeal must be dismissed, their Lordships' judgment rests on the view that none of the parties ever intended that the one kauri share in mauza Kolhua should vest in Udit or should pass by the mortgage from him to the mortgagee. This case differs *toto* from the case suggested in argument of a mere failure to make a good title to property dealt with by the instrument, and which both parties had intended to form part of the security.

4. In the present case the finding of the lower appellate Court is clear and categorical. The civil Judge held:

On the other hand, the parties considered that defendant 1, Irshad Ali, was owner of the Budaun property and he wanted to mortgage it. Long after the marriage was over Irshad Ali now wants to avoid it by setting up his own fraud.

5. In view of the finding it is not open to me to hold that Irshad Ali from the beginning did not intend to transfer the property. That being so, in my judgment, the document in suit is operative. For the reasons given above, I dismiss the appeal with costs. Leave to appeal is refused.