

Sundar Bai Vs. Basdeo Singh and ors.

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Court : Allahabad

Decided On : Oct-30-1918

Reported in : 50Ind.Cas.109

Judge : Piggott and ;Walsh, JJ.

Appellant : Sundar Bai

Respondent : Basdeo Singh and ors.

Judgement :

Piggott, J.

1. This is a second appeal by a plaintiff whose suit has failed in both the Courts below. The object of that suit was to obtain a declaration that a certain decree or order passed on the 13th of October 1909, in another suit instituted by this same plaintiff, is void and ineffectual against her, together with such subsidiary relief in the way of preventing the decree-holders from executing the said decree as the Court might think necessary and suitable. The Courts below have dismissed the suit, in part upon a finding of fact as to the soundness of the plaintiff's mind on the date on which that suit was instituted, and in part also on the view that it is barred either by Section 47 of the Code of Civil Procedure, or by Section 42 of the Specific Relief Act, or both. When the appeal first came before this same Bench in the month of June last, we were of opinion that the finding of fact on which the Courts below had proceeded was insufficient, because it was necessary for us to

know what was the state of the plaintiff's mind on the date on which the decree complained of was passed, that is to say, on the 13th of October 1909. We also felt considerable doubt whether we could agree with the view of the law upon which the Courts below had held this suit not to be maintainable at all. We accordingly remitted an issue to which a certain finding has been returned. The question of the effect of that finding has been debated before us and must be disposed of at once.

2. The defendants-respondents have taken objection to this finding, substantially on the ground that it is expressed in doubtful language and should not be treated as a definite or satisfactory determination of the issue remitted by this Court. Now the learned District Judge had before him evidence on which it was undoubtedly open to him, as a matter of law, to come to a finding that Musammat Sundar Bai was of unsound mind or by reason of unsoundness of mind or mental infirmity incapable of protecting her own interests on the 13th of October 1909. He found the question a very difficult one to determine and it is not surprising that he should have done so. The limits which separate infirmity of mind, or eccentricity, from such mental incapacity as is referred to in Rule 15 of Order XXXII of the Code of Civil Procedure are necessarily narrow, and it must often be difficult for the Court charged with the responsibility of coming to a conclusion of fact upon such a point to arrive at such conclusion with certainty. In the present case, moreover, the position was further complicated by the fact that another learned Judge, the predecessor-in-office of the Judge by whom the remand finding was returned, had come to the conclusion that this plaintiff was of sound mind and legally capable of looking after her own interests on the date on which the suit which resulted in the order complained of was instituted. Under the circumstances it cannot fairly be objected to the learned Judge of the Court below that he has frankly admitted that he found considerable difficulty in arriving at a conclusion. We think, however, that he has returned a clear finding to the issue remitted by this Court, that this is in substance a finding of fact and that we are bound to accept it as such. As regards the questions of law discussed in the judgment under appeal, it seems to us that they can be briefly disposed of. There is certainly nothing in Section 47 of the Code of Civil Procedure which bars a suit like the present. To hold the contrary would be to make it impossible for a person against whom a decree had been

passed during his minority, without his ever having been properly represented in the litigation, to obtain any relief against the said decree. In fact such a suit as that which was finally decreed by their Lordships of the Privy Council in *Partab Singh v. Bhabuti Singh* 21 Ind. Cas. 288 : 35 A. 487 : 17 C.W.N. 1165 : (1913) M.W.N. 785 : 14 M.L.T. 299 : 25 M.L.J. 492 : 11 A.L.J. 901 : 16 O.C. 247 : 18 C.L.J. 384 : 15 Bom. L.R. 1001 : 40 I.A. 182 (P.C.) would not be maintainable at all, if the principles upon which the lower Appellate Court has proceeded in deciding the first appeal in this case were correct. The same decision is authority also for the proposition that Section 42 of the Specific Relief Act cannot be applied so as to bar this suit in the manner in which it has been used by the Courts below.

3. In view of the decision which I have come to, however, I do not think it necessary to discuss the questions of law above referred to at any length. In my opinion the present suit was maintainable and could not be dismissed as it was in limine upon the grounds taken by the Courts below. But it is one thing to say that a suit is maintainable and another thing to lay down precisely what facts the plaintiff must be held bound to prove in order to obtain a decree. In the present case, I think the plaintiff was not entitled to a decree of the nature sought and the order complained of, passed on the 13th of October 1909, is one which it was within the jurisdiction of the Court to pass at that time; it seems to me a proper order for the Court to have passed and one which this plaintiff is not entitled to have set aside. It must be remembered that we are bound to hold, on the findings arrived at by the Court of first appeal, that the plaintiff was of sound mind and capable of protecting her own interests when she instituted Suit No. 70 of 1909 which resulted in the order now complained of. The object of that suit was to set aside a certain sale-deed which this plaintiff had executed on the 16th of March 1909. Somewhere between the date of the institution of the suit and the order of the 13th of October 1909, the plaintiff became afflicted with the legal disability of unsoundness of mind. She had been examined by the Court on the 2nd of October 1909, and it is clear that nothing which took place during her examination had in any way excited the suspicion of the Court, or suggested to any person the plea that the plaintiff had now become of unsound mind and incapable of prosecuting her own suit. Nor was any representation to this effect made to the Court at any time before it delivered its final decision in the case. The nature of that decision requires to be carefully

considered. It proceeded upon a petition presented to the Court by the plaintiff's legal adviser. That petition was presented under Order XXIII, Rule 1 of the Code of Civil Procedure. It was represented that the suit as brought must fail by reason of some formal defect and that the plaintiff ought, under the circumstances, to be allowed to withdraw from the suit with liberty to institute a fresh suit hereafter such an application can in the discretion of the Court be granted on such terms as it thinks fit. We must take it to be common ground now that the application was rightly made, that is to say, that the suit as instituted and then pending before the Court was bound to fail by reason of some formal defect. If the Court had gone on to dispose of the suit, apart from this application for leave to withdraw, it would have dismissed the same. It follows that the defect in consequence of which the suit was bound to fail was one inherent in the frame of the suit itself, and, therefore, one for which the plaintiff had made herself responsible at a time when she was not incapable of protecting her own interests by reason of unsoundness of mind or of mental infirmity. The Court decided that permission to withdraw from the suit with liberty to institute a fresh suit ought to be granted, subject to payment to the defendants of all costs incurred by them up to date. It so happened, and this is the real origin of the present litigation, that the bill of costs for the defendants was a heavy one. We must, however, take it as established that the costs therein specified were costs which had actually been incurred. It has never been any part of the plaintiff's case in the suit now before us that a fraud was practised upon the Court in the month of October 1909, by the defendants certifying payment of Pleader's fees which had not in fact been paid. The order of the Court, therefore, requiring the plaintiff to make good these costs was a reasonable one on the face of it. It was the only fair alternative to a decree dismissing the suit, and the order was passed on the application of the plaintiff's legal adviser.

4. What has really been contended before us on behalf of the appellant is that upon the finding that the said appellant, as plaintiff in Suit No. 70 of 1909, was suffering from the legal disability of unsoundness of mind on the date on which the order complained of was passed, taken in connection with the admitted fact that she was not represented by a next friend and that no guardian ad litem had been appointed for her on that date, the plaintiff is of necessity entitled to a decree in her favour. In effect the contention is that the decree so passed is, as it stand a

nullity in law, and that the Courts have no option, on becoming aware of the facts above set forth, but to declare it to be such. This contention is supported by reference to rulings in which the above principles have been affirmed in the case of decrees passed to the prejudice of minors who were not properly represented in the litigation in question. The position of a person of unsound mind is not quite the same as that of a minor. To begin with, minority is not a disability with which a litigant can become affected during the progress of a suit. Consequently in the case of a minor the particular position with which we have to deal in the present case could not possibly arise. In the next place, regard being had to the provisions of Order XXXII, Rule 15 of the Code of Civil Procedure, it is clear that the duty of appointing a guardian or next friend to look after the interests of a litigant afflicted with the legal disability of unsoundness of mind is laid upon the Court in two sets of circumstances only. If a person has been adjudged to be of unsound mind by order of a competent Court, then no suit can be brought by or against such a person unless subject to the provisions of Order XXXII of the Code of Civil Procedure; further, if during the course of a litigation the Court finds on enquiry that any one of the parties before it is, by reason of unsoundness of mind or mental infirmity, incapable of protecting his own interests, the Court is bound to take action under the aforesaid Order. Neither of these contingencies arose in the suit of 1909. The fact of the plaintiff's unsoundness of mind was never represented to the Court by any of the persons concerned, was never pleaded and was never made a matter of enquiry by that Court. It cannot be said, therefore, that the Court at the time when it passed the order of October the 13th, 1909, infringed the provisions of Order XXXII, Rule 15 of the Code of Civil Procedure, or exercised any jurisdiction not vested in it by law.

5. To sum up, therefore, my opinion is that, while a suit of this nature, by a person against whom a decree had been passed or an order made at a time when such person was suffering under the legal disability of unsoundness of mind, is maintainable and cannot be defeated on the grounds which have been relied upon by the Courts below; at the same time a person who has once been lawfully a party to a litigation, as for instance the present plaintiff, who on the date of her institution of the suit was not afflicted with any legal disability, is not necessarily entitled to have the final decree or order of the Court disturbed, merely upon a

finding that the legal disability of unsoundness of mind had supervened before that order was passed. The question of the plaintiff's right to a decree in a suit like the present must depend upon the facts of the case and the equities arising therefrom. I think, therefore, that the Courts below were right in dismissing the suit, though not upon the grounds on which they proceeded. Under the circumstances the plaintiff had some valid grounds for instituting the present appeal, as the defendants in the Courts below had succeeded upon contentions which were, in my opinion, not adequate. It is, therefore, reasonable that we should leave the parties to bear their own costs of this appeal. I would, however, dismiss the said appeal for the reasons which I have given.

Walsh, J.

6. I agree. The circumstances of this case are exceptional and have given rise to considerable difficulty.

7. I do not agree with the view of the lower Courts that Section 42 of the Specific Relief Act is a defence to this suit. Section 42 deals only with declaratory suits. Its object clearly is to prevent multiplicity of suits and undue haste on the part of a litigant who rushes into Court for some fancy grievance. Where, as in this case, a declaration is asked for as a necessary preliminary to the real relief,--which was in this case exemption from liability under a decree, which is a roundabout way of asking for the decree to be set aside,--the section in my judgment does not apply.

8. The decision to which we have come, in my opinion, does substantial justice in the peculiar circumstances of this case. It must not be treated as laying down any principle for the decision of cases in which a party becomes insane pendente lite, and a decree is passed against him in spite of such disability, or without notice of this disability having been given to the Court.

9. The appeal is dismissed, the parties to bear their own costs.